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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 6-K**

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**REPORT OF FOREIGN PRIVATE ISSUER  
PURSUANT TO RULE 13a-16 OR 15d-16  
OF THE SECURITIES EXCHANGE ACT OF 1934**

**Dated: March 3, 2014**

**Commission File No. 001-33311**

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**NAVIOS MARITIME HOLDINGS INC.**

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**7 Avenue de Grande Bretagne, Office 11B2  
Monte Carlo, MC 98000 Monaco  
(Address of Principal Executive Offices)**

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Indicate by check mark whether the registrant files or will file annual reports under cover Form 20-F or Form 40-F:

Form 20-F  Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Yes  No

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Yes  No

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## Facility Agreement

On December 20, 2013, Iris Shipping Corporation and Jasmine Shipping Corporation (the “Borrowers”), each a wholly owned subsidiary of Navios Asia LLC (“Navios Asia”), entered into a facility agreement with Crédit Agricole Corporate and Investment Bank, as lender and agent, for an amount of up to \$22.5 million in two advances to finance the acquisition of two Panamax bulk carrier vessels (the “Facility Agreement”). The facility bears interest at a rate of LIBOR plus 300 basis points and each advance is repayable in ten semi-annual installments of approximately \$0.6 million each and a final balloon payment on the last payment date of \$5.625 million each.

Navios Maritime Holdings Inc. (“Navios Holdings”) is a guarantor of the obligations of the Borrowers under the Facility Agreement. The Borrowers and Navios Holdings are subject to certain covenants under the Facility Agreement, including financial covenants and covenants under the indentures for Navios Holdings’ outstanding notes. Among other events, it will be an event of default under the Facility Agreement if the financial covenants are not complied with, if there is a change of control (as defined in the Facility Agreement) of Navios Asia, or if Angeliki Frangou and her affiliates, together, own less than 20% of the outstanding share capital of Navios Holdings.

The foregoing description is subject in all respects to the actual terms of the Facility Agreement. A copy of the Facility Agreement is furnished as Exhibit 10.1 to this Report and is incorporated herein by reference.

## Loan Agreement

On December 13, 2013, Navios Holdings Europe Finance Inc., a wholly owned subsidiary of Navios Holdings, Navios Acquisition Europe Finance Inc. and Navios Partners Europe Finance Inc., as lenders, entered into a Loan Agreement, with Navios Europe Inc. (“Navios Europe”), as borrower, Navios Partners Europe Finance Inc., as agent, Navios Acquisition Europe Finance Inc., as arranger and Navios Holdings Europe Finance Inc., as security trustee, relating to a term facility of up to \$10.0 million and a revolving facility of up to \$24.1 million (the “Loan Agreement”). The Loan Agreement was entered into for the purpose, with respect to the term facility, of partly financing the acquisition cost of ten vessels and, with respect to the revolving facility, for providing additional working capital to Navios Europe pursuant to that certain Master Agreement, dated December 13, 2013, between Navios Europe and HSH Nordbank AG (the “Master Agreement”). The loans bear interest at a rate of 12.7%. The term facility shall be repaid on the earlier of the tenth anniversary of the delivery date of the final ship acquired pursuant to the Master Agreement and December 27, 2023 (the “Final Repayment Date”). The revolving facility shall be repaid quarterly to the fullest extent possible from Free Cash Flow (as defined in the Loan Agreement) of Navios Europe, and paid in full on the Final Repayment Date.

The foregoing description is subject in all respects to the actual terms of the Loan Agreement. A copy of the Loan Agreement is furnished as Exhibit 10.2 to this Report and is incorporated herein by reference.

## Supplemental Indentures

On February 20, 2014, Navios Holdings and Navios Maritime Finance II (US) Inc., its wholly owned subsidiary (“Navios Finance” and, together with Navios Holdings, the “Co-Issuers”), entered into a First Supplemental Indenture in order to add Navios Holdings Europe Finance Inc., Triangle Shipping Corporation and Esmeralda Shipping Corporation, each of which is a subsidiary of Navios Holdings (collectively, the “New Guarantors”), as guarantors to the indenture, dated November 29, 2013, governing the Co-Issuers’ 7.375% First Priority Ship Mortgage Notes due 2022. A copy of the First Supplemental Indenture is furnished as Exhibit 10.3 to this Report and is incorporated herein by reference.

On February 20, 2014, the Co-Issuers entered into a Fifth Supplemental Indenture in order to add the New Guarantors as guarantors to the indenture, dated January 28, 2011, governing the Co-Issuers’ 8.125% Senior Notes due 2019. A copy of the Fifth Supplemental Indenture is furnished as Exhibit 10.4 to this Report and is incorporated herein by reference.

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This Report on Form 6-K is hereby incorporated by reference into Navios Holdings' Registration Statement on Form F-3, File No. 333-189231, the Registration Statement on Form S-8, File No. 333-147186, and the related prospectuses, except as otherwise indicated above.

## **Exhibits**

<u>Exhibit No.</u>	<u>Exhibit</u>
10.1	Facility Agreement of up to \$22,500,000, dated as of December 20, 2013.
10.2	Loan Agreement between Navios Europe Inc., Navios Partners Europe Finance Inc., Navios Acquisition Europe Finance Inc., and Navios Holdings Europe Finance Inc., as lenders, Navios Partners Europe Finance Inc., as agent, Navios Acquisition Europe Finance Inc., as arranger and Navios Holdings Europe Finance Inc., as security trustee, dated December 13, 2013.
10.3	First Supplemental Indenture, dated as of February 20, 2014.
10.4	Fifth Supplemental Indenture, dated as of February 20, 2014.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

NAVIOS MARITIME HOLDINGS INC.

By: /s/ Angeliki Frangou

Angeliki Frangou

Chief Executive Officer

Date: March 3, 2014

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**EXHIBIT INDEX**

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10.3	First Supplemental Indenture, dated as of February 20, 2014.
10.4	Fifth Supplemental Indenture, dated as of February 20, 2014.

Private and Confidential

DATED 20 December 2013

IRIS SHIPPING CORPORATION  
and  
JASMINE SHIPPING CORPORATION  
as Borrowers

-and-

CRÉDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK  
as Lender

-and-

CRÉDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK  
as Agent, Account Bank  
and Security Trustee

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FACILITY AGREEMENT FOR A USD22,500,000

TERM LOAN FACILITY

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INCE & CO

PIRAEUS

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**THIS AGREEMENT** dated 20 December 2013 is made **BY** and **BETWEEN**:

- (1) **IRIS SHIPPING CORPORATION** and **JASMINE SHIPPING CORPORATION** as Borrowers;
- (2) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** as Lenders; and
- (3) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** as Account Bank, Agent and Security Trustee.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1 PURPOSE, DEFINITIONS, CONSTRUCTION & MAJORITY LENDERS**

**1.1 Purpose**

This Agreement sets out the terms and conditions on which the Lenders agree to make available to the Borrowers a loan of up to twenty two million five hundred thousand Dollars (USD22,500,000) in 2 equal Advances, for the purpose of part-financing the purchase price of two Panamax bulk carriers.

**1.2 Definitions**

In this Agreement, unless the context otherwise requires:

“**Account Bank**” means Crédit Agricole Corporate and Investment Bank, acting through its office at 9, quai du Président Paul Doumer, 92920 Paris La Défense Cedex, France, or such other bank as may be designated by the Agent as an Account Bank for the purposes of this Agreement;

“**Advance A**” means the amount of up to USD11,250,000, to be made available by the Lenders to the Borrowers to assist Iris in its acquisition of Vessel A or, as the context requires, the amount thereof outstanding from time to time;

“**Advance B**” means the amount of up to USD11,250,000, to be made available by the Lenders to the Borrowers to assist Jasmine in its acquisition of Vessel B or, as the context requires, the amount thereof outstanding from time to time;

“**Advance**” means either of Advance A or Advance B and in the plural means both of them;

“**Agent**” means Crédit Agricole Corporate and Investment Bank, acting through its office at 9, quai du Président Paul Doumer, 92920 Paris La Défense Cedex, France (or of such other address as may last have been notified to the other parties to this Agreement pursuant to clause 17.2.3) or such other person as may be appointed as agent by the Lenders pursuant to clause 16.13;

“**Approved Broker**” means each of Fearnleys A.S., Oslo Shipbrokers A.S., Clarkson Valuations Limited, Simpson Spence & Young Shipbrokers Ltd., E.A. Gibson Shipbrokers Ltd., Allied Shipbroking, Greece, RS Platou ASA, ICAP Shipping Limited, ACM Ltd., London, or such other reputable, independent and first class firm of shipbrokers specialising in the valuation of vessels of the relevant type appointed by the Lenders and agreed with the Borrowers;

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**“Banking Day”** means a day on which dealings in deposits in USD are carried on in the London Interbank Eurocurrency Market and (other than Saturday or Sunday) on which banks are open for business in London, Piraeus, Paris and New York City (or any other relevant place of payment under clause 6);

**“Banks”** means, together, the Agent, the Security Trustee, the Account Bank, the Lenders and any Transferee Lenders;

**“Borrowed Money”** means Indebtedness in respect of (i) money borrowed or raised and debit balances at banks, (ii) any bond, note, loan stock, debenture or similar debt instrument, (iii) acceptance or documentary credit facilities, (iv) receivables sold or discounted (otherwise than on a non-recourse basis), (v) deferred payments for assets or services acquired, (vi) finance leases and hire purchase contracts, (vii) swaps, forward exchange contracts, futures and other derivatives, (viii) any other transaction (including without limitation forward sale or purchase agreements) having the commercial effect of a borrowing or raising of money or of any of (ii) to (vii) above and (ix) guarantees in respect of Indebtedness of any person falling within any of (i) to (viii) above;

**“Borrower”** means each of IRIS SHIPPING CORPORATION (**“Iris”**) and JASMINE SHIPPING CORPORATION (**“Jasmine”**) each having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960 and in the plural means both of them;

**“Break Costs”** means the aggregate amount of all losses, premiums, penalties, costs and expenses whatsoever certified by the Agent at any time and from time to time as having been incurred by the Lenders or any of them in maintaining or funding their Contributions or in liquidating or re-employing fixed deposits acquired to maintain the same as a result of either:

- (a) any repayment or prepayment of the Loan or any part thereof otherwise than (i) in accordance with clause 4.1 or (ii) on an Interest Payment Date whether on a voluntary or involuntary basis or otherwise howsoever; or
- (b) as a result of the Borrowers failing or being incapable of drawing an Advance after a relevant Drawdown Notice has been given;

**“Certified Copy”** means in relation to any document delivered or issued by or on behalf of any company, a copy of such document certified as a true, complete and up to date copy of the original by any of the directors or officers for the time being of such company or by such company’s attorneys or solicitors;

**“Charter Assignment”** means a specific assignment of each Extended Employment Contract required to be executed hereunder by either Borrower in favour of the Security Trustee (including any notices and/or acknowledgements and/or undertakings associated therewith) in such form as the Agent and the Majority Lenders may require in their sole discretion;

**“Charter Insurances”** means all policies and contracts of insurance which are from time to time during the Facility Period in place or taken out or entered into by or for the benefit of the Owners in respect of loss of earnings and all benefits thereof (including claims of whatsoever nature and return of premiums);

**“Charter Insurance Assignment”** means a first priority assignment of the Charter Insurances executed or to be executed by such named insured as the Agent may require in favour of the Security Trustee, in such form as the Agent and the Majority Lenders may in their sole discretion require;

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“**Classification**” means, in relation to each Vessel, the highest class available for a vessel of her type with the relevant Classification Society;

“**Classification Society**” means, in relation to each Vessel, any IACS classification society which the Lenders shall, at the request of the Borrowers, have agreed in writing shall be treated as the classification society in relation to such Vessel for the purposes of the relevant Ship Security Documents;

“**Commercial Manager**” means Navios Shipmanagement Inc., a company incorporated in the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960 or an affiliate of the Corporate Guarantor or, with the prior written consent of the Agent, any other person appointed by an Owner as the commercial manager of the relevant Mortgaged Vessel;

“**Commitment**” means, in relation to the Loan in relation to each Lender, the sum set out opposite its name in schedule 1 or any replacement thereof or otherwise pursuant to the terms of any relevant Transfer Certificate as the amount which, subject to the terms of this Agreement, it is obliged to advance to the Borrowers hereunder in respect of the Loan Facility, in each case as such amount may have been reduced and/or cancelled under this Agreement;

“**Compliance Certificate**” means a certificate substantially in the form set out in schedule 6 signed by the chief financial officer of the Corporate Guarantor;

“**Compulsory Acquisition**” means, in respect of a Vessel, requisition for title or other compulsory acquisition including, if that ship is not released therefrom within the Relevant Period, capture, appropriation, forfeiture, seizure, detention, deprivation or confiscation howsoever for any reason (but excluding requisition for use or hire) by or on behalf of any Government Entity or other competent authority or by pirates, hijackers, terrorists or similar persons; “**Relevant Period**” means for the purposes of this definition of Compulsory Acquisition either (i) thirty (30) (or in the respect of pirates, hijackers, terrorists or similar persons, ninety (90)) days or, (ii) in the respect of pirates, hijackers, terrorists or similar persons, if relevant underwriters confirm in writing (in customary terms) prior to the end of such ninety (90) day period that such capture will be covered by the relevant Owner’s war risks insurance if continuing for a further period exceeding six (6) calendar months, the shorter of twelve (12) months and such period at the end of which cover is confirmed to attach;

“**Contribution**” means, at any relevant time, in relation to each Lender, the principal amount of the Loan owing to such Lender at such time;

“**Corporate Guarantee**” means the guarantee required to be executed hereunder by the relevant Corporate Guarantor in such form as the Agent and the Majority Lenders may require in their sole discretion;

“**Corporate Guarantor**” means Navios Maritime Holdings Inc. a company incorporated in the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960;

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“**Default**” means any Event of Default or any event or circumstance which with the giving of notice or lapse of time or the satisfaction of any other condition (or any combination thereof) would constitute an Event of Default;

“**Delivery Date**” means, in relation to a Vessel, the date on which title to and possession of that Vessel is transferred from the relevant Seller to the relevant Borrower;

“**Dollars**” and “**USD**” mean the lawful currency of the USA and in respect of all payments to be made under any of the Security Documents means funds which are for same day settlement in the New York Clearing House Interbank Payments System (or such other US dollar funds as may at the relevant time be customary for the settlement of international banking transactions denominated in US dollars);

“**Drawdown Date**” means, in relation to each Advance, any date being a Banking Day falling during the Drawdown Period, on which the relevant Advance is, or is to be, made available;

“**Drawdown Notice**” means, in relation to each Advance, a notice substantially in the form of schedule 2;

“**Drawdown Period**” means the period commencing on the Execution Date and ending on the earliest of (a) 28 February 2014, (b) the Delivery Date in respect of the second Ship to be delivered by the relevant Seller and (c) any date on which (i) the amount of the Loan is equal to the Total Commitment or (ii) the Total Commitment is reduced to zero pursuant to clauses 10.2 or 12;

“**Earnings Account**” means, in respect of each Borrower, an interest bearing USD Account required to be opened hereunder with the Account Bank in the name of that Borrower designated “[NAME OF BORROWER] - Earnings Account” and includes any other account designated in writing by the Agent to be an Earnings Account for the purposes of this Agreement;

“**Earnings Account Pledge**” means, in respect of each Earnings Account, a first priority charge required to be executed hereunder between the relevant Borrower and the Security Trustee in respect of its Earnings Account in such form as the Agent and the Majority Lenders may require in their sole discretion, and in the plural means both of them;

“**Encumbrance**” means any mortgage, charge, pledge, lien, hypothecation, assignment, title retention, preferential right, option, trust arrangement or security interest or other encumbrance, security or arrangement conferring howsoever a priority of payment in respect of any obligation of any person;

“**Environmental Affiliate**” means any agent or employee of either Borrower, the Commercial Manager, the Technical Manager (other than Synergy), or any other Group Member or any other person having a contractual relationship with either Borrower, the Commercial Manager, the Technical Manager (other than Synergy), or any other Group Member in connection with any Relevant Ship or its operation or the carriage of cargo and/or passengers thereon and/or the provision of goods and/or services on or from any Relevant Ship;

“**Environmental Approval**” means any consent, authorisation, licence or approval of any governmental or public body or authorities or courts applicable to any Relevant Ship or its operation or the carriage of cargo and/or passengers thereon and/or the provision of goods and/or services on or from any Relevant Ship required under any Environmental Law;

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**“Environmental Claim”** means (i) any claim by any applicable Government Entity alleging breach of, or non-compliance with, any Environmental Laws or Environmental Approvals or otherwise howsoever relating to or arising out of an Environmental Incident or (ii) any claim by any other third party howsoever relating to or arising out of an Environmental Incident (and, in each such case, “claim” shall include a claim for damages and/or direction for and/or enforcement relating to clean-up costs, removal, compliance, remedial action or otherwise) or (iii) any Proceedings arising from any of the foregoing;

**“Environmental Incident”** means, regardless of cause, (i) any discharge or release of Environmentally Sensitive Material from any Relevant Ship; (ii) any incident in which Environmentally Sensitive Material is discharged or released from a vessel other than a Relevant Ship which involves collision between a Relevant Ship and such other vessel or some other incident of navigation or operation, in either case, where the Relevant Ship, the Commercial Manager and/or the Technical Manager (other than Synergy) and/or the relevant Owner and/or the relevant Group Member and/or the relevant Operator are actually, contingently or allegedly at fault or otherwise howsoever liable (in whole or in part) or (iii) any incident in which Environmentally Sensitive Material is discharged or released from a vessel other than a Relevant Ship and where such Relevant Ship is actually or reasonably likely to be arrested as a result and/or where the Commercial Manager and/or the Technical Manager (other than Synergy) and/or the relevant Owner and/or other Group Member and/or the relevant Operator are actually or contingently at fault or allegedly and reasonably likely to be found at fault or otherwise howsoever liable to any administrative or legal action;

**“Environmental Laws”** means all laws, regulations, conventions and agreements whatsoever relating to pollution, human or wildlife well-being or protection of the environment (including, without limitation, the United States Oil Pollution Act of 1990 and any comparable laws of the individual States of the USA);

**“Environmentally Sensitive Material”** means oil, oil products or any other products or substance which are polluting, toxic or hazardous or any substance the release of which into the environment is howsoever regulated, prohibited or penalised by or pursuant to any Environmental Law;

**“Event of Default”** means any of the events or circumstances listed in clause 10.1;

**“Execution Date”** means the date on which this Agreement has been executed by all the parties hereto;

**“Extended Employment Contract”** means, in respect of a Vessel, any time charterparty, contract of affreightment or other contract of employment of such ship (including the entry of any Vessel in any pool) which has a tenor exceeding twelve (12) months (including any options to renew or extend such tenor);

**“Facility Period”** means the period starting on the date of this Agreement and ending on such date as all obligations whatsoever of all of the Security Parties under or pursuant to the Security Documents whensoever arising, actual or contingent, have been irrevocably paid, performed and/or complied with;

**“First Indenture”** means the Indenture dated as of 28 January 2011 issued by the Corporate Guarantor and Navios Maritime Finance II (US) Inc. for 8 1/8% Senior Notes due on 15 February 2019;

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“**Flag State**” means Panama or any other country acceptable to the Lenders;

“**General Assignment**” means, in respect of each Vessel, the deed of assignment of its earnings, insurances and requisition compensation executed or to be executed by the relevant Owner in favour of the Security Trustee in such form as the Agent and the Majority Lenders may require in their sole discretion and in the plural means both of them;

“**Government Entity**” means any national or local government body, tribunal, court or regulatory or other agency and any organisation of which such body, tribunal, court or agency is a part or to which it is subject;

“**Group**” means at any relevant time the Corporate Guarantor and its subsidiaries but not including any subsidiary which is listed on any public stock exchange;

“**Group Member**” means any member of the Group;

“**Indebtedness**” means any obligation howsoever arising (whether present or future, actual or contingent, secured or unsecured as principal, surety or otherwise) for the payment or repayment of money;

“**Indentures**” means, together, the First Indenture and the Second Indenture;

“**Indenture Excerpt**” means the excerpt from the First Indenture set out in Schedule 8;

“**Interest Payment Date**” means, in relation to each Advance, the last day of an Interest Period and, if an Interest Period is longer than 6 months, the date falling at the end of each successive period of 6 months during such Interest Period starting from its commencement;

“**Interest Period**” means each period for the calculation of interest in respect of the Loan or, as the case may be, Advance ascertained in accordance with the provisions of clause 3;

“**ISM Code Documentation**” means, in relation to a Vessel, the document of compliance (DOC) and safety management certificate (SMC) issued by a Classification Society pursuant to the ISM Code in relation to that Vessel within the periods specified by the ISM Code;

“**ISM SMS**” means the safety management system which is required to be developed, implemented and maintained under the ISM Code;

“**ISPS Code**” means the International Ship and Port Security Code of the International Maritime Organisation and includes any amendments or extensions thereto and any regulations issued pursuant thereto;

“**ISSC**” means an International Ship Security Certificate issued in respect of a Vessel pursuant to the ISPS Code;

“**Latest Accounts**” means, in respect of any financial quarter or year of the Group, the latest unaudited (in respect of each financial quarter) or audited (in respect of each financial year) financial statements required to be prepared pursuant to clause 8.1.6;

“**Lenders**” means the banks listed in schedule 1 and Transferee Lenders;

“**Lending Branch**” means, in respect of each Lender, its office or branch at the address set out beneath its name in schedule 1 (or, in the case of a Transferee, in the Transfer Certificate to which it is a party as Transferee) or such other office or branch as any Lender shall from time to time select and notify through the Agent to the other parties to this Agreement;

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“**LIBOR**” means, the greater of (i) and (ii) below:

- (i) the rate equal to the offered quotation for deposits in USD in an amount comparable with the amount in relation to which LIBOR is to be determined for a period equal to, or as near as possible equal to, the relevant period which appears on Reuters Screen LIBOR01 at or about 11 a.m. on the second Banking Day before the first day of such period (and, for the purposes of this Agreement, “Reuters Screen LIBOR01” means the display designated as “LIBOR01” on the Reuters Service or such other page as may replace LIBOR01 on that service for the purpose of displaying rates comparable to that rate or on such other service as may be nominated by the British Bankers’ Association as the information vendor for the purpose of displaying the British Bankers’ Association Interest Settlement Rates for USD); and
- (ii) the rate per annum reasonably determined by the Agent from any source the Agent may reasonably select to be the rate which reflects the actual cost to the Lenders of funding their respective Contributions (or the relevant part thereof) during the relevant Interest Period;

“**Liquidity**” means the aggregate of all cash or cash equivalent deposits legally and beneficially owned by any Group Member which are at the free and unrestricted disposal of the relevant Group Member by which it is owned;

“**Loan**” means the aggregate principal amount in respect of the Loan Facility owing to the Lenders under this Agreement at any relevant time;

“**Loan Facility**” means the loan facility provided by the Lenders on the terms and subject to the conditions of this Agreement in the amount of USD22,500,000;

“**Majority Lenders**” means at any relevant time when there are two Lenders, both of them, and at any time when there are more than two Lenders, the Lenders whose Contributions exceed 75% of the Loan;

“**Management Agreement**” means, in respect of each Vessel, (i) the technical management agreement between the relevant Owner and the Technical Manager and (ii) the commercial management agreement between the relevant Owner and the Commercial Manager, each in a form previously approved in writing by the Agent (acting on the instructions of the Majority Lenders);

“**Manager’s Undertakings**” means, collectively, the undertakings and (in respect of the Technical Manager) assignments required to be executed hereunder by the Technical Manager and the Commercial Manager in favour of the Security Trustee in respect of each of the Vessels each in such form as the Agent and the Majority Lenders may require in their sole discretion;

“**Margin**” means, in relation to each Interest Period, 3% per annum;

“**Material Adverse Effect**” means any event or occurrence which the Majority Lenders reasonably determine has had or could reasonably be expected to have a material adverse effect on (i) the Banks’ rights under, or the security provided by, any Security Document, (ii) the ability of any Security Party to perform or comply with any of its obligations under any Security Document or (iii) the value or nature of the property, assets, operations, liabilities or financial condition of any Security Party;

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**“Maturity Date”** means in respect of each Advance, the date falling 5 years after the Drawdown Date in respect of such Advance;

**“MII & MAP Policy”** means a mortgagee’s interest and pollution risks insurance policy (including additional perils (pollution) cover) in respect of each Mortgaged Vessel to be effected by the Security Trustee on or before the first Drawdown Date to cover the Mortgaged Vessels as the same may be renewed or replaced annually thereafter and maintained throughout the Facility Period through such brokers, with such underwriters and containing such coverage as may be acceptable to the Security Trustee in its sole discretion, insuring a sum of at least one hundred and ten per cent (110%) of the Loan in respect of mortgagee’s interest insurance and one hundred and ten per cent (110%) of the Loan in respect of additional perils cover;

**“month”** means a period beginning in one calendar month and ending in the next calendar month on the day numerically corresponding to the day of the calendar month on which it started, provided that (a) if the period started on the last Banking Day in a calendar month or if there is no such numerically corresponding day, it shall end on the last Banking Day in such next calendar month and (b) if such numerically corresponding day is not a Banking Day, the period shall end on the next following Banking Day in the same calendar month but if there is no such Banking Day it shall end on the preceding Banking Day and “months” and “monthly” shall be construed accordingly;

**“Mortgage”** means, in respect of each Vessel, the first preferred Ship mortgage thereof required to be executed hereunder by the Owner thereof in favour of the Security Trustee, each in such form as the Agent and the Majority Lenders may require in their sole discretion and in the plural means both of them;

**“Mortgaged Vessel”** means, at any relevant time, any Vessel which is at such time subject to a Mortgage and a Vessel shall, for the purposes of this Agreement, be regarded as a Mortgaged Vessel as from the date on which the Mortgage of that Vessel has been executed and registered in accordance with this Agreement until whichever shall be the earlier of (i) the payment in full of the amount required to be paid to the Agent pursuant to clause 4.3 or 4.4 following the Total Loss or sale respectively of such Vessel and (ii) the end of the Facility Period;

**“Operator”** means any person who is from time to time during the Facility Period concerned in the operation of a Relevant Ship and falls within the definition of “Company” set out in rule 1.1.2 of the ISM Code;

**“Owner”** means, in relation to:

- (i) Vessel A, Iris; and
- (ii) Vessel B, Jasmine;

and in the plural means both of them;

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**“Permitted Encumbrance”** means any Encumbrance in favour of the Banks or any of them created pursuant to the Security Documents and Permitted Liens;

**“Permitted Liens”** means any lien on any Vessel for master’s, officer’s or crew’s wages outstanding in the ordinary course of trading, any lien for salvage and any ship repairer’s or outfitter’s possessory lien for a sum not (except with the prior written consent of the Agent) exceeding the Casualty Amount (as defined in the Ship Security Documents for such Vessel);

**“Pertinent Jurisdiction”** means any jurisdiction in which or where any Security Party is incorporated, resident, domiciled, has a permanent establishment or assets, carries on, or has a place of business or is otherwise howsoever effectively connected;

**“Prepayment Ratio”** means in respect of the sale or Total Loss of a Mortgaged Vessel the Valuation Amount of such Mortgaged Vessel immediately prior to such sale or Total Loss divided by the Security Value immediately prior to such sale or Total Loss and for these purposes any valuation of a Vessel (calculated in accordance with Clause 8.2.2) may be no more than two months old;

**“Proceedings”** means any litigation, arbitration, legal action or complaint or judicial, quasi-judicial or administrative proceedings whatsoever arising or instigated by anyone (private or governmental) in any court, tribunal, public office or other forum whatsoever and wheresoever (including, without limitation, any action for provisional or permanent attachment of any thing or for injunctive remedies or interim relief and any action instigated on an ex parte basis);

**“Registry”** means, in relation to each Vessel, the office of the registrar, commissioner or representative of the Flag State, who is duly empowered to register such Vessel, the relevant Owner’s title thereto and the relevant Mortgage under the laws and flag of the Flag State;

**“Relevant Advance”** means, in respect of Vessel A, Advance A and in respect of Vessel B, Advance B;

**“Relevant Ship”** means each of the Vessels and any other ship from time to time (whether before or after the date of this Agreement) owned, managed or crewed by, or chartered to, any Group Member;

**“Relevant Vessel”** means the Vessel in respect of which the relevant Advance is being made available;

**“Repayment Dates”** means, in respect of each Advance, subject to clause 6.3, each of the dates falling at six-monthly intervals after the Drawdown Date in respect of such Advance, up to and including the date falling 60 months after such date;

**“Required Authorisation”** means any authorisation, consent, declaration, licence, permit, exemption, approval or other document, whether imposed by or arising in connection with any law, regulation, custom, contract, security or otherwise howsoever which must be obtained at any time from any person, Government Entity, central bank or other self-regulating or supra-national authority in order to enable the Borrowers lawfully to borrow the loan or draw any Advance and/or to enable any Security Party lawfully and continuously to continue its corporate existence and/or perform all its obligations whatsoever whensoever arising and/or grant security under the relevant Security Documents and/or to ensure the continuous validity and enforceability thereof;

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**“Required Security Amount”** means the amount in USD (as certified by the Agent) which is at any relevant time 120% of the Loan;

**“Retention Account”** an interest bearing USD Account required to be opened hereunder with the Account Bank in the name of the Borrowers designated “Iris Shipping Corporation and Jasmine Shipping Corporation – Retention Account” and includes any other account designated in writing by the Agent to be the Retention Account for the purposes of this Agreement;

**“Retention Account Pledge”** means a first priority charge required to be executed hereunder between the Borrowers and the Security Trustee in respect of the Retention Account in such form as the Agent and the Majority Lenders may require in their sole discretion;

**“Retention Amount”** means, in relation to any Retention Date, such sum as shall be the aggregate of:

- (a) one sixth (1/6th) of the repayment instalment in respect of the relevant Advance falling due for payment pursuant to clause 4.1.1 (as the same may have been reduced by any prepayment) on the next Repayment Date after the relevant Retention Date in respect of that Advance; and
- (b) the applicable fraction (as hereinafter defined) of the aggregate amount of interest falling due for payment in respect of each part of the Loan during and at the end of each Interest Period current at the relevant Retention Date and, for this purpose, the expression “ **applicable fraction**” in relation to each Interest Period shall mean a fraction having a numerator of one and a denominator equal to the number of Retention Dates falling within the relevant Interest Period;

**“Retention Dates”** means, in respect of each Advance, the date falling thirty (30) days after the Drawdown Date in respect thereof and each of the dates falling at monthly intervals after such date and prior to the Maturity Date in respect of that Advance;

**“Second Indenture”** means the Indenture dated as of 29 November 2013 for USD650,000,000 issued by the Corporate Guarantor and Navios Maritime Finance II (US) Inc. for 7 <sup>3</sup>/<sub>8</sub>% First Priority Ship Mortgage Notes due in 2022;

**“Security Documents”** means this Agreement, the Mortgages, the Corporate Guarantee, the General Assignments, the Charter Assignments, the Earnings Account Pledges, the Retention Account Pledge, the Manager’s Undertakings, the Shares Pledges, and any other documents as may have been or shall from time to time after the date of this Agreement be executed to guarantee and/or to govern and/or secure all or any part of the Loan, interest thereon and other moneys from time to time owing by the Borrowers pursuant to this Agreement (whether or not any such document also secures moneys from time to time owing pursuant to any other document or agreement);

**“Security Party”** means the Borrowers, the Technical Manager (other than Synergy), the Commercial Manager, the Corporate Guarantor, the Shareholder or any other person who may at any time be a party to any of the Security Documents (other than the Banks and Synergy);

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**“Security Trustee”** means Crédit Agricole Corporate and Investment Bank, acting through its office at 9, quai du Président Paul Doumer, 92920 Paris La Défense Cedex, France (or of such other address as may last have been notified to the other parties to this Agreement pursuant to clause 17.2.3) or such other person as may be appointed as Security Trustee and trustee by the Lenders, the Account Bank and the Agent pursuant to clause 16.14;

**“Security Value”** means the amount in USD (as certified by the Agent) which is, at any relevant time, the aggregate of (a) the Valuation Amounts of the Mortgaged Vessels as most recently determined in accordance with clause 8.2.2 and (b) the net realizable market value of any additional security for the time being actually provided to the Lenders pursuant to clause 8.2.1(b) and (c) and cash (excluding the Minimum Balance) over which there is an Encumbrance as security for the obligations of the Borrowers under this Agreement;

**“Shareholder”** means Navios Asia LLC, a limited liability company incorporated in the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960;

**“Shares Pledge”** means the first priority pledge of the shares of and in each Borrower to be executed by the Shareholder in favour of the Security Trustee in such form as the Agent and the Majority Lenders may require in their sole discretion and in the plural means both of them;

**“Ship Security Documents”** means, in relation to each Vessel, the relevant Mortgage, the relevant General Assignment, any relevant Charter Assignment and the relevant Manager’s Undertakings;

**“subsidiary”** of a person means any company or entity directly or indirectly controlled by such person, and for this purpose “control” means either the ownership of more than fifty per cent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity or the power to direct its policies and management, whether by contract or otherwise;

**“Taxes”** includes all present and future income, corporation, capital or value-added taxes and all stamp and other taxes and levies, imposts, deductions, duties, charges and withholdings whatsoever together with interest thereon and penalties in respect thereto, if any, and charges, fees or other amounts made on or in respect thereof (and “Taxation” shall be construed accordingly);

**“Technical Manager”** means Synergy Marine Pte. Ltd., (“**Synergy**”) a company incorporated in Singapore and having its registered office at 1 Kim Seng Promenade, #12-01, Great World City, Singapore 237994 or an affiliate thereof or, with the prior written consent of the Agent, any other person appointed by an Owner as the technical manager of the relevant Mortgaged Vessel;

**“Total Assets”** and **“Total Liabilities”** mean, respectively, the total assets and total liabilities of the Group as evidenced at any relevant time by the Latest Accounts, in which they shall have been calculated by reference to the meanings assigned to them in accordance with US GAAP provided that cash and vessels under construction shall be deducted from Total Assets, the benefit of any charterparty shall be included in the Total Assets and debt related to vessels under construction and cash shall be deducted from Total Liabilities;

**“Total Commitment”** means, at any relevant time, the aggregate of the Commitments of all the Lenders at such time (being the aggregate of the sums set out opposite their names in schedule 1);

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“**Total Loss**” means, in relation to each Vessel:

- (a) actual, constructive, compromised or arranged total loss of such Vessel; or
- (b) Compulsory Acquisition; or
- (c) any hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of such Vessel not falling within the definition of Compulsory Acquisition by any Government Entity, or by persons allegedly acting or purporting to act on behalf of any Government Entity, unless such Vessel be released and restored to the relevant Owner within ninety (90) days after such incident;

“**Transfer Certificate**” means a certificate in substantially the form set out in schedule 4;

“**Transferee Lender**” has the meaning ascribed thereto in clause 15.3;

“**Transferor Lender**” has the meaning ascribed thereto in clause 15.3;

“**Trust Deed**” means a trust deed in the form, or substantially in the form, set out in schedule 5;

“**Trust Property**” means (i) the security, powers, rights, titles, benefits and interests (both present and future) constituted by and conferred on the Banks or any of them under or pursuant to the Security Documents (including, without limitation, the benefit of all covenants, undertakings, representations, warranties and obligations given, made or undertaken to any Bank in the Security Documents), (ii) all moneys, property and other assets paid or transferred to or vested in any Bank (or anyone else on such Bank’s behalf) or received or recovered by any Bank (or anyone else on such Bank’s behalf) pursuant to, or in connection with, any of the Security Documents whether from any Security Party or any other person and (iii) all moneys, investments, property and other assets at any time representing or deriving from any of the foregoing, including all interest, income and other sums at any time received or receivable by any Bank (or anyone else on such Bank’s behalf) in respect of the same (or any part thereof);

“**Underlying Documents**” means, together, the MOAs and the Management Agreement;

“**Unlawfulness**” means any event or circumstance which either is or, as the case may be, might in the opinion of the Agent become the subject of a notification by the Agent to the Borrowers under clause 12.1;

“**USA**” means the United States of America;

“**Valuation Amount**” means, in respect of each Mortgaged Vessel, the value thereof as most recently determined under clause 8.2.2; and

“**Vessel**” means each of Vessel A and Vessel B and in the plural means both of them.

Words and expressions defined in Schedule 7 (Vessel Details) shall have the meanings given to them therein as if the same were set out in full in this clause 1.2.

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1.3 **Construction**

In this Agreement, unless the context otherwise requires:

- 1.3.1 clause headings and the index are inserted for convenience of reference only and shall be ignored in the construction of this Agreement;
- 1.3.2 references to clauses and schedules are to be construed as references to clauses of, and schedules to, this Agreement and references to this Agreement include its schedules and any supplemental agreements executed pursuant hereto;
- 1.3.3 references to (or to any specified provision of) this Agreement or any other document shall be construed as references to this Agreement, that provision or that document as in force for the time being and as duly amended and/or supplemented and/or novated;
- 1.3.4 references to a “regulation” include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any Government Entity, central bank or any self-regulatory or other supra-national authority;
- 1.3.5 references to any person in or party to this Agreement shall include reference to such person’s lawful successors and assigns and references to a Lender shall also include a Transferee Lender;
- 1.3.6 words importing the plural shall include the singular and vice versa;
- 1.3.7 references to a time of day are, unless otherwise stated, to London time;
- 1.3.8 references to a person shall be construed as references to an individual, firm, company, corporation or unincorporated body of persons or any Government Entity;
- 1.3.9 references to a “guarantee” include references to an indemnity or any other kind of assurance whatsoever (including, without limitation, any kind of negotiable instrument, bill or note) against financial loss or other liability including, without limitation, an obligation to purchase assets or services as a consequence of a default by any other person to pay any Indebtedness and “guaranteed” shall be construed accordingly;
- 1.3.10 references to any statute or other legislative provision are to be construed as references to any such statute or other legislative provision as the same may be re enacted or modified or substituted by any subsequent statute or legislative provision (whether before or after the date hereof) and shall include any regulations, orders, instruments or other subordinate legislation issued or made under such statute or legislative provision;
- 1.3.11 a certificate by the Agent or the Security Trustee as to any amount due or calculation made or any matter whatsoever determined in connection with this Agreement shall be conclusive and binding on the Borrowers except for manifest error;
- 1.3.12 if any document, term or other matter or thing is required to be approved, agreed or consented to by any of the Banks such approval, agreement or consent must be obtained in writing unless the contrary is stated;
- 1.3.13 time shall be of the essence in respect of all obligations whatsoever of the Borrowers under this Agreement, howsoever and whensoever arising;
- 1.3.14 and the words “other” and “otherwise” shall not be construed eiusdem generis with any foregoing words where a wider construction is possible.

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1.4 **Accounting terms and references to currencies**

Currencies are referred to in this Agreement by the three letter currency codes (ISO 4217) allocated to them by the International Organisation for Standardisation.

1.5 **Contracts (Rights of Third Parties Act) 1999**

Except for clause 20, no part of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

1.6 **Majority Lenders**

Where this Agreement or any other Security Document provides for any matter to be determined by reference to the opinion of the Majority Lenders or to be subject to the consent or request of the Majority Lenders or for any decision or action to be taken on the instructions in writing of the Majority Lenders, such opinion, consent, request or instructions shall (as between the Lenders) only be regarded as having been validly given or issued by the Majority Lenders if all the Lenders with a Commitment and/or Contribution shall have received prior notice of the matter on which such opinion, consent, request or instructions are required to be obtained and the relevant majority of such Lenders shall have given or issued such opinion, consent, request or instructions but so that (as between the Borrowers and the Banks) the Borrowers shall be entitled (and bound) to assume that such notice shall have been duly received by each relevant Lender and that the relevant majority shall have been obtained to constitute Majority Lenders whether or not this is in fact the case.

2 **THE AVAILABLE COMMITMENT AND CANCELLATION**

2.1 **Agreement to lend**

The Lenders, relying upon each of the representations and warranties in clause 7, agree to provide to the Borrowers upon and subject to the terms of this Agreement, the Advances, for the purposes of financing part of the purchase price of the Vessels. Subject to the terms of this Agreement, the obligations of the Lenders shall be to contribute to each Advance, the proportion of the relevant Advance which their respective Commitments bear to the Total Commitment on any relevant Drawdown Date.

2.2 **Obligations several**

The obligations of the Lenders under this Agreement are several according to their respective Commitments and/or Contributions. The failure of any Lender to perform such obligations shall not relieve any other party to this Agreement of any of its respective obligations or liabilities under this Agreement nor shall any Bank be responsible for the obligations of any other Bank (except for its own obligations, if any, as a Lender) under this Agreement.

2.3 **Interests several**

Notwithstanding any other term of this Agreement (but without prejudice to the provisions of this Agreement relating to or requiring action by the Majority Lenders) the interests of the Banks are several and the amount due to any Bank is a separate and independent debt. Each Bank shall have the right to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Bank to be joined as an additional party in any Proceedings for this purpose.

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2.4 **Drawdown**

2.4.1 On the terms and subject to the conditions of this Agreement, each Advance shall be advanced to the Borrowers on the relevant Drawdown Date following receipt by the Agent from the Borrowers of Drawdown Notices not later than 10 a.m. on the third Banking Day before each proposed Drawdown Date.

2.4.2 A Drawdown Notice shall be effective on actual receipt by the Agent and, once given, shall, subject as provided in clause 3.6, be irrevocable.

2.5 **Limitation and application of Advances**

2.5.1 The amount of the Loan shall not exceed the amount of the Loan Facility and the amount of each Advance shall not exceed the lesser of USD11,250,000, and (ii) 60% of the Valuation Amount of the Vessel which is to be financed therewith.

2.5.2 Each Advance shall be paid forthwith upon drawdown to such account or accounts as the Borrowers shall stipulate in the relevant Drawdown Notice.

2.6 **Availability**

Upon receipt of a Drawdown Notice complying with the terms of this Agreement, the Agent shall promptly notify each Lender and each Lender shall make available to the Agent its portion of the relevant Advance for payment by the Agent in accordance with clause 6.2. The Borrowers acknowledge that payment of any Advance to the account referred to in the relevant Drawdown Notice shall satisfy the obligation of the Lenders to lend that Advance to the Borrowers under this Agreement.

2.7 **Voluntary cancellation of Facility**

The Borrowers may, without penalty or cost but after payment of any Break Costs, at any time during the Drawdown Period by notice to the Agent (effective only on actual receipt) cancel with effect from a date not less than five Banking Days after the receipt by the Agent of such notice the whole or any part (being five hundred thousand Dollars (USD500,000) or any larger sum which is an integral multiple of five hundred thousand Dollars (USD500,000)) of the Total Commitment. Any such notice of cancellation, once given, shall be irrevocable and the Total Commitment shall be reduced accordingly and each Lender's Commitment shall be reduced pro rata according to the proportion which its Commitment bears to the Total Commitment.

2.8 **Cancellation in changed circumstances**

The Borrowers may also at any time during the Facility Period by notice to the Agent (effective only on actual receipt) prepay and cancel with effect from a date not less than five (5) days after receipt by the Agent of such notice, the whole but not part only, but without prejudice to the Borrowers' obligations under clauses 6.6 and 12, of the Contribution and Commitment (if any) of any Lender to which the Borrowers shall have become obliged to pay additional amounts under clause 12 or clause 6.6. Upon any notice of such prepayment and cancellation being given, the Commitment of the relevant Lender shall be reduced to zero, the Borrowers shall be obliged to prepay the Contribution of such Lender and such Lender's related costs (including but not limited to Break Costs) on such date and such Lender shall be under no obligation to participate in the Loan or any further Advances.

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2.9 **Use of proceeds**

Without prejudice to the Borrowers' obligations under clause 8.1.4, no Bank shall have any responsibility for the application of the proceeds of any Advance or any part thereof by the Borrowers.

3 **INTEREST AND INTEREST PERIODS**

3.1 **Normal interest rate**

The Borrowers must pay interest on each Advance in respect of each Interest Period relating thereto on each Interest Payment Date at the rate per annum determined by the Agent to be the aggregate of (a) the Margin and (b) LIBOR.

3.2 **Selection of Interest Periods**

Subject to clause 3.3, the Borrowers may by notice received by the Agent not later than 10:00 a.m. on the third Banking Day before the beginning of each Interest Period specify whether such Interest Period shall have a duration of three (3), six (6) or twelve (12) months or such other longer period as the Borrowers may select and the Agent (acting on the instructions of the Lenders) may agree, and if the Borrowers wish to specify an Interest Period of more than 12 months, they must give at least 5 Banking Days prior notice thereof.

3.3 **Determination of Interest Periods**

Subject to Clause 3.3.1 every Interest Period shall be of the duration specified by the Borrowers pursuant to clause 3.2 but so that:

3.3.1 the first Interest Period in respect of the first Advance to be made hereunder shall start on the Drawdown Date in respect thereof, and each subsequent Interest Period relating to the first Advance shall start the day falling the day after the last day of the previous Interest Period;

3.3.2 the first Interest Period in respect of the second Advance to be made hereunder shall commence on its Drawdown Date and terminate simultaneously with the Interest Period which is then current for the Loan and each subsequent Interest Period shall start the day falling the day after the last day of the previous Interest Period;

3.3.3 if any Interest Period would otherwise overrun a relevant Repayment Date, then the relevant Advance shall be divided into parts so that there is one part in the amount of the repayment instalment due on such Repayment Date and having an Interest Period ending on the relevant Repayment Date and another part in the amount of the balance of that Advance having an Interest Period ascertained in accordance with clause 3.2 and the other provisions of this clause 3.3; and

3.3.4 if the Borrowers fail to specify the length of an Interest Period in accordance with the provisions of clause 3.2 and this clause 3.3 such Interest Period shall last three months or such other period as complies with this clause 3.3.

3.4 **Default interest**

If the Borrowers fail to pay any sum (including, without limitation, any sum payable pursuant to this clause 3.4) on its due date for payment under any of the Security Documents, the Borrowers must pay interest on such sum on demand from the due date up to the date of actual payment (as well after as before judgment) at a rate determined by the Agent pursuant to this clause 3.4. The period starting on such due date and ending on such date of payment

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shall be divided into successive periods of not more than three (3) months as selected by the Agent each of which (other than the first, which shall start on such due date) shall start on the last day of the preceding such period. The rate of interest applicable to each such period shall be the aggregate (as determined by the Agent) of (a) two per cent (2%) per annum, (b) the Margin and (c) LIBOR for such periods. Such interest shall be due and payable on demand, or, if no demand is made, then on the last day of each such period as determined by the Agent and on the day on which all amounts in respect of which interest is being paid under this Clause are paid, and each such day shall, for the purposes of this Agreement, be treated as an Interest Payment Date, provided that if the relevant unpaid sum is (i) an amount of principal which became due and payable by reason of a declaration by the Agent under clause 10.2.2 or (ii) a prepayment pursuant to clauses 4.3, 4.4, 8.2.1(a) or 12.1 on a date other than an Interest Payment Date relating thereto, the first such period selected by the Agent shall be of a duration equal to the period between the due date of such principal sum and such Interest Payment Date and interest shall be payable on such principal sum during such period at a rate of two per cent (2%) above the rate applicable thereto immediately before it shall have become so due and payable. If, for the reasons specified in clause 3.6.1, the Agent is unable to determine a rate in accordance with the foregoing provisions of this clause 3.4, each Lender shall promptly notify the Agent of the cost of funds to such Lender and interest on any sum not paid on its due date for payment shall be calculated at a rate determined by the Agent to be two per cent (2%) per annum above the aggregate of the Margin and the arithmetic mean of the cost of funds to the Lenders compounded at such intervals as the Agent selects.

**3.5 Notification of Interest Periods and interest rate**

The Agent agrees to notify (i) the Lenders promptly of the duration of each Interest Period and (ii) the Borrowers and the Lenders promptly of each rate of interest determined by it under this clause 3.

**3.6 Market disruption; non-availability**

**3.6.1** Whenever, at any time prior to the commencement of any Interest Period:

- (a) the Agent shall have determined that adequate and fair means do not exist for ascertaining LIBOR during such Interest Period; or
- (b) the Agent shall have received notification from a Lender or Lenders that deposits in USD are not available to such Lender or Lenders in the London InterBank Market in the ordinary course of business to fund their Contributions to the Loan for such Interest Period

the Agent must promptly give notice (a “**Determination Notice**”) thereof to the Borrowers and to each of the Lenders. A Determination Notice shall contain particulars of the relevant circumstances giving rise to its issue. After the giving of any Determination Notice, regardless of any other provision of this Agreement, any undrawn Commitment shall not be borrowed until notice to the contrary is given to the Borrowers by the Agent.

**3.6.2** Within two (2) days of any Determination Notice being given by the Agent under clause 3.6.1, each Lender must certify an alternative basis (the “**Alternative Basis**”) for maintaining its Contribution. The Alternative Basis may at the relevant Lender’s sole discretion include (without limitation) alternative interest periods, alternative currencies or alternative rates of interest but shall include a Margin above the cost of funds to such Lender. The Agent shall calculate the arithmetic mean of the Alternative Bases provided by the relevant Lenders (the

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“**Substitute Basis**”) and certify the same to the Borrowers and the Lenders. The Substitute Basis so certified shall be binding upon the Borrowers, and shall take effect in accordance with its terms from the date specified in the Determination Notice until such time as the Agent notifies the Borrowers that none of the circumstances specified in clause 3.6.1 continues to exist whereupon the provisions of Clause 3.1 shall again apply and, subject to the other provisions of this Agreement, the Commitment may again be borrowed.

#### 4 **REPAYMENT AND PREPAYMENT**

##### 4.1 **Repayment**

4.1.1 Subject as otherwise provided in this Agreement, the Borrowers must repay each Advance by 10 equal semi-annual instalments of USD562,500 each, one such instalment to be repaid on each of the Repayment Dates and a balloon instalment of USD5,625,000 to be repaid on the relevant final Repayment Date.

If the Commitment in respect of any Advance is not drawn in full, the amount of each repayment instalments including the said balloon instalment for that Advance shall be reduced proportionately.

4.1.2 The Borrowers shall on the Maturity Date in respect of the last Advance to be repaid also pay to the Agent and the Lenders all other amounts in respect of interest or otherwise then due and payable under this Agreement and the Security Documents.

##### 4.2 **Voluntary prepayment**

Subject to clauses 4.5 and 4.6 the Borrowers may, subject to having given five (5) Banking Days prior notice thereof to the Agent, prepay any specified amount (such part being in an amount of five hundred thousand Dollars (USD500,000) or any larger sum which is an integral multiple of such amount) of any Advance on any relevant Interest Payment Date without premium or penalty.

##### 4.3 **Mandatory Prepayment on Total Loss**

On the date falling one hundred and eighty (180) days after that on which a Mortgaged Vessel became a Total Loss or, if earlier, on the date upon which the relevant insurance proceeds are, or Requisition Compensation (as defined in the Mortgage for such Vessel) is, received by the relevant Borrower (or the Security Trustee pursuant to the Security Documents), the Borrowers must prepay the Loan by an amount equal to the greatest of (i) the Relevant Advance, (ii) 50% of the Loan, (iii) the amount of the Loan on the date on which such prepayment is required to be made multiplied by the Prepayment Ratio and (iv) such amount as would be required to ensure that the Security Value after such prepayment is at least equal to the Required Security Amount.

##### 4.3.1 Interpretation

For the purpose of this Agreement, a Total Loss shall be deemed to have occurred:

- (a) in the case of an actual total loss of a Vessel, on the actual date and at the time such Vessel was lost or, if such date is not known, on the date on which such Vessel was last reported;

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- (b) in the case of a constructive total loss of a Vessel, upon the date and at the time notice of abandonment of the ship is given to the then insurers of such Vessel (provided a claim for total loss is admitted by such insurers) or, if such insurers do not immediately admit such a claim, at the date and at the time at which either a total loss is subsequently admitted by such insurers or a total loss is subsequently adjudged by a competent court of law or arbitration tribunal to have occurred;
  - (c) in the case of a compromised or arranged total loss of a Vessel, on the date upon which a binding agreement as to such compromised or arranged total loss has been entered into by the then insurers of such Vessel;
  - (d) in the case of Compulsory Acquisition, on the date upon which the relevant requisition of title or other compulsory acquisition occurs; and
  - (e) in the case of hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of a Vessel (other than within the definition of Compulsory Acquisition) by any Government Entity, or by persons allegedly acting or purporting to act on behalf of any Government Entity, which deprives an Owner of the use of such Vessel for more than thirty (30) days, upon the expiry of the period of thirty (30) days after the date upon which the relevant incident occurred.

#### 4.4 **Mandatory prepayment on sale of Mortgaged Vessel**

On the date of completion of the sale of a Mortgaged Vessel the Borrowers must prepay the Loan by an amount equal to the greatest of (i) the Relevant Advance, (ii) 50% of the Loan, (iii) the amount of the Loan on the date on which such prepayment is required to be made multiplied by the Prepayment Ratio and (iv) such amount as would be required to ensure that the Security Value after such prepayment is at least equal to the Required Security Amount.

#### 4.5 **Amounts payable on prepayment**

Any prepayment of all or part of the Loan under this Agreement shall be made together with:

- 4.5.1 accrued interest on the amount to be prepaid to the date of such prepayment;
- 4.5.2 any additional amount payable under clauses 3.6, 6.6 or 12.2; and
- 4.5.3 all other sums due and payable by the Borrowers to the Banks under this Agreement or any of the other Security Documents on the date of such prepayment including, without limitation any Break Costs and, if the whole Loan is being prepaid, any accrued commitment commission payable under clause 5.1.

#### 4.6 **Notice of prepayment; reduction of maximum loan amount**

- 4.6.1 Every notice of prepayment shall be effective only on actual receipt by the Agent, shall be irrevocable, shall specify the amount to be prepaid and the Advance which is to be prepaid and shall oblige the Borrowers to make such prepayment on the date specified. Subject to the other provisions of this Agreement and in particular Clause 2.6, no amount prepaid under this Clause 4 in respect of the Loan may be reborrowed.

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- 4.6.2 Any amounts prepaid pursuant to clause 4.2 shall be applied against the relevant Advance in reducing the Balloon Instalment and other outstanding repayment instalments pro rata or in such other manner and order as shall be agreed between the Borrowers and the Lenders at the time of such prepayment.
- 4.6.3 Any amounts prepaid pursuant to clauses 4.3 or 4.4 shall be applied against the Relevant Advance and thereafter against the remaining Advance in accordance with clause 4.6.2.
- 4.6.4 The Borrowers' obligations set out in Clause 4.1.1 shall not be affected by any prepayment in respect of the Loan pursuant to clause 4.2.
- 4.6.5 The Borrowers may not prepay any part of the Loan except as expressly provided in this Agreement.

## 5 FEES AND EXPENSES

### 5.1 Commission

- 5.1.1 The Borrowers agree to pay to the Agent for the account of the Lenders pro rata in accordance with their Commitments quarterly in arrears, with the first payment falling due and payable on 12 February 2014, until the end of the Drawdown Period and on the last day of the Drawdown Period commitment commission, computed from 12 November 2013 at a rate of one per cent (1%) per annum on the daily amount of the undrawn Loan Facility.
- 5.1.2 The commission referred to in clause 5.1.1 must be paid by the Borrowers to the Agent, whether or not any part of the Total Commitment is ever advanced and shall be non-refundable.

### 5.2 Arrangement Fee

The Borrowers shall pay to the Agent on the first Drawdown Date an arrangement fee of USD225,000 (less any amount paid in respect thereof prior to the first Drawdown Date) for the account of the Lenders pro rata in accordance with their Commitments.

### 5.3 Expenses

The Borrowers agree to reimburse the Banks on a full indemnity basis within ten (10) days of demand all expenses and/or disbursements whatsoever (including without limitation legal, printing, travel and out of pocket expenses and expenses related to the provision of legal and insurance opinions referred to in schedule 3) certified by the Banks or any of them as having been incurred by them from time to time:

- 5.3.1 in connection howsoever with the syndication of the Loan Facility and with the negotiation, preparation, execution and, where relevant, registration of the Security Documents and of any contemplated or actual amendment, or indulgence or the granting of any waiver or consent howsoever in connection with, any of the Security Documents (including legal fees and any travel expenses); and
- 5.3.2 in contemplation or furtherance of, or otherwise howsoever in connection with, the exercise or enforcement of, or preservation of any rights, powers, remedies or discretions under any of the Security Documents, or in consideration of the Banks' rights thereunder or any action proposed or taken following the occurrence of a Default or otherwise in respect of the moneys owing under any of the Security Documents,

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together with interest at the rate referred to in clause 3.4 (if applicable) from the date on which reimbursement of such expenses and/or disbursements were due following demand to the date of payment (as well after as before judgment).

5.4 **Value added tax**

All fees and expenses payable pursuant to this Agreement must be paid together with value added tax or any similar tax (if any) properly chargeable thereon in any jurisdiction. Any value added tax chargeable in respect of any services supplied by the Banks or any of them under this Agreement shall, on delivery of the value added tax invoice, be paid in addition to any sum agreed to be paid hereunder.

5.5 **Stamp and other duties**

The Borrowers must pay all stamp, documentary, registration or other like duties or taxes (including any duties or taxes payable by any of the Banks) imposed on or in connection with any of the Underlying Documents, the Security Documents or the Loan or any Advance and agree to indemnify the Banks or any of them against any liability arising by reason of any delay or omission by the Borrowers to pay such duties or taxes.

6 **PAYMENTS AND TAXES; ACCOUNTS AND CALCULATIONS**

6.1 **No set-off or counterclaim**

All payments to be made by the Borrowers under any of the Security Documents must be made in full, without any set off or counterclaim whatsoever and, subject as provided in clause 6.6, free and clear of any deductions or withholdings, in USD on or before 11:00 am on the due date in freely available funds to such account at such bank and in such place as the Agent may from time to time specify for this purpose. Save as otherwise provided in this Agreement or any other relevant Security Documents, such payments shall be for the account of all Lenders and the Agent shall distribute such payments in like funds as are received by the Agent to the Lenders rateably, in the proportions which their respective Contributions bear to the aggregate of the Loan and the Advances on the date on which such payment is made.

6.2 **Payment by the Lenders**

All sums to be advanced by the Lenders to the Borrowers under this Agreement shall be remitted in USD on the relevant Drawdown Date to the account of the Agent at such bank as the Agent may have notified to the Lenders and shall be paid by the Agent on such date in like funds as are received by the Agent to the account specified in the relevant Drawdown Notice.

6.3 **Non-Banking Days**

When any payment under any of the Security Documents would otherwise be due on a day which is not a Banking Day, the due date for payment shall be extended to the next following Banking Day unless such Banking Day falls in the next calendar month in which case payment shall be made on the immediately preceding Banking Day.

6.4 **Calculations**

All interest and other payments of an annual nature under any of the Security Documents shall accrue from day to day and be calculated on the basis of actual days elapsed and a three hundred and sixty (360) day year.

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6.5 **Currency of account**

If any sum due from the Borrowers under any of the Security Documents, or under any order or judgment given or made in relation thereto, must be converted from the currency (“the first currency”) in which the same is payable thereunder into another currency (“the second currency”) for the purpose of (i) making or filing a claim or proof against the Borrowers, (ii) obtaining an order or judgment in any court or other tribunal or (iii) enforcing any order or judgment given or made in relation thereto, the Borrowers undertake to indemnify and hold harmless the Lender from and against any loss suffered as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (b) the rate or rates of exchange at which the Lender may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgment, claim or proof. Any amount due from the Borrowers under this clause 6.5 shall be due as a separate debt and shall not be affected by judgment being obtained for any other sums due under or in respect of any of the Security Documents and the term “rate of exchange” includes any premium and costs of exchange payable in connection with the purchase of the first currency with the second currency.

6.6 **Grossing-up for Taxes - by the Borrowers**

If at any time the Borrowers must make any deduction or withholding in respect of Taxes or deduction in respect of any royalty payment, duty, assessment or other charge or otherwise from any payment due under any of the Security Documents for the account of any Bank or if the Agent or the Security Trustee must make any deduction or withholding from a payment to another Bank or withholding in respect of Taxes from any payment due under any of the Security Documents, the sum due from the Borrowers in respect of such payment must be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the relevant Bank receives on the due date for such payment (and retains, free from any liability in respect of such deduction or withholding), a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made and the Borrowers must indemnify each Bank against any losses or costs incurred by it by reason of any failure of the Borrowers to make any such deduction or withholding or by reason of any increased payment not being made on the due date for such payment Provided however that if any Bank or the Agent or the Security Trustee shall be or become entitled to any Tax credit or relief in respect of any Tax which is deducted from any payment by the Borrowers and it actually receives a benefit from such Tax credit or relief in its country of domicile, incorporation or residence, the relevant Bank or the Agent or the Security Trustee, as the case may be, shall, subject to any laws or regulations applicable thereto, pay to the Borrowers after such benefit is effectively received by the relevant Bank or the Agent or the Security Trustee, as the case may be, such amounts (which shall be conclusively certified by the Agent) as shall ensure that the net amount actually retained by the relevant Bank or the Agent or the Security Trustee, as the case may be, is equal to the amount which would have been retained if there had been no such deduction **provided that** (i) nothing in this Clause shall prevent the Banks from arranging their respective tax affairs in whichever manner they deem suitable, (ii) the declaration by any Bank of a rebate shall be conclusive and binding and (iii) no Bank shall be required to disclose its tax affairs to the Borrowers. The Borrowers must promptly deliver to the Agent any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.

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6.7 **Grossing-up for Taxes - by the Lenders**

If at any time a Lender must make any deduction or withholding in respect of Taxes from any payment due under any of the Security Documents for the account of the Agent or the Security Trustee, the sum due from such Lender in respect of such payment must be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Agent or, as the case may be, the Security Trustee receives on the due date for such payment (and retains free from any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made and each Lender must indemnify the Agent and the Security Trustee against any losses or costs incurred by it by reason of any failure of such Lender to make any such deduction or withholding or by reason of any increased payment not being made on the due date for such payment.

6.8 **Loan account**

Each Lender shall maintain, in accordance with its usual practice, an account evidencing the amounts from time to time lent by, owing to and paid to it under the Security Documents. The Agent and/or the Security Trustee shall maintain a control account showing the Loan, the Advances and other sums owing by the Borrowers under the Security Documents and all payments in respect thereof being made from time to time. The control account shall, in the absence of manifest error, be prima facie evidence of the amount from time to time owing by the Borrowers under the Security Documents.

6.9 **Agent may assume receipt**

Where any sum is to be paid under the Security Documents to the Agent or, as the case may be, the Security Trustee for the account of another person, the Agent or, as the case may be, the Security Trustee may assume that the payment will be made when due and the Agent or, as the case may be, the Security Trustee may (but shall not be obliged to) make such sum available to the person so entitled. If it proves to be the case that such payment was not made to the Agent or, as the case may be, the Security Trustee, then the person to whom such sum was so made available must on request refund such sum to the Agent or, as the case may be, the Security Trustee together with interest thereon sufficient to compensate the Agent or, as the case may be, the Security Trustee for the cost of making available such sum up to the date of such repayment and the person by whom such sum was payable must indemnify the Agent or, as the case may be, the Security Trustee for any and all loss or expense which the Agent or, as the case may be, the Security Trustee may sustain or incur as a consequence of such sum not having been paid on its due date.

6.10 **Partial payments**

If, on any date on which a payment is due to be made by the Borrowers under any of the Security Documents, the amount received by the Agent from the Borrowers falls short of the total amount of the payment due to be made by the Borrowers on such date then, without prejudice to any rights or remedies available to the Agent, the Security Trustee, the Security Trustee and the Lenders under any of the Security Documents, the Agent must apply the amount actually received from the Borrowers in or towards discharge of the obligations of the Borrowers under the Security Documents in the following order, notwithstanding any appropriation made, or purported to be made, by the Borrowers:

6.10.1 first, in or towards payment, on a pro-rata basis, of any unpaid costs and expenses of the Agent and the Security Trustee under any of the Security Documents;

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- 6.10.2 secondly, in or towards payment of any fees payable to the Agent or any of the other Banks under, or in relation to, the Security Documents which remain unpaid;
- 6.10.3 thirdly, in or towards payment to the Lenders, on a pro rata basis, of any accrued interest owing in respect of the Loan which shall have become due under any of the Security Documents but remains unpaid;
- 6.10.4 fourthly, in or towards payment to the Lenders, on a pro rata basis according to their respective Contributions, of any principal in respect of the Loan which shall have become due and payable but remains unpaid;
- 6.10.5 fifthly, in or towards payment to the Lenders, on a pro rata basis, of any Break Costs and any other sum relating to the Loan which shall have become due under any of the Security Documents but remains unpaid; and

The order of application set out in clauses 6.10.1 to 6.10.5 may be varied by the Agent if the Majority Lenders so direct, without any reference to, or consent or approval from, the Borrowers.

## **7 REPRESENTATIONS AND WARRANTIES**

### **7.1 Continuing representations and warranties**

The Borrowers represent and warrant to each Bank that:

#### **7.1.1 Due incorporation**

each of the Security Parties is duly incorporated and validly existing in good standing, under the laws of its respective country of incorporation, in each case, as a corporation and has power to carry on its respective businesses as it is now being conducted and to own their respective property and other assets to which it has unencumbered legal and beneficial title except as disclosed to the Agent in writing;

#### **7.1.2 Corporate power**

each of the Security Parties has power to execute, deliver and perform its obligations and, as the case may be, to exercise its rights under the Underlying Documents and the Security Documents to which it is a party; all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and on the execution of the Security Documents performance of the same and no limitation on the powers of the Borrowers to borrow or any other Security Party to howsoever incur liability and/or to provide or grant security will be exceeded as a result of borrowing any part of the Loan;

#### **7.1.3 Binding obligations**

the Underlying Documents and the Security Documents, when executed, will constitute valid and legally binding obligations of the relevant Security Parties enforceable in accordance with their respective terms;

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7.1.4 No conflict with other obligations

the execution and delivery of, the performance of their obligations under, and compliance with the provisions of, the Underlying Documents and the Security Documents by the relevant Security Parties will not (i) contravene any existing applicable law, statute, rule or regulation or any judgment, decree or permit to which any Security Party or other member of the Group is subject, (ii) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which any Security Party or any other member of the Group is a party or is subject or by which it or any of its property is bound, (iii) contravene or conflict with any provision of the constitutional documents of any Security Party or (iv) result in the creation or imposition of, or oblige any of the Security Parties to create, any Encumbrance (other than a Permitted Encumbrance) on any of the undertakings, assets, rights or revenues of any of the Security Parties;

7.1.5 No default

no Default has occurred;

7.1.6 No litigation or judgments

no Proceedings are current, pending or, to the knowledge of the officers of either Borrower, threatened against any of the Security Parties or any other Group Members or their assets which could have a Material Adverse Effect and there exist no judgments, orders, injunctions which would materially affect the obligations of the Security Parties under the Security Documents;

7.1.7 No filings required

except for the registration of the Mortgages in the relevant register under the laws of the relevant Flag State through the relevant Registry, it is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of any of the Underlying Documents or any of the Security Documents that they or any other instrument be notarised, filed, recorded, registered or enrolled in any court, public office or elsewhere in any Pertinent Jurisdiction or that any stamp, registration or similar tax or charge be paid in any Pertinent Jurisdiction on or in relation to any of the Underlying Documents or the Security Documents and each of the Underlying Documents and the Security Documents is in proper form for its enforcement in the courts of each Pertinent Jurisdiction;

7.1.8 Required Authorisations and legal compliance

all Required Authorisations have been obtained or effected and are in full force and effect and no Security Party has in any way contravened any applicable law, statute, rule or regulation (including all such as relate to money laundering);

7.1.9 Choice of law

the choice of English law to govern the Underlying Documents and the Security Documents (other than the Mortgages and the Earnings Account Pledges and the Retention Account Pledge), the choice of the law of the Flag State to govern the Mortgages, the choice of French law to govern the Earnings Account Pledges and the Retention Account Pledge and the submissions by the Security Parties to the jurisdiction of the English courts and the obligations of such Security Parties associated therewith, are valid and binding;

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7.1.10 No immunity

no Security Party nor any of their assets is entitled to immunity on the grounds of sovereignty or otherwise from any Proceedings whatsoever;

7.1.11 Financial statements correct and complete

the latest audited and unaudited consolidated financial statements of the Corporate Guarantor in respect of the relevant financial year as delivered to the Agent present or will present fairly and accurately the financial position of the Corporate Guarantor and the consolidated financial position of the Group as at the date thereof and the results of the operations of the Corporate Guarantor and the consolidated results of the operations of the Group for the financial year ended on such date and, as at such date, neither the Corporate Guarantor nor any of its subsidiaries have any significant liabilities (contingent or otherwise) or any unrealised or anticipated losses which are not disclosed by, or reserved against or provided for in, such financial statements;

7.1.12 Pari passu

the obligations of the Borrowers under this Agreement are direct, general and unconditional obligations of the Borrowers and rank at least pari passu with all other present and future unsecured and unsubordinated Indebtedness of the Borrowers except for obligations which are mandatorily preferred by operation of law and not by contract;

7.1.13 Information/ Material Adverse Effect

all information, whatsoever provided by any Security Party to the Agent in connection with the negotiation and preparation of the Security Documents or otherwise provided hereafter in relation to, or pursuant to this Agreement is, or will be, true and accurate in all material respects and not misleading, does or will not omit material facts and all reasonable enquiries have been, or shall have been, made to verify the facts and statements contained therein and there has not occurred any event which could have a Material Adverse Effect on any Security Party since such information was provided to the Agent; there are, or will be, no other facts the omission of which would make any fact or statement therein misleading;

7.1.14 No withholding Taxes

no Taxes anywhere are imposed whatsoever by withholding or otherwise on any payment to be made by any Security Party under the Underlying Documents or the Security Documents to which such Security Party is or is to be a party or are imposed on or by virtue of the execution or delivery by the Security Parties of the Underlying Documents or the Security Documents or any other document or instrument to be executed or delivered under any of the Security Documents;

7.1.15 Use of proceeds

the Borrowers shall apply the Loan only for the purposes specified in clauses 1.1 and 2.1;

7.1.16 The Mortgaged Vessels

throughout the Facility Period, each Mortgaged Vessel will, following its Delivery Date, be :

- (a) in the absolute sole, legal and beneficial ownership of the relevant Owner;
- (b) registered through the offices of the relevant Registry as a ship under the laws and flag of the relevant Flag State;

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- (c) in compliance with the ISM Code and the ISPS Code and operationally seaworthy and in every way fit for service;
  - (d) in good and sea-worthy and cargo-worthy condition; and
  - (e) classed with the relevant Classification free of all requirements and recommendations of the relevant Classification Society.

7.1.17 Mortgaged Vessels' employment

Except with the prior written consent of the Majority Lenders there will not be any agreement or arrangement in respect of the employment of any Mortgaged Vessel whereby the Earnings (as defined in the relevant Ship Security Documents) of any Mortgaged Vessel may be shared howsoever with any other person provided that no such consent shall be required if (i) the aggregate Earnings of the Mortgaged Vessels are sufficient to cover the aggregate of the Borrowers' payment obligations under this Agreement and vessel operating expenses as they fall due and (ii) no Event of Default has occurred which is continuing;

7.1.18 Freedom from Encumbrances

no Mortgaged Vessel nor its Earnings, Insurances or Requisition Compensation (each as defined in the relevant Ship Security Documents) nor the Earnings Accounts, Retention Account nor any Extended Employment Contract in respect of such Mortgaged Vessel nor any other properties or rights which are, or are to be, the subject of any of the Security Documents nor any part thereof will be subject to any Encumbrance except Permitted Encumbrances;

7.1.19 Environmental Matters

except as may already have been disclosed by the Borrowers in writing to, and acknowledged and accepted in writing by, the Agent:

- (a) the Borrowers and, to the best of the Borrowers' knowledge and belief, their respective Environmental Affiliates, have complied with the provisions of all Environmental Laws;
- (b) the Borrowers and, to the best of the Borrowers' knowledge and belief, their respective Environmental Affiliates have obtained all Environmental Approvals and are in compliance with all such Environmental Approvals;
- (c) no Environmental Claim has been made or threatened or pending against either Borrower, or, to the best of the Borrowers' knowledge and belief, any of their respective Environmental Affiliates; and
- (d) there has been no Environmental Incident;

7.1.20 ISM and ISPS Code

With effect from the Delivery Date of its Vessel, each of the Borrowers will comply with and continue to comply with and procure that the Technical Manager complies with and continues to comply with the ISM Code, the ISPS Code and all other statutory and other requirements relative to its business and in particular each Borrower or the Technical Manager will obtain and maintain a valid DOC and SMC for each Mortgaged Vessels and that it and the Technical Manager will implement and continue to implement an ISM SMS;

7.1.21 Copies true and complete

the Certified Copies or originals of the Underlying Documents delivered or to be delivered to the Agent pursuant to clause 8.1 are, or will when delivered be, true and complete copies or, as the case may be, originals of such documents; and such documents constitute valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and there have been no amendments or variations thereof or defaults thereunder;

7.1.22 Ownership of Borrowers

all the shares in each Borrower are legally and beneficially owned by the Shareholder;

7.1.23 the Borrowers are the ultimate beneficiaries of the Loan;

7.1.24 no Security Party has incurred any Indebtedness save under this Agreement and the Indentures or as otherwise disclosed to the Agent in writing or as disclosed in the Group's public filings;

7.1.25 the Corporate Guarantor and both Borrowers have filed all tax and other fiscal returns required to be filed by any tax authority to which they are subject;

7.1.26 no Borrower has an office in England;

7.1.27 the entry by the Borrowers into this Agreement, and their borrowing of the Loan hereunder, and the execution by the Corporate Guarantor of the Corporate Guarantee do not breach Section 4.10 or any other provision of either Indenture.

**7.2 Repetition of representations and warranties**

On each day throughout the Facility Period, the Borrowers shall be deemed to repeat the representations and warranties in clause 7 updated mutatis mutandis as if made with reference to the facts and circumstances existing on such day.

**8 UNDERTAKINGS**

**8.1 General**

The Borrowers undertake with each Bank that, from the Execution Date until the end of the Facility Period, they will:

**8.1.1 Notice of Default and Proceedings**

promptly inform the Agent of (a) any Default (including the occurrence of any Event of Default under (and as defined in) either Indenture, in which case the Borrower shall also provide to the Agent copies of all demands or notices made in connection therewith) and of any other circumstances or occurrence which might adversely affect the ability of any Security Party to perform its obligations under any of the Security Documents and (b) as soon as the same is instituted or threatened, details of any Proceedings involving any Security Party which could have a material adverse effect on that Security Party and/or the operation of any of the Vessels (including, but not limited to any Total Loss of a Vessel or the occurrence of any Environmental Incident) and will from time to time, if so requested by the Agent, confirm to the Agent in writing that, save as otherwise stated in such confirmation, no Default has occurred and is continuing and no such Proceedings are on foot or threatened;

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8.1.2 Authorisation

obtain or cause to be obtained, maintain in full force and effect and comply fully with all Required Authorisations, provide the Agent with Certified Copies of the same and do, or cause to be done, all other acts and things which may from time to time be necessary or desirable under any applicable law (whether or not in the Pertinent Jurisdiction) for the continued due performance of all the obligations of the Security Parties under each of the Security Documents;

8.1.3 Corporate Existence/Ownership

ensure that each Security Party maintains its corporate existence as a body corporate duly organised and validly existing and in good standing under the laws of its country of incorporation and ensure that each Borrower is owned and controlled, directly or through other companies, by the Corporate Guarantor;

8.1.4 Use of proceeds

use the Advances exclusively for the purposes specified in clauses 1.1 and 2.1;

8.1.5 Pari passu

ensure that their obligations under this Agreement shall at all times rank at least pari passu with all their other present and future unsecured and unsubordinated Indebtedness with the exception of any obligations which are mandatorily preferred by law and not by contract;

8.1.6 Financial statements

send to the Agent (or procure that is sent):

- (a) as soon as possible, but in no event later than 180 days after the end of each of its Financial Years, annual audited (prepared in accordance with US GAAP by a firm of accountants acceptable to the Agent) consolidated balance sheet and profit and loss accounts of the Corporate Guarantor and all companies which are owned, directly or indirectly, or controlled by it (commencing with the Financial Year ending 31 December 2013); and
- (b) as soon as possible, but in no event later than 75 days after the end of each financial quarter in each of its Financial Years, the Corporate Guarantor's unaudited consolidated balance sheet and profit and loss accounts for that financial quarter certified as to their correctness by its chief financial officer.

8.1.7 Reimbursement of MII & MAP Policy premiums

Whether or not any amount is borrowed under this Agreement, reimburse the Agent on the Agent's written demand the amount of the premium payable by the Agent for the inception or, as the case may be, extension and/or continuance of the MII & MAP Policy (including any insurance tax thereon);

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8.1.8 Compliance Certificates

deliver to the Agent on the earlier of (i) the date on which the quarterly reports are delivered under clause 8.1.6 and (ii) the date falling 75 days after the end of the financial quarter to which they refer, a Compliance Certificate together with such supporting information as the Agent may require.

8.1.9 Provision of further information

provide the Agent, and procure that the Corporate Guarantor provides the Agent, with such financial or other information concerning either Borrower and the Corporate Guarantor and all companies which are owned, directly or indirectly, or controlled by it and their respective affairs, activities, financial standing, Indebtedness and operations, the performance of the Mortgaged Vessels as the Agent or any Lender (acting through the Agent) may from time to time reasonably require and all other documentation and information as any Lender may from time to time require in order to comply with its, and all other relevant, know-your-customer regulations;

8.1.10 Obligations under Security Documents

duly and punctually perform each of the obligations expressed to be imposed or assumed by them under the Security Documents and Underlying Documents and will procure that each of the other Security Parties will, duly and punctually perform each of the obligations expressed to be assumed by it under the Security Documents and the Underlying Documents to which it is a party;

8.1.11 Compliance with ISM Code

comply with, and will procure that any Operator will comply with, and ensure that the Mortgaged Vessels and any Operator comply with the requirements of the ISM Code, including (but not limited to) the maintenance and renewal of valid certificates pursuant thereto throughout the Security Period (as defined in the Mortgages);

8.1.12 Withdrawal of DOC and SMC

immediately inform the Agent if there is any actual withdrawal of their or any Operator's DOC or the SMC of any Mortgaged Vessel;

8.1.13 Issuance of DOC and SMC

and will procure that any Operator will promptly inform the Agent of the receipt by either Borrower or any Operator of notification that its application for a DOC or any application for an SMC for any Mortgaged Vessel has been refused;

8.1.14 ISPS Code Compliance

and will procure that the Technical Manager or any Operator will:

- (a) maintain at all times a valid and current ISSC in respect of each Mortgaged Vessel;
- (b) immediately notify the Agent in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC in respect of a Mortgaged Vessel; and
- (c) procure that each Mortgaged Vessel will comply at all times with the ISPS Code;

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8.1.15 Compliance with Laws and payment of taxes

and will comply with all relevant Environmental Laws, laws, statutes and regulations and pay all taxes for which it is liable as they fall due provided, however, that the Borrowers shall not be required to pay and discharge, or cause to be paid and discharged, any such tax, so long as the legality thereof has been contested by them in good faith and by appropriate proceedings or other acts and they shall have set aside on their books adequate reserves with respect thereof;

8.1.16 Charters etc.

(i) deliver to the Agent a Certified Copy of each Extended Employment Contract upon its execution, (ii) forthwith on the Agent's request execute (a) a Charter Assignment in respect thereof and (b) any notice of assignment required in connection therewith and use reasonable efforts to procure the acknowledgement of any such notice of assignment by the relevant charterer (provided that any failure to procure the same shall not constitute an Event of Default) and (iii) pay all legal and other costs incurred by the Agent in connection with any such Charter Assignments, forthwith following the Agent's demand;

8.1.17 Financial Covenants of the Corporate Guarantor's Group

procure that

- (a) at no time shall the Liquidity of the Group be less than USD30,000,000;
- (b) the Total Liabilities divided by the Total Assets (adjusted for market values of vessels calculated in accordance with Clause 8.2.2 provided, however, that the market value of each Vessel shall include the benefit of any charterparty or other engagements concerning such Vessel) shall at all times be equal to or less than 75%;

8.1.18 Inspection

permit the Agent, at the cost of the Borrowers and upon receipt of at least 15 days written notice, by surveyors or other persons appointed by it for such purpose, to board any Mortgaged Vessel (i) while no Event of Default has occurred or is continuing, no more than once per calendar year during the Facility Period and (ii) following the occurrence of an Event of Default which is continuing, unremedied and unwaived, at any time, provided in each case that the Agent shall use reasonable endeavours to ensure that such inspections or surveys shall not interfere with the operation of such Mortgaged Vessel for the purpose of inspecting her and to afford all proper facilities for such inspections and for this purpose to give the Agent reasonable advance notice of any intended drydocking of each Vessel (whether for the purpose of classification, survey or otherwise) and to pay the costs in respect of each such inspection or survey;

8.1.19 Delivery

pay to the relevant Seller all amounts payable on delivery of the Vessels in accordance with the relevant MOA and take, or as the case may be, ensure that the relevant Borrower, takes delivery of the relevant Vessel;

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#### 8.1.20 Subordination

ensure that all Indebtedness of either Borrower to its shareholders or to any other Group Member is fully subordinated to the Loan, and to subordinate to the Loan any Indebtedness issued to a Borrower by the Corporate Guarantor (save for the Indentures), all in a form acceptable to the Agent (acting on the instructions of the Majority Lenders); and

#### 8.1.21 Indentures

comply with all of the obligations undertaken by the Corporate Guarantor under the Indentures which are set out in the Indenture Excerpt and the Borrowers further agree:

- (a) any terms defined in the First Indenture shall have those meanings when used in the Indenture Excerpt;
- (b) no waiver or variation of any term of either Indenture by any person shall waive or vary the Borrowers' obligations hereunder to comply with the obligations in the Indenture Excerpt, except with the consent of the Agent;
- (c) the Borrowers shall continue to be bound by their, or as the case may be, the Corporate Guarantor's, obligations as set out in the Indenture Excerpt following a Covenant Defeasance (as defined in either Indenture) or a Legal Defeasance (as defined in either Indenture) or other termination or cancellation of the Indenture;
- (d) the Borrowers will not, and will procure that the Corporate Guarantor will not, vary any material term of either Indenture without the prior written consent of the Banks, however this will not affect their right of partial or full prepayment of either Indenture.

#### 8.1.22 Dividends

Provided that no Event of Default has occurred or shall be caused thereby, the Corporate Guarantor may declare or pay dividends or distribute any of its present or future assets, undertakings, rights or revenues in an amount not exceeding USD0.06 per issued share per quarter for any relevant financial year or quarter (the "**Dividend Quota**") to any of its partners, members or shareholders, and the Corporate Guarantor may make such other investments as it may require (and, notwithstanding the terms of this Clause, the Lenders hereby agree and confirm that the Corporate Guarantor may pay dividends out of any undistributed Dividend Quota in any previous financial year).

### 8.2 Security value maintenance

#### 8.2.1 Security shortfall

If, at any time after the first Delivery Date, the Security Value shall be less than the Required Security Amount, the Agent (acting on the instructions of the Majority Lenders) shall give notice to the Borrowers requiring that such deficiency be remedied and then the Borrowers must either:

- (a) prepay within a period of thirty (30) days of the date of receipt by the Borrowers of the Agent's said notice such part of the Loan as will result in the Security Value after such prepayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such prepayment) being equal to or higher than the Required Security Amount; or

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- (b) within thirty (30) days of the date of receipt by the Borrowers of the Agent's said notice provide to the satisfaction of the Agent such further security for the Loan as shall be acceptable to the Majority Lenders having a value for security purposes (as determined by the Agent in its absolute discretion) at the date upon which such further security shall be constituted which, when added to the Security Value, shall not be less than the Required Security Amount as at such date.

The provisions of clauses 4.5 and 4.6 shall apply to prepayments under clause 8.2.1(a) provided that the Agent shall apply such prepayments (i) pro rata against the Advances, (ii) in reduction of the repayment instalments under clause 4.1 pro rata and the amounts of the Loan prepaid hereunder shall not be available to be re-borrowed.

#### 8.2.2 Valuation of Mortgaged Vessels

Each Mortgaged Vessel shall, for the purposes of this Agreement, be valued (at the Borrowers' expense) in USD by taking a valuation prepared by any Approved Broker appointed by the Agent, such valuation to be made without physical inspection, and on the basis of a sale for prompt delivery for cash at arms' length, on normal commercial terms, as between a willing buyer and a willing seller without taking into account the benefit or burden of any charterparty or other engagement concerning the relevant Mortgaged Vessel and to be obtained at any time as the Agent (acting on the instructions of the Majority Lenders) shall require at the cost of (a) in respect of one valuation in every 12 months period or valuations obtained following the occurrence of an Event of Default which is continuing, unremedied and unwaived, the Borrowers and (b) otherwise, the Lenders.

The Approved Brokers' valuations for each Mortgaged Vessel on each such occasion shall constitute the Valuation Amount of such Mortgaged Vessel for the purposes of this Agreement until superceded by the next such valuation.

#### 8.2.3 Information

The Borrowers undertake with the Banks to supply to the Agent and to the Approved Broker such information concerning the relevant Mortgaged Vessel and its condition as such shipbrokers may require for the purpose of determining any Valuation Amount.

#### 8.2.4 Costs

All costs in connection with the obtaining and any determining of any Valuation Amount pursuant to Clause 8.2.2(a) and any valuation either of any additional security for the purposes of ascertaining the Security Value at any time or necessitated by the Borrowers electing to constitute additional security pursuant to clause 8.2.1(b), must be paid by the Borrowers.

#### 8.2.5 Valuation of additional security

For the purposes of this clause 8.2, the market value (i) of any additional security over a ship (other than the Vessels) shall be determined in accordance with clause 8.2.2 and (ii) of any other additional security provided or to be provided to the Banks or any of them shall be determined by the Agent after consultation with the Lenders and the Borrowers.

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8.2.6 Documents and evidence

In connection with any additional security provided in accordance with this clause 8.2, the Agent shall be entitled to receive (at the Borrowers' expense) such evidence and documents of the kind referred to in schedule 3 as may in the Agent's opinion be appropriate and such favourable legal opinions as the Agent shall in its absolute discretion require.

8.3 **Negative undertakings**

The Borrowers jointly and severally undertake with each Bank that, from the Execution Date until the end of the Facility Period, they will not, without the prior written consent of the Agent (acting on the instructions of the Majority Banks):

8.3.1 Negative pledge

permit any Encumbrance (other than a Permitted Encumbrance) to subsist, arise or be created or extended over all or any part of their respective present or future undertakings, assets, rights or revenues to secure or prefer any present or future Indebtedness or other liability or obligation of any Group Member or any other person;

8.3.2 No merger or transfer

merge or consolidate with any other person or permit any change to the legal or beneficial ownership of their shares from that existing at the Execution Date;

8.3.3 Disposals

sell, transfer, assign, create security or option over, pledge, pool, abandon, lend or otherwise dispose of or cease to exercise direct control over any part of their present or future undertaking, assets, rights or revenues (otherwise than by transfers, sales or disposals for full consideration in the ordinary course of trading) whether by one or a series of transactions related or not;

8.3.4 Other business or manager

undertake any business other than the ownership and operation of the Vessels or employ anyone other than the Commercial Manager and the Technical Manager as, respectively, commercial and technical manager of the Vessels;

8.3.5 Acquisitions

acquire any further assets other than the Vessels and rights arising under contracts entered into by or on behalf of the Borrowers in the ordinary course of their businesses of owning, operating and chartering the Vessels;

8.3.6 Other obligations

incur any obligations except for obligations arising under the Underlying Documents or the Security Documents or contracts entered into in the ordinary course of their business of owning, operating and chartering the Vessels;

8.3.7 No borrowing

incur any Borrowed Money except for Borrowed Money pursuant to the Security Documents;

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8.3.8 Repayment of borrowings

repay or prepay the principal of, or pay interest on or any other sum in connection with any of their Borrowed Money except for Borrowed Money pursuant to the Security Documents;

8.3.9 Guarantees

issue any guarantees or otherwise become directly or contingently liable or give security or quasi security for the obligations of any person, firm, or corporation except pursuant to the Security Documents and except for (i) guarantees from time to time required in the ordinary course by any protection and indemnity or war risks association with which a Vessel is entered, guarantees required to procure the release of such Vessel from any arrest, detention, attachment or levy or guarantees required for the salvage of a Vessel and Banks and (ii) senior unsecured guarantees issued under the Indentures;

8.3.10 Loans

make any loans or grant any credit (save for normal trade credit in the ordinary course of business) to any person or agree to do so;

8.3.11 Sureties

permit any Indebtedness of either Borrower to any person (other than the Banks pursuant to the Security Documents) to be guaranteed by any person (except for guarantees from time to time required in the ordinary course of business and in the ordinary course by any protection and indemnity or war risks association with which a Vessel is entered, guarantees required to procure the release of such Vessel from any arrest, detention, attachment or levy or guarantees or undertakings required for the salvage of a Vessel and guarantees in favour of the Sellers in respect of any MOA); or

8.3.12 Subsidiaries

form or acquire any Subsidiaries.

8.4 **Indentures**

Notwithstanding anything in this Agreement:

- (i) any terms, transactions or events permitted by the Indenture Excerpt; and
  - (ii) save as otherwise expressly provided in this Agreement, any other terms or transactions or events permitted by the Indentures
- shall be deemed to be permitted by this Agreement.

9 **CONDITIONS**

9.1 **Advance of any Advance**

The obligation of each Lender to make its Commitment available in respect of any Advance is conditional upon:

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- 9.1.1 that, on or before the service of the first Drawdown Notice hereunder, the Agent has received the documents described in Part A of Schedule 3 in form and substance satisfactory to the Agent;
- 9.1.2 that, on or before the Drawdown Date in respect of each Advance but prior to making such Advance, the Agent has received the documents described in Part B of Schedule 3 in respect of the Relevant Vessel (as defined in Schedule 3) in form and substance satisfactory to the Agent;
- 9.1.3 the representations and warranties contained in clause 7 and clauses 4.1 and 4.2 of the Corporate Guarantee being then true and correct as if each was made with respect to the facts and circumstances existing at such time; and
- 9.1.4 no Default having occurred and being continuing and there being no Default which would result from the making of the Loan.

9.2 **Waiver of conditions precedent**

The conditions specified in this clause 9 are inserted solely for the benefit of the Lenders and may be waived by the Agent in whole or in part and with or without conditions only with the consent of the Majority Lenders.

9.3 **Further conditions precedent**

Not later than five (5) Banking Days prior to the Drawdown Date of an Advance and not later than five (5) Banking Days prior to any Interest Payment Date, the Agent (acting on the instructions of the Majority Lenders) may request and the Borrowers must, not later than two (2) Banking Days prior to such Drawdown Date or Interest Payment Date, deliver to the Agent (at the Borrowers' expense) on such request further favourable certificates and/or opinions as to any or all of the matters which are the subject of clauses 7, 8, 9 and 10.

10 **EVENTS OF DEFAULT**

10.1 **Events**

Each of the following events shall constitute an Event of Default (whether such event shall occur voluntarily or involuntarily or by operation of law or regulation or in connection with any judgment, decree or order of any court or other authority or otherwise, howsoever):

- 10.1.1 **Non-payment:** any Security Party fails to pay any sum payable by it under any of the Security Documents at the time, in the currency and in the manner stipulated in the Security Documents or the Underlying Documents (and so that, for this purpose, sums payable (i) under clauses 3.1 and 4.1 shall be treated as having been paid at the stipulated time if (aa) received by the Agent within three (3) Banking Days of the dates therein referred to and (bb) such delay in receipt is caused by administrative or other delays or errors within the banking system and (ii) on demand shall be treated as having been paid at the stipulated time if paid within three (3) Banking Days of demand); or
- 10.1.2 **Breach of Insurance and certain other obligations:** any Owner fails to obtain and/or maintain the Insurances (as defined in, and in accordance with the requirements of, the Ship Security Documents) for any of the Mortgaged Vessels or if any insurer in respect of such Insurances cancels the Insurances or disclaims liability by reason, in either case, of mis-statement in any proposal for the Insurances or for any other failure or default on the part of the Borrowers or a Borrower commits any breach of or omits to observe any of the obligations or undertakings expressed to be assumed by them under clause 8; or

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- 10.1.3 **Breach of other obligations:** any Security Party commits any breach of or omits to observe any of its obligations or undertakings expressed to be assumed by it under any of the Security Documents (other than those referred to in clauses 10.1.1 and 10.1.2 above) unless such breach or omission, in the opinion of the Agent (following consultation with the Banks) is capable of remedy, in which case the same shall constitute an Event of Default if it has not been remedied within fifteen (15) days of the occurrence thereof; or
- 10.1.4 **Misrepresentation:** any representation or warranty made or deemed to be made or repeated by or in respect of any Security Party in or pursuant to any of the Security Documents or in any notice, certificate or statement referred to in or delivered under any of the Security Documents is or proves to have been incorrect or misleading in any material respect; or
- 10.1.5 **Cross-default:** any Indebtedness of either Borrower or any Indebtedness of any Security Party in an amount exceeding three million Dollars (USD3,000,000) is not paid when due (subject to applicable grace or cure periods) or any such Indebtedness of either Borrower or any Security Party becomes (whether by declaration or automatically in accordance with the relevant agreement or instrument constituting the same) due and payable prior to the date when it would otherwise have become due (unless as a result of the exercise by the relevant Borrower or Security Party of a voluntary right of prepayment), or any creditor of a Borrower or any Security Party becomes entitled to declare any such Indebtedness due and payable or any facility or commitment available to either Borrower or any Security Party relating to Indebtedness is withdrawn, suspended or cancelled by reason of any default (however described) of the person concerned; or
- 10.1.6 **Execution:** any uninsured judgment or order made against any Security Party is not stayed, appealed against or complied with within thirty (30) days or a creditor attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced upon or sued out against, any of the undertakings, assets, rights or revenues of any Security Party and is not discharged within forty (40) days; or
- 10.1.7 **Insolvency:** any Security Party is unable or admits inability to pay its debts as they fall due; suspends making payments on any of its debts or announces an intention to do so; becomes insolvent; or any Security Party has negative net worth (taking into account contingent liabilities); or suffers the declaration by any court, liquidator, receiver or administrator of a moratorium in respect of any of its Indebtedness; or
- 10.1.8 **Reduction or loss of capital:** a meeting is convened by any Security Party (other than the Corporate Guarantor) without the Agent's prior written consent, for the purpose of passing any resolution to purchase, reduce or redeem any of its share capital without the Agent's prior written consent; or
- 10.1.9 **Dissolution:** any corporate action, Proceedings or other steps are taken to dissolve or wind-up any Security Party or an order is made or resolution passed for the dissolution or winding up of any Security Party or a notice is issued convening a meeting for such purpose; or
- 10.1.10 **Administration:** any petition is presented, notice given or other steps are taken anywhere to appoint an administrator of any Security Party or the Agent reasonably believes that any such petition or other step is imminent or an administration order is made in relation to any Security Party; or

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- 10.1.11 **Appointment of receivers and managers:** any administrative or other receiver is appointed anywhere of any Security Party or any material part of its assets and/or undertaking or any other steps are taken to enforce any Encumbrance over all or any material part of the assets of any Security Party; or
- 10.1.12 **Compositions:** any corporate action, legal proceedings or other procedures or steps are taken, or negotiations commenced, by any Security Party or by any of its creditors (other than the Corporate Guarantor) or any legal proceedings are taken in respect of the Corporate Guarantor, with a view to the general readjustment or rescheduling of all or part of its Indebtedness or to proposing any kind of composition, compromise or arrangement involving such company and any of its creditors; or
- 10.1.13 **Analogous proceedings:** there occurs, in relation to any Security Party, in any country or territory in which any of them carries on business or to the jurisdiction of whose courts any part of their assets is subject, any event which, in the reasonable opinion of the Agent, appears in that country or territory to correspond with, or have an effect equivalent or similar to, any of those mentioned in clauses 10.1.6 to 10.1.12 (inclusive) or any Security Party otherwise becomes subject, in any such country or territory, to the operation of any law relating to insolvency, bankruptcy or liquidation; or
- 10.1.14 **Cessation of business:** any Security Party suspends or ceases or threatens to suspend or cease to carry on its business without the prior written consent of the Agent, such consent not to be unreasonably withheld (it being agreed that a sale of a Vessel by the Borrower who is the owners thereof shall not constitute an Event of Default provided that the Borrowers comply with Clause 4.4); or
- 10.1.15 **Seizure:** all or a material part of the undertaking, assets, rights or revenues of, or shares or other ownership interests in, any Security Party are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any Government Entity; or
- 10.1.16 **Invalidity:** any of the Security Documents and the Underlying Documents shall at any time and for any reason become invalid or unenforceable or otherwise cease to remain in full force and effect, or if the validity or enforceability of any of the Security Documents and the Underlying Documents shall at any time and for any reason be contested by any Security Party which is a party thereto, or if any such Security Party shall deny that it has any, or any further, liability thereunder; or
- 10.1.17 **Unlawfulness:** any Unlawfulness occurs or it becomes impossible or unlawful at any time for any Security Party, to fulfil any of the covenants and obligations expressed to be assumed by it in any of the Security Documents or for a Bank to exercise the rights or any of them vested in it under any of the Security Documents; or
- 10.1.18 **Repudiation:** any Security Party repudiates any of the Security Documents or does or causes or permits to be done any act or thing evidencing an intention to repudiate any of the Security Documents; or
- 10.1.19 **Encumbrances enforceable:** any Encumbrance (other than Permitted Liens) in respect of any of the property (or part thereof) which is the subject of any of the Security Documents becomes enforceable; or

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- 10.1.20 **Arrest:** a Mortgaged Vessel is arrested, confiscated, seized, taken in execution, impounded, forfeited, detained in exercise or purported exercise of any possessory lien or other claim or otherwise taken from the possession of its Owner and that Owner shall fail to procure the release of such Mortgaged Vessel within a period of thirty (30) days thereafter (this clause does not include capture of a Vessel by pirates); or
- 10.1.21 **Registration:** the registration of a Mortgaged Vessel under the laws and flag of the relevant Flag State is cancelled or terminated without the prior written consent of the Majority Banks; or
- 10.1.22 **Unrest:** the Flag State of a Mortgaged Vessel or the country in which any Security Party is incorporated or domiciled becomes involved in hostilities or civil war or there is a seizure of power in the Flag State by unconstitutional means (which hostilities or civil war or seizure of power would reasonably be expected to have a Material Adverse Effect) unless the Owner of the Vessel registered in such Flag State shall have transferred its Vessel onto a new flag acceptable to the Banks within sixty (60) days of the start of such hostilities or civil war or seizure of power; or
- 10.1.23 **Environmental Incidents:** an Environmental Incident occurs which gives rise, or may give rise, to an Environmental Claim which could, in the opinion of the Agent be expected to have a Material Adverse Effect (i) on the business, assets or financial condition of any Security Party or the Group taken as a whole or (ii) on the security constituted by any of the Security Documents or the enforceability of that security in accordance with its terms; or
- 10.1.24 **P&I:** an Owner or the Technical Manager or any other person fails or omits to comply with any requirements of the protection and indemnity association or other insurer with which a Mortgaged Vessel is entered for insurance or insured against protection and indemnity risks (including oil pollution risks) to the effect that any cover (including, without limitation, any cover in respect of liability for Environmental Claims arising in jurisdictions where such Mortgaged Vessel operates or trades) is or may be liable to cancellation, qualification or exclusion at any time; or
- 10.1.25 **Material events:** any other event occurs or circumstance arises which, in the opinion of the Agent (following consultation with the Banks), is likely materially and adversely to affect either (i) the ability of any Security Party to perform all or any of its obligations under or otherwise to comply with the terms of any of the Security Documents or (ii) the security created by any of the Security Documents; or
- 10.1.26 **Required Authorisations:** any Required Authorisation is revoked or withheld or modified (the effect of which would be to have a Material Adverse Effect) or is otherwise not granted or fails to remain in full force and effect or if any exchange control or other law or regulation shall exist which would make any transaction under the Security Documents or the continuation thereof, unlawful or would prevent the performance by any Security Party of any term of any of the Security Documents;
- 10.1.27 **Ownership:** there is any change in the legal and/or beneficial ownership of either Borrower without the prior written consent of the Agent;
- 10.1.28 **Change of Control:** there shall occur a “Change of Control” (as defined in the Second Indenture) or the “Permitted Holder” (as defined in the Second Indenture) owns less than 20% of the issued share capital of the Corporate Guarantor or there is a change of control (as defined in the definition fo “subsidiary” in Clause 1.2) in respect of the Shareholder; or

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10.1.28 **Money Laundering:** any Security Party is in breach of or fails to observe any law, requirement, measure or procedure implemented to combat “money laundering” as defined in Article 1 of the Directive (91/308 EEC) of the Council of the European Communities.

10.2 **Acceleration**

The Agent may, and if so requested by the Majority Lenders shall, without prejudice to any other rights of the Lenders, at any time after the happening of an Event of Default by notice to the Borrowers declare that:

10.2.1 the obligation of each Lender to make its Commitment available shall be terminated, whereupon the Commitment shall be reduced to zero forthwith; and/or

10.2.2 the Loan and all interest accrued and all other sums payable whatsoever under the Security Documents have become due and payable, whereupon the same shall, immediately or in accordance with the terms of such notice, become due and payable.

10.3 **Demand Basis**

If, under clause 10.2.2, the Agent has declared the Loan to be due and payable on demand, at any time thereafter the Agent may (and if so instructed by the Majority Lenders shall) by written notice to the Borrowers (a) demand repayment of the Loan on such date as may be specified whereupon, regardless of any other provision of this Agreement, the Loan shall become due and payable on the date so specified together with all interest accrued and all other sums payable under this Agreement or (b) withdraw such declaration with effect from the date specified in such notice.

11 **INDEMNITIES**

11.1 **General indemnity**

The Borrowers agree to indemnify each Bank on demand, without prejudice to any of such Bank’s other rights under any of the Security Documents, against any loss (including loss of Margin) or expense (including, without limitation, Break Costs) which such Bank shall certify as sustained by it as a consequence of any Default, any prepayment of the Loan being made under clauses 4.2, 4.3, 4.4, 8.2.1(a) or 12.1 or any other repayment or prepayment of the Loan or part thereof being made otherwise than on an Interest Payment Date relating to the part of the Loan prepaid or repaid; and/or any Advance not being made for any reason (excluding any default by the Agent, the Security Trustee or any Lender) after the Drawdown Notice for such Advance has been given.

11.2 **Environmental indemnity**

The Borrowers shall indemnify each Bank on demand and hold it harmless from and against all costs, claims, expenses, payments, charges, losses, demands, liabilities, actions, Proceedings, penalties, fines, damages, judgements, orders, sanctions or other outgoings of whatever nature which may be incurred or made or asserted whensoever against such Bank at any time, whether before or after the repayment in full of principal and interest under this Agreement, arising howsoever out of an Environmental Claim made or asserted against such Bank which would not have been, or been capable of being, made or asserted against such Bank had it not entered into any of the Security Documents or been involved in any of the resulting or associated transactions.

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11.3 **Capital adequacy and reserve requirements indemnity**

The Borrowers shall promptly indemnify each Lender on demand against any cost incurred or loss suffered by such Lender as a result of its complying with (i) the minimum reserve requirements from time to time of the European Central Bank (ii) any capital adequacy directive of the European Union and/or (iii) any revised framework for international convergence of capital measurements and capital standards and/or any regulation imposed by any Government Entity in connection therewith, and/or in connection with maintaining required reserves with a relevant national central bank to the extent that such compliance or maintenance relates to such Lender's Commitment and/or Contribution or deposits obtained by it to fund the whole or part thereof and to the extent such cost or loss is not recoverable by such Lender under clause 12.2.

12 **UNLAWFULNESS AND INCREASED COSTS**

12.1 **Unlawfulness**

If it is or becomes contrary to any law, directive or regulation for any Lender to contribute to an Advance or to maintain its Commitment or fund its Contribution to the Loan or any Advance, such Lender shall promptly, through the Agent, give notice to the Borrowers whereupon (a) such Lender's Contribution and Commitment shall be reduced to zero and (b) the Borrowers shall be obliged to prepay such Lender's Contribution either (i) forthwith or (ii) on a future specified date not being earlier than the latest date permitted by the relevant law, directive or regulation together with interest accrued to the date of prepayment and all other sums payable by the Borrowers under this Agreement.

12.2 **Increased costs**

If the result of any change (which occurs after the Execution Date) in, or in the interpretation or application of, or the introduction of, any law or any regulation, request or requirement (whether or not having the force of law, but, if not having the force of law, with which a Lender or, as the case may be, its holding company habitually complies), including (without limitation) those relating to Taxation, capital adequacy, liquidity, reserve assets, cash ratio deposits and special deposits, is to:

- 12.2.1 subject any Lender to Taxes or change the basis of Taxation of any Lender with respect to any payment under any of the Security Documents (other than Taxes or Taxation on the overall net income, profits or gains of such Lender imposed in the jurisdiction in which its principal or lending office under this Agreement is located); and/or
- 12.2.2 increase the cost to, or impose an additional cost on, any Lender or its holding company in making or keeping such Lender's Commitment available or maintaining or funding all or part of such Lender's Contribution; and/or
- 12.2.3 reduce the amount payable or the effective return to any Lender under any of the Security Documents; and/or
- 12.2.4 reduce any Lender's or its holding company's rate of return on its overall capital by reason of a change in the manner in which it is required to allocate capital resources to such Lender's obligations under any of the Security Documents; and/or

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- 12.2.5 require any Lender or its holding company to make a payment or forgo a return on or calculated by reference to any amount received or receivable by such Lender under any of the Security Documents; and/or
- 12.2.6 require any Lender or its holding company to incur or sustain a loss (including a loss of future potential profits) by reason of being obliged to deduct all or part of its Contribution or the Loan from its capital for regulatory purposes,
- then and in each such case (subject to clause 12.3):
- (a) such Lender shall notify, via the Agent, the Borrowers in writing of such event promptly upon its becoming aware of the same; and
  - (b) the Borrowers shall on demand made at any time whether or not such Lender's Contribution has been repaid, pay to the Agent for the account of such Lender the amount which such Lender specifies (in a certificate setting forth the basis of the computation of such amount but not including any matters which such Lender or its holding company regards as confidential) is required to compensate such Lender and/or (as the case may be) its holding company for such liability to Taxes, cost, reduction, payment, forgone return or loss.

For the purposes of this clause 12.2 "holding company" means the company or entity (if any) within the consolidated supervision of which a Lender is included.

12.3 **Exception**

Nothing in clause 12.2 shall entitle any Lender to receive any amount in respect of compensation for any such liability to Taxes, increased or additional cost, reduction, payment, foregone return or loss to the extent that the same is the subject of an additional payment under clause 6.6.

13 **APPLICATION OF MONEYS, SET OFF, PRO-RATA PAYMENTS AND MISCELLANEOUS**

13.1 **Application of moneys**

All moneys received by the Agent and/or the Security Trustee under or pursuant to any of the Security Documents and expressed to be applicable in accordance with the provisions of this clause 13.1 or in a manner determined in the Security Trustee's or (as the case may be) the Agent's discretion, shall be applied in the following manner:

- 13.1.1 first, in or towards payment, on a pro-rata basis, of any unpaid costs and expenses of the Banks or any of them under any of the Security Documents;
- 13.1.2 secondly, in or towards payment of any fees payable to the Agent or any of the other Banks under, or in relation to, the Security Documents which remain unpaid;
- 13.1.3 thirdly, in or towards payment to the Banks, on a pro rata basis, of any accrued interest owing in respect of the Loan which shall have become due under any of the Security Documents but remains unpaid;
- 13.1.4 fourthly, in or towards repayment of the Loan (whether the same is due and payable or not); and

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13.1.5 fifthly, in or towards payment to the Lenders, on a pro rata basis any Break Costs and any other sum relating to the Loan which shall have become due under any of the Security Documents but remains unpaid;

13.1.6 sixthly, the surplus (if any) shall be paid to the Borrowers or to whomsoever else may then be entitled to receive such surplus.

13.2 **Set-off**

13.2.1 Each Borrower irrevocably authorises each Bank (without prejudice to any of such Bank's rights at law, in equity or otherwise), at any time and without notice to the Borrowers, to apply any credit balance to which either Borrower is then entitled standing upon any account of either Borrower with any branch of such Bank in or towards satisfaction of any sum due and payable from the Borrowers to such Bank under any of the Security Documents. For this purpose, each Bank is authorised to purchase with the moneys standing to the credit of such account such other currencies as may be necessary to effect such application.

13.2.2 No Bank shall be obliged to exercise any right given to it by this clause 13.2. Each Bank shall notify the Borrowers through the Agent forthwith upon the exercise or purported exercise of any right of set off giving full details in relation thereto and the Agent shall inform the other Banks.

13.2.3 Nothing in this clause 13.2 shall be effective to create a charge or other security interest.

13.3 **Pro rata payments**

13.3.1 If at any time any Lender (the "**Recovering Lender**") receives or recovers any amount owing to it by the Borrowers under this Agreement (other than pursuant to any other Security Document) by direct payment, set-off or in any manner other than by payment through the Agent pursuant to clauses 6.1 or 6.9 (not being a payment received from a Transferee Bank or a sub-participant in such Lender's Contribution or any other payment of an amount due to the Recovering Lender for its sole account pursuant to clauses 3.6, 5, 6.6, 11.1, 11.2, 11.3, 12.1, or 12.2), the Recovering Lender shall, within two (2) Banking Days of such receipt or recovery (a "**Relevant Receipt**") notify the Agent of the amount of the Relevant Receipt. If the Relevant Receipt exceeds the amount which the Recovering Lender would have received if the Relevant Receipt had been received by the Agent and distributed pursuant to clause 6.1 or 6.10 (as the case may be) then:

- (a) within two (2) Banking Days of demand by the Agent, the Recovering Lender shall pay to the Agent an amount equal (or equivalent) to the excess;
- (b) the Agent shall treat the excess amount so paid by the Recovering Lender as if it were a payment made by the Borrowers and shall distribute the same to the Lenders (other than the Recovering Lenders) in accordance with clause 6.10; and
- (c) as between the Borrowers and the Recovering Lender the excess amount so re-distributed shall be treated as not having been paid but the obligations of the Borrowers to the other Lenders shall, to the extent of the amount so re-distributed to them, be treated as discharged.

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- 13.3.2 If any part of the Relevant Receipt subsequently has to be wholly or partly refunded by the Recovering Lender (whether to a liquidator or otherwise) each Lender to which any part of such Relevant Receipt was so re-distributed shall on request from the Recovering Lender repay to the Recovering Lender such Lender's pro-rata share of the amount which has to be refunded by the Recovering Lender.
- 13.3.3 Each Lender shall on request supply to the Agent such information as the Agent may from time to time request for the purposes of this clause 13.3.
- 13.3.4 Notwithstanding the foregoing provisions of this clause 13.3, no Recovering Lender shall be obliged to share any Relevant Receipt which it receives or recovers pursuant to Proceedings taken by it to recover any sums owing to it under this Agreement with any other party which has a legal right to, but does not, either join in such Proceedings or commence and diligently pursue separate Proceedings to enforce its rights in the same or another court (unless the Proceedings instituted by the Recovering Lender are instituted by it without prior notice having been given to such party through the Agent).
- 13.4 **No release**
- For the avoidance of doubt it is hereby declared that failure by any Recovering Lender to comply with the provisions of clause 13.3 shall not release any other Recovering Lender from any of its obligations or liabilities under clause 13.3.
- 13.5 **No charge**
- The provisions of this clause 13 shall not, and shall not be construed so as to, constitute a charge or create or declare a trust by a Lender over all or any part of a sum received or recovered by it in the circumstances mentioned in clause 13.3.
- 13.6 **Further assurance**
- Each Borrower undertakes with each Bank that the Security Documents shall both at the date of execution and delivery thereof and throughout the Facility Period be valid and binding obligations of the Security Parties party thereto which, with the rights of each Lender thereunder, are enforceable in accordance with their respective terms and that they will, at their expense, execute, sign, perfect and do, and will procure the execution, signing, perfecting and doing by each of the other Security Parties of, any and every such further assurance, document, act or thing as in the reasonable opinion of the Majority Lenders may be necessary or desirable for perfecting the security contemplated or constituted by the Security Documents.
- 13.7 **Conflicts**
- In the event of any conflict between this Agreement and any of the other Security Documents, the provisions of this Agreement shall prevail.
- 13.8 **No implied waivers, remedies cumulative**
- No failure or delay on the part of any of the Banks to exercise any power, right or remedy under any of the Security Documents shall operate as a waiver thereof, nor shall any single or partial exercise by any Bank of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The remedies provided in the Security Documents are cumulative and are not exclusive of any remedies provided by law. No waiver by any Bank shall be effective unless it is in writing.

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13.9 **Severability**

If any provision of this Agreement is prohibited, invalid, illegal or unenforceable in any jurisdiction, such prohibition, invalidity, illegality or unenforceability shall not affect or impair howsoever the remaining provisions thereof or affect the validity, legality or enforceability of such provision in any other jurisdiction.

13.10 **Force Majeure**

Regardless of any other provision of this Agreement, none of the Banks shall be liable for any failure to perform the whole or any part of this Agreement resulting directly or indirectly from (i) the action or inaction or purported action of any governmental or local authority (ii) any strike, lockout, boycott or blockade (including any strike, lockout, boycott or blockade effected by or upon any Bank or any of its representatives or employees) (iii) any act of God (iv) any act of war (whether declared or not) or terrorism (v) any failure of any information technology or other operational systems or equipment affecting any Bank or (vi) any other circumstances whatsoever outside any Bank's control.

13.11 **Amendments**

This Agreement may be amended or varied only by an instrument in writing executed by all parties hereto who irrevocably agree that the provisions of this clause 13.11 may not be waived or modified except by an instrument in writing to that effect signed by all of them.

13.12 **Counterparts**

This Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same agreement which may be sufficiently evidenced by one counterpart.

13.13 **English language**

All documents required to be delivered under and/or supplied whensoever in connection howsoever with any of the Security Documents and all notices, communications, information and other written material whatsoever given or provided in connection howsoever therewith must either be in the English language or accompanied by an English translation certified by a notary, lawyer or consulate acceptable to the Agent.

14 **ACCOUNTS AND RETENTIONS**

14.1 **General**

Each Borrower undertakes with each Bank that it will ensure that:

14.1.1 it will on or before the Delivery Date in respect of its Vessel, open an Earnings Account in its name; and

14.1.2 all moneys payable to any Owner in respect of the Earnings (as defined in the relevant Mortgage) of its Vessel shall, unless and until the Agent (acting on the instructions of the Majority Lenders) directs to the contrary pursuant to the provisions of the relevant Mortgage, be paid to its Earnings Account, Provided however that if any of the moneys paid to an Earnings Account are payable in a currency other than USD, the Account Bank shall then convert such moneys into USD at that Account Bank's spot rate of exchange at the relevant time for the purchase of USD with such currency and the term "spot rate of exchange" shall include any premium and costs of exchange payable in connection with the purchase of USD with such currency).

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14.2 **Earnings Accounts: withdrawals**

Any sums standing to the credit of the Earnings Accounts may be applied from time to time (i) firstly to make the payments required under this Agreement, (ii) secondly, subject to there being no breach of Clauses 14.3 and 14.4 and to no Event of Default having occurred, in the operation of the Mortgaged Vessels and (iii) thirdly, subject to no Event of Default having occurred and to there being at any time sufficient funds to maintain or pay amounts due under (i) and (ii) above as they fall due, for the general corporate purposes of the Borrowers.

14.3 **Minimum Balance**

The Borrowers shall accumulate within 6 months of the relevant Drawdown Date and thereafter maintain a balance of USD250,000 (the “ **Minimum Balance**”) on each Earnings Account throughout the Facility Period.

14.4 **Retention Account: credits and withdrawals**

14.4.1 The Borrowers undertake with each Bank that, throughout the Facility Period, they will procure that, on each Retention Date there is paid (whether from the Earnings Accounts or elsewhere) to the Retention Account, the Retention Amount for such date.

14.4.2 Unless and until there shall occur an Event of Default (whereupon the provisions of clause 14.5 shall apply), all Retention Amounts credited to the Retention Account together with interest from time to time accruing or at any time accrued thereon must be applied by the Account Bank (and the Borrowers hereby irrevocably authorise that Account Bank so to apply the same) upon each Repayment Date and/or on each day that interest is payable on the Loan or an Advance pursuant to clause 3.1, in or towards payment to the Agent of the instalment then falling due for repayment or, as the case may be, the amount of interest then due. Each such application by such Account Bank shall constitute a payment in or towards satisfaction of the Borrowers’ corresponding payment obligations under this Agreement but shall be strictly without prejudice to the obligations of the Borrowers to make any such payment to the extent that the aforesaid application by the said Account Bank is insufficient to meet the same.

14.4.3 Unless the Agent (acting on the instructions of the Majority Banks) otherwise agrees in writing and subject to clause 14.4.2, Borrowers shall not be entitled to withdraw any moneys from the Retention Account at any time during the Facility Period.

14.5 **Application of accounts**

At any time after the occurrence of an Event of Default, the Agent may (and on the instructions of the Majority Lenders shall), without notice to the Borrowers, instruct the Account Banks to apply all moneys then standing to the credit of the Earnings Accounts and/or the Retention Account (together with interest from time to time accruing or accrued thereon) in or towards satisfaction of any sums due to the Banks or any of them under the Security Documents in the manner specified in clause 13.1.

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14.6 **Charging of accounts**

The Earnings Accounts, the Retention Account and all amounts from time to time standing to the credit thereof shall be subject to the security constituted and the rights conferred by the Earnings Account Pledges and the Retention Account Pledge respectively.

15 **ASSIGNMENT, TRANSFER AND LENDING OFFICE**

15.1 **Benefit and burden**

This Agreement shall be binding upon, and enure for the benefit of, the Banks and the Borrowers and their respective successors in title.

15.2 **No assignment by Borrowers**

No Borrower may assign or transfer any of its rights or obligations under this Agreement.

15.3 **Transfers by Banks**

any Lender (the “**Transferor Lender**”) may at any time, without the consent of, but after consultation with, the Borrowers, cause all or any part of its rights, benefits and/or obligations under this Agreement and the other Security Documents to be transferred to (i) another Lender, (ii) another branch, subsidiary or affiliate of a Lender, (iii) another first class international bank or financial institution, (iv) a trust corporation, fund or other person which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (in either case a “**Transferee Lender**”), in each case by delivering to the Agent a Transfer Certificate duly completed and duly executed by the Transferor Lender and the Transferee Lender **provided** that any Transferee Lender shall, before transferring its right, benefits and obligations to any other bank or financial institution, give notice thereof to the other Lenders, who shall have the option, to be exercised by notice in writing, to acquire all its part of the rights, benefits and obligations of the Transferee Lender, in which case the Transferor Lender shall transfer the same to that Lender or Lenders in accordance with this Clause 15.3. No such transfer is binding on, or effective in relation to, the Borrowers or the Agent unless (i) it is effected or evidenced by a Transfer Certificate which complies with the provisions of this clause 15.3 and is signed by or on behalf of the Transferor Lender, the Transferee Lender and the Agent (on behalf of itself, the Borrowers and the other Banks) and (ii) such transfer of rights under the other Security Documents has been effected and registered. Upon signature of any such Transfer Certificate by the Agent, which signature shall be effected as promptly as is practicable after such Transfer Certificate has been delivered to the Agent, and subject to the terms of such Transfer Certificate, such Transfer Certificate shall have effect as set out below.

The following further provisions shall have effect in relation to any Transfer Certificate:

15.3.1 a Transfer Certificate may be in respect of a Lender’s rights in respect of all, or part of, its Commitment and shall be in respect of the same proportion of its Contribution;

15.3.2 a Transfer Certificate shall only be in respect of rights and obligations of the Transferor Lender in its capacity as a Lender and shall not transfer its rights and obligations (if applicable) as the Agent and/or Security Trustee, or in any other capacity, as the case may be and such other rights and obligations may only be transferred in accordance with any applicable provisions of this Agreement;

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15.3.3 a Transfer Certificate shall take effect in accordance with English law as follows:

- (a) to the extent specified in the Transfer Certificate, the Transferor Lender's payment rights and all its other rights (other than those referred to in clause 15.3.2 above) under this Agreement are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender's title and of any rights or equities which the Borrowers had against the Transferor Lender and the Transferee Lender assumes all obligations of the Transferor Lender as are transferred by such Transfer Certificate;
- (b) the Transferor Lender's Commitment is discharged to the extent specified in the Transfer Certificate;
- (c) the Transferee Lender becomes a Lender with a Contribution and/or a Commitment in respect of the Loan Facility of the amounts specified in the Transfer Certificate;
- (d) the Transferee Lender becomes bound by all the provisions of this Agreement and the Security Documents which are applicable to the Lenders generally, including those about pro-rata sharing and the exclusion of liability on the part of, and the indemnification of, the Agent and the Security Trustee and to the extent that the Transferee Lender becomes bound by those provisions, the Transferor Lender ceases to be bound by them;
- (e) an Advance or part of an Advance which the Transferee Lender makes after the Transfer Certificate comes into effect ranks in point of priority and security in the same way as it would have ranked had it been made by the Transferor Lender, assuming that any defects in the Transferor Lender's title and any rights or equities of any Security Party against the Transferor Lender had not existed; and
- (f) the Transferee Lender becomes entitled to all the rights under this Agreement which are applicable to the Lenders generally, including but not limited to those relating to the Majority Lenders and those under clauses 3.6, 5 and 12 and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them;

15.3.4 the rights and equities of the Borrowers or of any other Security Party referred to above include, but are not limited to, any right of set-off and any other kind of cross-claim; and

15.3.5 the Borrowers, the Account Banks, the Security Trustee, the Agent and the Lenders hereby irrevocably authorise and instruct the Agent to sign any such Transfer Certificate on their behalf and undertake not to withdraw, revoke or qualify such authority or instruction at any time. Promptly upon its signature of any Transfer Certificate, the Agent shall notify the Borrowers, the Transferor Lender and the Transferee Lender.

#### 15.4 **Reliance on Transfer Certificate**

15.4.1 The Agent shall be entitled to rely on any Transfer Certificate believed by it to be genuine and correct and to have been presented or signed by the persons by whom it purports to have been presented or signed, and shall not be liable to any of the parties to this Agreement and the Security Documents for the consequences of such reliance.

15.4.2 The Agent shall at all times during the continuation of this Agreement maintain a register in which it shall record the name, Commitments, Contributions and administrative details (including the lending office) from time to time of the Lenders holding a Transfer Certificate and the date at which the transfer referred to in such Transfer Certificate held by each Lender

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was transferred to such Lender, and the Agent shall make the said register available for inspection by any Lender or the Borrowers during normal banking hours upon receipt by the Agent of reasonable prior notice requesting the Agent to do so.

15.4.3 The entries on the said register shall, in the absence of manifest error, be conclusive in determining the identities of the Commitments, the Contributions and the Transfer Certificates held by the Lenders from time to time and the principal amounts of such Transfer Certificates and may be relied upon by all parties to this Agreement.

15.5 **Transfer fees and expenses**

Any Transferor Lender who causes the transfer of all or any part of its rights, benefits and/or obligations under the Security Documents in accordance with the foregoing provisions of this clause 15, must, on each occasion, pay to the Agent a transfer fee of one thousand five hundred Dollars (USD 1,500) and, in addition, be responsible for all other costs and expenses (including, but not limited to, reasonable legal fees and expenses) associated therewith and all value added tax thereon, as well as those of the Agent (in addition to its fee as aforesaid) in connection with such transfer.

15.6 **Documenting transfers**

If any Lender assigns all or any part of its rights or transfers all or any part of its rights, benefits and/or obligations as provided in clause 15.3, each Borrower undertakes, immediately on being requested to do so by the Agent and at the cost of the Transferor Lender, to enter into, and procure that the other Security Parties shall (at the cost of the Transferor Lender) enter into, such documents as may be necessary or desirable to transfer to the Transferee Lender all or the relevant part of such Lender's interest in the Security Documents and all relevant references in this Agreement to such Lender shall thereafter be construed as a reference to the Transferor Lender and/or its Transferee Lender (as the case may be) to the extent of their respective interests.

15.7 **Sub-Participation**

A Lender may sub-participate all or any part of its rights and/or obligations under the Security Documents at its own expense without the consent of, or notice to, the Borrowers but with prior written notice to the other Lenders.

15.8 **Lending office**

Each Lender shall lend through its office at the address specified in schedule 1 or, as the case may be, in any relevant Transfer Certificate or through any other office of such Lender selected from time to time by it through which such Lender wishes to lend for the purposes of this Agreement. If the office through which a Lender is lending is changed pursuant to this clause 15.8, such Lender shall notify the Agent promptly of such change and the Agent shall notify the Borrowers, the Security Trustee, the Agent, the Account Banks and the other Lenders.

15.9 **Disclosure of information**

A Bank may disclose to any of its branches and affiliates, its head office, any relevant fiscal authorities a prospective assignee, transferee or to any other person who may propose entering into contractual relations with such Bank in relation to this Agreement such information about the Borrowers and/or the other Security Parties and/or the Loan and/or the Security Documents as such Bank shall consider appropriate in relation to any transfer and/or enforcement hereunder.

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16     **AGENT AND SECURITY TRUSTEE**

16.1    **Appointment of the Agent**

Each Lender irrevocably appoints the Agent as its agent for the purposes of this Agreement and such of the Security Documents to which it may be appropriate for the Agent to be party. Accordingly each of the Lenders hereby authorises the Agent:

16.1.1 to execute such documents as may be approved by the Majority Lenders for execution by the Agent; and

16.1.2 (whether or not by or through employees or agents) to take such action on such Lender's behalf and to exercise such rights, remedies, powers and discretions as are specifically delegated to the Agent by any Security Document, together with such powers and discretions as are reasonably incidental thereto.

16.2    **Agent's actions**

Any action taken by the Agent under or in relation to any of the Security Documents whether with requisite authority or on the basis of appropriate instructions received from the Majority Lenders (or as otherwise duly authorised) shall be binding on all the Banks.

16.3    **Agent's and Agent's duties**

16.3.1 The Agent shall promptly notify each Lender of (i) the contents of each notice, certificate or other document received by it from the Borrowers under or pursuant to clauses 8.1.1, 8.1.6, 8.1.9, 8.1.10, 8.1.13 and 8.1.17 and (ii) any information it receives which is material to the Borrowers' ability to repay the Loan; and

16.3.2 The Agent shall (subject to the other provisions of this clause 16) take (or instruct the Security Trustee to take) such action or, as the case may be, refrain from taking (or authorise the Security Trustee to refrain from taking) such action with respect to the exercise of any of its rights, remedies, powers and discretions as agent, as the Majority Lenders may direct.

16.4    **Security Trustee's and Agent's rights**

The Security Trustee and the Agent may:

16.4.1 in the exercise of any right, remedy, power or discretion in relation to any matter, or in any context, not expressly provided for by this Agreement or any of the other Security Documents, act or, as the case may be, refrain from acting (or authorise the Security Trustee to act or refrain from acting) in accordance with the instructions of the Lenders, and shall be fully protected in so doing;

16.4.2 unless and until it has received directions from the Majority Lenders, take such action or, as the case may be, refrain from taking such action (or authorise the Security Trustee to take or refrain from taking such action) in respect of a Default of which the Agent has actual knowledge as it shall consider advisable in the best interests of the Lenders (but shall not be obliged to do so);

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- 16.4.3 refrain from acting (or authorise the Security Trustee to refrain from acting) in accordance with any instructions of the Lenders to institute any Proceedings arising out of or in connection with any of the Security Documents until it and/or the Security Trustee has been indemnified and/or secured to its satisfaction against any and all costs, expenses or liabilities (including legal fees) which it would or might incur as a result;
- 16.4.4 deem and treat (i) each Lender as the person entitled to the benefit of the Contribution of such Lender for all purposes of this Agreement unless and until a notice shall have been filed with the Agent pursuant to clause 15.3 and shall have become effective, and (ii) the office set opposite the name of each of the Lenders in schedule 1 as its lending office unless and until a written notice of change of lending office shall have been received by the Agent and the Agent may act upon any such notice unless and until the same is superseded by a further such notice;
- 16.4.5 rely as to matters of fact which might reasonably be expected to be within the knowledge of any Security Party upon a certificate signed by any director or officer of the relevant Security Party on behalf of the relevant Security Party; and
- 16.4.6 do anything which is in its opinion necessary or desirable to comply with any law or regulation in any jurisdiction.
- 16.5 **No Liability of Agent**
- Neither of the Security Trustee, the Agent nor any of their respective employees and agents shall:
- 16.5.1 be obliged to make any enquiry as to the use of any of the proceeds of the Loan unless (in the case of the Agent) so required in writing by a Lender, in which case the Agent shall promptly make the appropriate request to the Borrowers; or
- 16.5.2 be obliged to make any enquiry as to any breach or default by the Borrowers or any other Security Party in the performance or observance of any of the provisions of the Security Documents or as to the existence of a Default unless (in the case of the Agent) the Agent has actual knowledge thereof or has been notified in writing thereof by a Bank, in which case the Agent shall promptly notify the Banks of the relevant event or circumstance; or
- 16.5.3 be obliged to enquire whether or not any representation or warranty made by the Borrowers or any other Security Party pursuant to this Agreement or any of the other Security Documents is true; or
- 16.5.4 be obliged to do anything (including, without limitation, disclosing any document or information) which would, or might in its opinion, be contrary to any law or regulation or be a breach of any duty of confidentiality or otherwise be actionable or render it liable to any person; or
- 16.5.5 be obliged to account to any Lender for any sum or the profit element of any sum received by it for its own account; or
- 16.5.6 be obliged to institute any Proceedings arising out of or in connection with any of the Security Documents other than on the instructions of the Majority Lenders; or
- 16.5.7 be liable to any Lender for any action taken or omitted under or in connection with any of the Security Documents unless caused by its gross negligence or wilful misconduct.

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For the purposes of this clause 16, neither of the Security Trustee or the Agent shall be treated as having actual knowledge of any matter of which the corporate finance or any other division outside the agency or loan administration department of the Security Trustee or the Agent or the person for the time being acting as the Security Trustee or the Agent may become aware in the context of corporate finance, advisory or lending activities from time to time undertaken by the Security Trustee or the Agent or, as the case may be, the Security Trustee or Agent for any Security Party or any other person which may be a trade competitor of any Security Party or may otherwise have commercial interests similar to those of any Security Party.

**16.6 Non –reliance on Security Trustee or Agent**

Each Lender acknowledges that it has not relied on any statement, opinion, forecast or other representation made by the Security Trustee or the Agent to induce it to enter into any of the Security Documents and that it has made and will continue to make, without reliance on the Security Trustee or the Agent and based on such documents as it considers appropriate, its own appraisal of the creditworthiness of the Security Parties and its own independent investigation of the financial condition, prospects and affairs of the Security Parties in connection with the making and continuation of such Lender’s Commitment or Contribution under this Agreement. Neither of the Security Trustee and the Agent shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect to any Security Party whether coming into its possession before the making of any Advance or the Loan or at any time or times thereafter other than as provided in clause 16.3.1.

**16.7 No responsibility on the Security Trustee or Agent for Borrowers’ performance**

Neither of the Security Trustee or the Agent shall have any responsibility or liability to any Lender:

- 16.7.1 on account of the failure of any Security Party to perform its obligations under any of the Security Documents; or
- 16.7.2 for the financial condition of any Security Party; or
- 16.7.3 for the completeness or accuracy of any statements, representations or warranties in any of the Security Documents or any document delivered under any of the Security Documents; or
- 16.7.4 for the execution, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence of any of the Security Documents or of any certificate, report or other document executed or delivered under any of the Security Documents; or
- 16.7.5 to investigate or make any enquiry into the title of the Borrowers or any other Security Party to the Vessels or any other security or any part thereof; or
- 16.7.6 for taking or omitting to take any other action under or in relation to any of the Security Documents or any aspect of any of the Security Documents; or
- 16.7.7 on account of the failure of the Security Trustee to perform or discharge any of its duties or obligations under the Security Documents; or
- 16.7.8 otherwise in connection with the Security Documents or their negotiation or for acting (or, as the case may be, refraining from acting) in accordance with the instructions of the Lenders.

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16.8 **Reliance on documents and professional advice**

Each of the Security Trustee and the Agent shall be entitled to rely on any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper person and shall be entitled to rely as to legal or other professional matters on opinions and statements of any legal or other professional advisers selected or approved by it (including those in the Security Trustee's or Agent's employment).

16.9 **Other dealings**

Each of the Security Trustee and the Agent may, without any liability to account to the Lenders, accept deposits from, and generally engage in any kind of banking or other business with, and provide advisory or other services to, any Security Party or any company in the same group of companies as such Security Party or any of the Lenders as if it were not the Security Trustee or Agent.

16.10 **Rights of Agent, Agent as Lender; no partnership**

With respect to its own Commitment and Contribution (if any) the Security Trustee and the Agent shall have the same rights and powers under the Security Documents as any other Lender and may exercise the same as though it were not performing the duties and functions delegated to it under this Agreement and the term "Lenders" shall, unless the context clearly otherwise indicates, include the Security Trustee and the Agent in their respective individual capacity as a Lender. This Agreement shall not be construed so as to constitute a partnership between the parties or any of them.

16.11 **Amendments and waivers**

16.11.1 Subject to clause 16.11, the Security Trustee and/or the Agent (as the case may be) may, with the consent of the Majority Lenders (or if and to the extent expressly permitted by the other provisions of any of the Security Documents) and, if so instructed by the Majority Lenders, shall:

16.11.2 agree (or authorise the Security Trustee to agree) amendments or modifications to any of the Security Documents with the Borrowers and/or any other Security Party; and/or

16.11.3 vary or waive breaches of, or defaults under, or otherwise excuse performance of, any provision of any of the other Security Documents by the Borrowers and/or any other Security Party (or authorise the Security Trustee to do so).

Any such action so authorised and effected by the Agent shall be documented in such manner as the Security Trustee and/or the Agent (as the case may be) shall (with the approval of the Majority Lenders) determine, shall be promptly notified to the Lenders by the Security Trustee and/or the Agent (as the case may be) and (without prejudice to the generality of clause 16.2) shall be binding on the Lenders.

16.11.4 Except with the prior written consent of the Lenders, the Security Trustee and the Agent shall have no authority on behalf of the Lenders to agree (or authorise the Security Trustee to agree) with the Borrowers and/or any other Security Party any amendment or modification to any of the Security Documents or to grant (or authorise the Security Trustee to grant) waivers in respect of breaches or defaults or to vary or excuse (or authorise the Security Trustee to vary or excuse) performance of or under any of the Security Documents by the Borrowers and/or any other Security Party, if the effect of such amendment, modification, waiver or excuse would be to:

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- (a) reduce the Margin, postpone the due date or reduce the amount of any payment of principal, interest or other amount payable by any Security Party under any of the Security Documents;
  - (b) change the currency in which any amount is payable by any Security Party under any of the Security Documents;
  - (c) increase any Lender's Commitment;
  - (d) extend any Maturity Date;
  - (e) change any provision of any of the Security Documents which expressly or impliedly requires the approval or consent of all the Lenders such that the relevant approval or consent may be given otherwise than with the sanction of all the Lenders;
  - (f) change the order of distribution under clauses 6.10 and 13.1;
  - (g) change this clause 16.11;
  - (h) change the definition of "**Majority Lenders**" in clause 1.2;
  - (i) release any Security Party from the security constituted by any Security Document (except as required by the terms thereof or by law) or change the terms and conditions upon which such security or guarantee may be, or is required to be, released.

#### 16.12 **Reimbursement and indemnity by Lenders**

Each Lender shall reimburse the Security Trustee and the Agent (rateably in accordance with such Lender's Commitment or, after the first Advance or the Loan has been drawn, its Contribution,) to the extent that the Security Trustee or the Agent is not reimbursed by the Borrowers, for the costs, charges and expenses incurred by the Security Trustee or the Agent which are expressed to be payable by the Borrowers under clause 5.3 including (in each case), without limitation, the fees and expenses of legal or other professional advisers provided that, if following any payment to the Security Trustee or the Agent by a Lender under this clause the Security Trustee or the Agent receives payment from the Borrowers in respect of the same costs, fees or expenses, the Security Trustee or the Agent shall upon receipt thereof reimburse the relevant Lender. Each Lender must on demand indemnify the Security Trustee or the Agent (rateably in accordance with such Lender's Commitment or, after the first Advance or the Loan has been drawn, its Contribution) against all liabilities, damages, costs and claims whatsoever incurred by the Security Trustee in connection with any of the Security Documents or the performance of its duties under any of the Security Documents or any action taken or omitted by the Security Trustee or, as the case may be, the Agent, under any of the Security Documents, unless such liabilities, damages, costs or claims arise from the Security Trustee's or as the case may be, the Agent's own gross negligence or wilful misconduct.

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16.13 **Retirement of the Agent**

16.13.1 The Agent may, having given to the Borrowers and each of the Lenders not less than fifteen (15) days' notice of its intention to do so, retire from its appointment as the Agent under this Agreement, provided that no such retirement shall take effect unless there has been appointed by the Lenders as a successor agent:

- (a) a company in the same group of companies as the Agent,
- (b) a Lender nominated by the Majority Lenders or, failing such a nomination,
- (c) any reputable and experienced bank or financial institution nominated by the retiring Agent.

and written confirmation (in a form acceptable to the Lenders) of such acceptance agreeing to be bound by this Agreement in the capacity of the Agent as if it had been an original party to this Agreement.

Any corporation into which the retiring Agent and/or the retiring Security Trustee (as the case may be) may be merged or converted or any corporation with which the Security Trustee and/or the Agent (as the case may be) may be consolidated or any corporation resulting from any merger, conversion, amalgamation, consolidation or other reorganisation to which the Security Trustee or the Agent (as the case may be) shall be a party shall, to the extent permitted by applicable law, be the successor Agent or Security Trustee under this Agreement and the other Security Documents without the execution or filing of any document or any further act on the part of any of the parties to the Security Documents save that notice of any such merger, conversion, amalgamation, consolidation or other reorganisation shall forthwith be given to each Security Party and the Lenders. Prior to any such successor being appointed, the Agent agrees to consult with the Borrowers and the Lenders as to the identity of the proposed successor and to take account of any reasonable objections which the Borrowers and the Lenders may raise to such successor being appointed.

16.13.2 If the Majority Lenders, acting reasonably, are of the opinion that the Security Trustee or Agent is unable to fulfil its respective obligations under this Agreement in a professional and acceptable manner, then they may require the Security Trustee or Agent, by written notice, to resign in accordance with clause 16.13.1, which the Agent shall promptly do, and the terms of clause 16.13.1 shall apply to the appointment of any substitute Security Trustee or Agent, save that the same shall be appointed by the Majority Lenders and not by all of the Lenders.

16.13.3 Upon any such successor as aforesaid being appointed, the retiring Agent or, as the case may be, the Security Trustee shall be discharged from any further obligation under the Security Documents (but shall continue to have the benefit of this clause 16 in respect of any action it has taken or refrained from taking prior to such discharge) and its successor and each of the other parties to this Agreement shall have the same rights and obligations among themselves as they would have had if such successor had been a party to this Agreement in place of the retiring Agent or Security Trustee. The retiring Agent or Agent shall (at its own expense) provide its successor with copies of such of its records as its successor reasonably requires to carry out its functions under the Security Documents.

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16.14 **Appointment and retirement of Security Trustee**

16.14.1 Appointment

Each of the Banks irrevocably appoints the Security Trustee as its Security Trustee and trustee for the purposes of the Security Documents, in each case on the terms set out in this Agreement. Accordingly, each of the Lenders and the Agent hereby authorises the Security Trustee (whether or not by or through employees or agents) to take such action on its behalf and to exercise such rights, remedies, powers and discretions as are specifically delegated to the Security Trustee by this Agreement and/or the Security Documents, together with such powers and discretions as are reasonably incidental thereto.

16.14.2 Retirement

Without prejudice to clause 16.13, the Security Trustee may, having given to the Borrowers and each of the Lenders not less than fifteen (15) days' notice of its intention to do so, retire from its appointment as Security Trustee under this Agreement and any Trust Deed, provided that no such retirement shall take effect unless there has been appointed by the Lenders and the Agent as a successor Security Trustee and trustee:

- (a) a company in the same group of companies of the Security Trustee nominated by the Security Trustee which the Lenders hereby irrevocably and unconditionally agree to appoint or, failing such nomination,
- (b) a Lender or trust corporation nominated by the Majority Lenders or, failing such a nomination,
- (c) any bank or trust corporation nominated by the retiring Security Trustee,

and, in any case, such successor Security Trustee and trustee shall have duly accepted such appointment by delivering to the Agent (i) written confirmation (in a form acceptable to the Agent) of such acceptance agreeing to be bound by this Agreement in the capacity of Security Trustee as if it had been an original party to this Agreement and (ii) a duly executed Trust Deed.

Any corporation into which the retiring Security Trustee may be merged or converted or any corporation with which the Security Trustee may be consolidated or any corporation resulting from any merger, conversion, amalgamation, consolidation or other reorganisation to which the Security Trustee shall be a party shall, to the extent permitted by applicable law, be the successor Security Trustee under this Agreement, any Trust Deed and the other Security Documents without the execution or filing of any document or any further act on the part of any of the parties to this Agreement, any Trust Deed and the other Security Documents save that notice of any such merger, conversion, amalgamation, consolidation or other reorganisation shall forthwith be given to each Security Party and the Lenders. Prior to any such successor being appointed, the Security Trustee agrees to consult with the Borrowers as to the identity of the proposed successor and to take account of any reasonable objections which the Borrowers may raise to such successor being appointed.

Upon any such successor as aforesaid being appointed, the retiring Security Trustee shall be discharged from any further obligation under the Security Documents (but shall continue to have the benefit of this clause 16 in respect of any action it has taken or refrained from taking prior to such discharge) and its successor and each of the other parties to this Agreement shall have the same rights and obligations among themselves as they would have had if such successor had been a party to this Agreement in place of the retiring Security Trustee. The retiring Security Trustee shall (at its own expense) provide its successor with copies of such of its records as its successor reasonably requires to carry out its functions under the Security Documents.

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**16.15 Powers and duties of the Security Trustee**

16.15.1 The Security Trustee shall have no duties, obligations or liabilities to any of the Lenders and the Agent beyond those expressly stated in any of the Security Documents. Each of the Agent and the Lenders hereby authorises the Security Trustee to enter into and execute:

- (a) each of the Security Documents to which the Security Trustee is or is intended to be a party; and
- (b) any and all such other Security Documents as may be approved by the Agent in writing (acting on the instructions of the Majority Lenders) for entry into by the Security Trustee,

and, in each and every case, to hold any and all security thereby created upon trust for the Lenders and the Agent for the time being in the manner contemplated by this Agreement.

16.15.2 Subject to clause 16.15.3 the Security Trustee may, with the prior consent of the Majority Lenders communicated in writing by the Agent, concur with any of the Security Parties to:

- (a) amend, modify or otherwise vary any provision of the Security Documents to which the Security Trustee is or is intended to be a party; or
- (b) waive breaches of, or defaults under, or otherwise excuse performance of, any provision of the Security Documents to which the Security Trustee is or is intended to be a party; or
- (c) give any consents to any Security Party in respect of any provision of any Security Document.

Any such action so authorised and effected by the Security Trustee shall be promptly notified to the Lenders and the Agent by the Security Trustee and shall be binding on the other Banks.

16.15.3 The Security Trustee shall not concur with any Security Party with respect to any of the matters described in clause 16.11.4 without the consent of the Lenders communicated in writing by the Agent.

16.15.4 The Security Trustee shall (subject to the other provisions of this clause 16) take such action or, as the case may be, refrain from taking such action, with respect to any of its rights, powers and discretions as Security Trustee and trustee, as the Agent may direct. Subject as provided in the foregoing provisions of this clause, unless and until the Security Trustee has received such instructions from the Agent, the Security Trustee may, but shall not be obliged to, take (or refrain from taking) such action under or pursuant to the Security Documents referred to in clause 16.14 as the Security Trustee shall deem advisable in the best interests of the Banks provided that (for the avoidance of doubt), to the extent that this clause might otherwise be construed as authorising the Security Trustee to take, or refrain from taking, any action of the nature referred to in clause 16.15.2 - and for which the prior consent of the Lenders is expressly required under clause 16.15.3 - clauses 16.15.2 and 16.15.3 shall apply to the exclusion of this clause.

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- 16.15.5 None of the Lenders nor the Agent shall have any independent power to enforce any of the Security Documents referred to in clause 16.14 or to exercise any rights, discretions or powers or to grant any consents or releases under or pursuant to such Security Documents or any of them or otherwise have direct recourse to the security and/or guarantees constituted by such Security Documents or any of them except through the Security Trustee.
- 16.15.6 For the purpose of this clause 16, the Security Trustee may, rely and act in reliance upon any information from time to time furnished to the Security Trustee by the Agent (whether pursuant to clause 16.15.7 or otherwise) unless and until the same is superseded by further such information, so that the Security Trustee shall have no liability or responsibility to any party as a consequence of placing reliance on and acting in reliance upon any such information unless the Security Trustee has actual knowledge that such information is inaccurate or incorrect.
- 16.15.7 Without prejudice to the foregoing each of the Agent and the Lenders (whether directly or through the Agent) shall provide the Security Trustee with such written information as it may reasonably require for the purpose of carrying out its duties and obligations under the Security Documents referred to in clause 16.14.
- 16.16 **Trust provisions**
- 16.16.1 The trusts constituted or evidenced in or by this Agreement and the Trust Deed shall remain in full force and effect until whichever is the earlier of:
- (a) the expiration of a period of eighty (80) years from the date of this Agreement; and
  - (b) receipt by the Security Trustee of confirmation in writing by the Agent that there is no longer outstanding any Indebtedness (actual or contingent) which is secured or guaranteed or otherwise assured by or under any of the Security Documents,
- and the parties to this Agreement declare that the perpetuity period applicable to this Agreement and the trusts declared by the Trust Deed shall for the purposes of the Perpetuities and Accumulations Act 1964 be the period of eighty (80) years from the date of this Agreement.
- 16.16.2 In its capacity as trustee in relation to the Security Documents specified in clause 16.14, the Security Trustee shall, without prejudice to any of the powers, discretions and immunities conferred upon trustees by law (and to the extent not inconsistent with the provisions of any of those Security Documents), have all the same powers and discretions as a natural person acting as the beneficial owner of such property and/or as are conferred upon the Security Trustee by any of those Security Documents.
- 16.16.3 It is expressly declared that, in its capacity as trustee in relation to the Security Documents specified in clause 16.14, the Security Trustee shall be entitled, subject to the consent of the Lenders, to invest moneys forming part of the security and which, in the opinion of the Security Trustee, may not be paid out promptly following receipt in the name or under the control of the Security Trustee in any of the investments for the time being authorised by law for the investment by trustees of trust moneys or in any other property or investments whether similar to the aforesaid or not or by placing the same on deposit in the name or under the control of the Security Trustee as the Security Trustee may think fit without being under any duty to diversify its investments and the Security Trustee may at any time vary or transpose any such property or investments for or into any others of a like nature and shall not be responsible for any loss due to depreciation in value or otherwise of such property or investments. Any investment of any part or all of the security may, at the discretion of the Security Trustee, be made or retained in the names of nominees.

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**16.17 Independent action by Banks**

None of the Banks shall enforce, exercise any rights, remedies or powers or grant any consents or releases under or pursuant to, or otherwise have a direct recourse to the security and/or guarantees constituted by any of the Security Documents without the prior written consent of the Majority Lenders but, provided such consent has been obtained, it shall not be necessary for any other Bank to be joined as an additional party in any Proceedings for this purpose.

**16.18 Common Agent and Security Trustee**

The Agent and the Security Trustee have entered into the Security Documents in their separate capacities (a) as agent for the Lenders under and pursuant to this Agreement (in the case of the Agent) and (b) as Security Trustee and trustee for the Lenders and the Agent under and pursuant to this Agreement, to hold the guarantees and/or security created by the Security Documents specified in clause 16.14 on the terms set out in such Security Documents (in the case of the Security Trustee). If and when the Agent and the Security Trustee are the same entity and any Security Document provides for the Agent to communicate with or provide instructions to the Security Trustee (and vice versa), all parties to this Agreement agree that any such communications or instructions on such occasions are unnecessary and are hereby waived.

**16.19 Co-operation to achieve agreed priorities of application**

The Lenders and the Agent shall co-operate with each other and with the Security Trustee and any receiver under the Security Documents in realising the property and assets subject to the Security Documents and in ensuring that the net proceeds realised under the Security Documents after deduction of the expenses of realisation are applied in accordance with clause 13.1.

**16.20 The Prompt distribution of proceeds**

Moneys received by any of the Banks (whether from a receiver or otherwise) pursuant to the exercise of (or otherwise by virtue of the existence of) any rights and powers under or pursuant to any of the Security Documents shall (after providing for all costs, charges, expenses and liabilities and other payments ranking in priority) be paid to the Agent for distribution (in the case of moneys so received by any of the Banks other than the Agent or the Security Trustee) and shall be distributed by the Agent or, as the case may be, the Security Trustee (in the case of moneys so received by the Agent or, as the case may be, the Security Trustee) in each case in accordance with clause 13.1. The Agent or, as the case may be, the Security Trustee shall make each such application and/or distribution as soon as is practicable after the relevant moneys are received by, or otherwise become available to, the Agent or, as the case may be, the Security Trustee save that (without prejudice to any other provision contained in any of the Security Documents) the Agent or, as the case may be, the Security Trustee (acting on the instructions of the Majority Lenders) or any receiver may credit any moneys received by it to a suspense account for so long and in such manner as the Agent or such receiver may from time to time determine with a view to preserving the rights of the Agent and/or the Security Trustee and/or the Account Bank and/or the Lenders or any of them to provide for the whole of their respective claims against the Borrowers or any other person liable.



17.2.3 subject to clause 17.2.5, notices to the Agent and/or Account Bank and/or Security Trustee shall be deemed to be given, and shall take effect, when received in full legible form by the Agent and/or the Security Trustee at the address and/or the fax number address appearing below (or at any such other address or fax number as the Agent and/or the Security Trustee (as appropriate) may hereafter specify for such purpose to the Borrowers and the other Lenders by notice in writing);

Agent: Cr dit Agricole Corporate and Investment Bank  
Address: 9, quai du Pr sident Paul Doumer  
92920 Paris La D fense Cedex  
France  
Fax: + 33 1 41 89 29 87  
Attn: Shipping Department – Mr Alain Pitner

With copy to “Agency and Middle-Office Shipping”, Fax: + 33 1 41 89 19 34

17.2.4 subject to clause 17.2.5 and 17.3, notices to a Lender shall be deemed to be given and shall take effect when received in full legible form by such Lender at its address and/or fax number specified in schedule 1 or in any relevant Transfer Certificate (or at any other address or fax number as such Lender may hereafter specify for such purpose to the other Banks); and

17.2.5 if under clause 17.2.1 or clause 17.2.3 a notice would be deemed to have been given and been effective on a day which is not a working day in the place of receipt or is outside the normal business hours in the place of receipt, the notice shall be deemed to have been given and to have taken effect at the opening of business on the next working day in such place.

### 17.3 **Electronic Communication**

17.3.1 Any communication to be made by and/or between the Banks or any of them and the Security Parties or any of them under or in connection with the Security Documents or any of them may be made by electronic mail or other electronic means, if and provided that all such parties:

- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (b) notify each other of any change to their electronic mail address or any other such information supplied by them.

17.3.2 Any electronic communication made by and/or between the Banks or any of them and the Security Parties or any of them will be effective only when actually received in readable form and, in the case of any electronic communication made by the Borrowers or the Lenders to the Agent, only if it is addressed in such manner as the Agent shall specify for this purpose.

### 17.4 **Notices through the Agent**

Every notice under this Agreement or (unless otherwise provided therein) any other Security Document to be given by the Borrowers to any other party, shall be given to the Agent for onward transmission as appropriate and every notice under this Agreement to be given to the Borrowers shall (except as otherwise provided in the Security Documents) be given to the Borrowers by the Agent.

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18 **BORROWERS' OBLIGATIONS**

18.1 **Joint and several**

Regardless of any other provision in any of the Security Documents, all obligations and liabilities whatsoever of the Borrowers herein contained are joint and several and shall be construed accordingly. Each of the Borrowers agrees and consents to be bound by the Security Documents to which it becomes a party notwithstanding that the other Borrower may not do so or be effectually bound and notwithstanding that any of the Security Documents may be invalid or unenforceable against the other Borrower, whether or not the deficiency is known to any Bank.

18.2 **Borrowers as principal debtors**

Each Borrower acknowledges that it is a principal and original debtor in respect of all amounts which may become payable by the Borrowers in accordance with the terms of any of the Security Documents and agrees that each Bank may continue to treat it as such, whether or not such Bank is or becomes aware that such Borrower is or has become a surety for the other Borrower.

18.3 **Indemnity**

The Borrowers undertake to keep the Banks fully indemnified on demand against all claims, damages, losses, costs and expenses arising from any failure of either Borrower to perform or discharge any purported obligation or liability of that Borrower which would have been the subject of this Agreement or any other Security Document had it been valid and enforceable and which is not or ceases to be valid and enforceable against the other Borrower on any ground whatsoever, whether or not known to any Bank including, without limitation, any irregular exercise or absence of any corporate power or lack of authority of, or breach of duty by, any person purporting to act on behalf of the other Borrower (or any legal or other limitation, whether under the Limitation Acts or otherwise or any disability or death, bankruptcy, unsoundness of mind, insolvency, liquidation, dissolution, winding up, administration, receivership, amalgamation, reconstruction or any other incapacity of any person whatsoever (including, in the case of a partnership, a termination or change in the composition of the partnership) or any change of name or style or constitution of any Security Party)).

18.4 **Liability unconditional**

None of the obligations or liabilities of the Borrowers under any Security Document shall be discharged or reduced by reason of:

- 18.4.1 the death, bankruptcy, unsoundness of mind, insolvency, liquidation, dissolution, winding-up, administration, receivership, amalgamation, reconstruction or other incapacity of any person whatsoever (including, in the case of a partnership, a termination or change in the composition of the partnership) or any change of name or style or constitution of either Borrower or any other Security Party;
- 18.4.2 any Bank granting any time, indulgence or concession to, or compounding with, discharging, releasing or varying the liability of, either Borrower or any other person liable or renewing, determining, varying or increasing any accommodation, facility or transaction or otherwise dealing with the same in any manner whatsoever or concurring in, accepting, varying any compromise, arrangement or settlement or omitting to claim or enforce payment from either Borrower or any other Security Party; or

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18.4.3 anything done or omitted which but for this provision might operate to exonerate the Borrowers or both of them.

18.5 **Recourse to other security**

No Bank shall be obliged to make any claim or demand or to resort to any security or other means of payment now or hereafter held by or available to them for enforcing any of the Security Documents against either Borrower or any other person liable and no action taken or omitted by any Bank in connection with any such security or other means of payment will discharge, reduce, prejudice or affect the liability of the Borrowers under the Security Documents to which any of them is, or is to be, a party.

18.6 **Waiver of Borrowers' rights**

Each Borrower agrees with the Banks that, throughout the Facility Period, it will not, without the prior written consent of the Agent:

18.6.1 exercise any right of subrogation, reimbursement and indemnity against the other Borrower or any other person liable under the Security Documents;

18.6.2 demand or accept repayment in whole or in part of any Indebtedness now or hereafter due to such Borrower from the other Borrower or from any other person liable for such Indebtedness or demand or accept any guarantee against financial loss or any document or instrument created or evidencing an Encumbrance in respect of the same or dispose of the same;

18.6.3 take any steps to enforce any right against the other Borrower or any other person liable in respect of any such moneys; or

18.6.4 claim any set-off or counterclaim against the other Borrower or any other Security Party or claim or prove in competition with any Bank in the liquidation of the other Borrower or any other person liable or have the benefit of, or share in, any payment from or composition with, the other Borrower or any other person liable or any security granted under any Security Document now or hereafter held by any Bank for any moneys owing under this Agreement or for the obligations or liabilities of any other person liable but so that, if so directed by the Agent, it will prove for the whole or any part of its claim in the liquidation of the other Borrower or other person liable on terms that the benefit of such proof and all money received by it in respect thereof shall be held on trust for the Banks and applied in or towards discharge of any moneys owing under this Agreement in such manner as the Agent shall require.

19 **GOVERNING LAW**

This Agreement is governed by and shall be construed in accordance with English law.

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20     **JURISDICTION**

20.1    **Exclusive Jurisdiction**

For the benefit of the Banks, and subject to clause 20.4 below, the Borrowers hereby irrevocably agree that the courts of England shall have exclusive jurisdiction:

20.1.1 to settle any disputes or other matters whatsoever arising under or in connection with this Agreement and any disputes or other such matters arising in connection with the negotiation, validity or enforceability of this Agreement or any part thereof, whether the alleged liability shall arise under the laws of England or under the laws of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts; and

20.1.2 to grant interim remedies or other provisional or protective relief.

20.2    **Submission and service of process**

Each Borrower accordingly irrevocably and unconditionally submits to the jurisdiction of the English courts. Without prejudice to any other mode of service each Borrower:

20.2.1 irrevocably empowers and appoints HFW Nominees Ltd at present of Friary Court, 65 Crutched Friars, London EC3N 2AE, England as its agent to receive and accept on its behalf any process or other document relating to any proceedings before the English courts in connection with this Agreement;

20.2.2 agrees to maintain such an agent for service of process in England from the date hereof until the end of the Facility Period;

20.2.3 agrees that failure by a process agent to notify the Borrowers of service of process will not invalidate the proceedings concerned;

20.2.4 without prejudice to the effectiveness of service of process on its agent under clause 20.2.1 above but as an alternative method, consents to the service of process relating to any such proceedings by mailing or delivering a copy of the process to its address for the time being applying under clause 17.2;

20.2.5 agrees that if the appointment of any person mentioned in clause 20.2.1 ceases to be effective, the Borrowers shall immediately appoint a further person in England to accept service of process on its behalf in England and, failing such appointment within seven (7) days the Agent shall thereupon be entitled and is hereby irrevocably authorised by the Borrowers in those circumstances to appoint such person by notice to the Borrowers.

20.3    **Forum non conveniens and enforcement abroad**

Each Borrower:

20.3.1 waives any right and agrees not to apply to the English court or other court in any jurisdiction whatsoever to stay or strike out any proceedings commenced in England on the ground that England is an inappropriate forum and/or that Proceedings have been or will be started in any other jurisdiction in connection with any dispute or related matter falling within clause 20.1; and

20.3.2 agrees that a judgment or order of an English court in a dispute or other matter falling within clause 20.1 shall be conclusive and binding on the Borrowers and may be enforced against them in the courts of any other jurisdiction.

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20.4 **Right of Security Trustee, but not Borrowers, to bring proceedings in any other jurisdiction**

20.4.1 Nothing in this clause 20 limits the right of any Lender to bring Proceedings, including third party proceedings, against any one or all Borrowers, or to apply for interim remedies, in connection with this Agreement in any other court and/or concurrently in more than one jurisdiction;

20.4.2 the obtaining by any Lender of judgment in one jurisdiction shall not prevent such Lender from bringing or continuing proceedings in any other jurisdiction, whether or not these shall be founded on the same cause of action.

20.5 **Enforceability despite invalidity of Agreement**

Without prejudice to the generality of clause 13.9, the jurisdiction agreement contained in this clause 20 shall be severable from the rest of this Agreement and shall remain valid, binding and in full force and shall continue to apply notwithstanding this Agreement or any part thereof being held to be avoided, rescinded, terminated, discharged, frustrated, invalid, unenforceable, illegal and/or otherwise of no effect for any reason.

20.6 **Effect in relation to claims by and against non-parties**

20.6.1 For the purpose of this clause “Foreign Proceedings” shall mean any Proceedings except proceedings brought or pursued in England arising out of or in connection with (i) or in any way related to any of the Security Documents or any assets subject thereto or (ii) any action of any kind whatsoever taken by any Bank pursuant thereto or which would, if brought by any or all of the Borrowers against the Banks, have been required to be brought in the English courts;

20.6.2 no Borrower shall bring or pursue any Foreign Proceedings against any Bank and shall use its best endeavours to prevent persons not party to this Agreement from bringing or pursuing any Foreign Proceedings against any Bank;

20.6.3 If, for any reason whatsoever, any Security Party and/or any person connected howsoever with any Security Party brings or pursues against any Bank any Foreign Proceedings, the Borrowers shall indemnify such Bank on demand in respect of any and all claims, losses, damages, demands, causes of action, liabilities, costs and expenses (including, but not limited to, legal costs) of whatsoever nature howsoever arising from or in connection with such Foreign Proceedings which such Bank (or the Agent on its behalf) certifies as having been incurred by it;

20.6.4 the Banks and the Borrowers hereby agree and declare that the benefit of this clause 20 shall extend to and may be enforced by any officer, employee, agent or business associate of any of the Banks against whom a Borrower brings a claim in connection howsoever with any of the Security Documents or any assets subject thereto or any action of any kind whatsoever taken by, or on behalf of or for the purported benefit of any Bank pursuant thereto or which, if it were brought against any Bank, would fall within the material scope of clause 20.1. In those circumstances this clause 20 shall be read and construed as if references to any Bank were references to such officer, employee, agent or business associate, as the case may be.

**Execution Page**

**IN WITNESS** whereof the parties to this Agreement have caused this Agreement to be duly executed on the date first above written.

SIGNED as a deed for and on behalf of )  
**IRIS SHIPPING CORPORATION** )  
By **ALEXANDROS LAIOS** /s/ Alexandros Laios  
(as Borrower under and pursuant to )  
a power of attorney dated )  
12 November 2013) in the presence of )

SIGNED as a deed for and on behalf of )  
**JASMINE SHIPPING CORPORATION** )  
By **ALEXANDROS LAIOS** /s/ Alexandros Laios  
(as Borrower under and pursuant to )  
a power of attorney dated )  
12 November 2013) in the presence of )

SIGNED by **ROBIN PARRY** ) /s/ Robin Parry  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
(as a Lender) in the presence of )

SIGNED by **ROBIN PARRY** ) /s/ Robin Parry  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
(as Account Bank, Agent, )  
and Security Trustee )  
in the presence of )

**Dated 13 December 2013**

**NAVIOS EUROPE INC.**

as Borrower

and

**THE CORPORATIONS**

listed in Schedule 1

as Lenders

and

**NAVIOS PARTNERS EUROPE FINANCE INC.**

as Agent

**NAVIOS ACQUISITION EUROPE FINANCE INC.**

as Mandated Lead Arranger

and

**NAVIOS HOLDINGS EUROPE FINANCE INC.**

as Security Trustee

**LOAN AGREEMENT**



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**THIS AGREEMENT** is made on 13<sup>th</sup> December 2014

**BETWEEN**

- (1) **NAVIOS EUROPE INC.**, a company duly incorporated and existing in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands, as **Borrower**;
- (2) **THE CORPORATIONS** listed in Schedule 1, as **Lenders**;
- (3) **NAVIOS PARTNERS EUROPE FINANCE INC.**, a company duly incorporated and existing in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands, as **Agent**;
- (4) **NAVIOS ACQUISITION EUROPE FINANCE INC.**, a company duly incorporated and existing in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands, as **Mandated Lead Arranger**;  
and
- (5) **NAVIOS HOLDINGS EUROPE FINANCE INC.**, a company duly incorporated and existing in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands, as **Security Trustee**.

**BACKGROUND**

The Lenders have agreed to make available to the Borrower certain secured term and revolving loan facilities for the purposes and in the amounts set forth in Clause 2 and such term and revolving loan facilities shall be the “**Navios Loans**” and “**WC Loans**” respectively for the purposes of the Master Agreement (as defined herein).

**IT IS AGREED** as follows:

**1 INTERPRETATION**

**1.1 Definitions.**

Subject to Clause 1.5, in this Agreement:

“**Acquisition**” means the acquisition of the Ships in accordance with the MOAs pursuant to the terms of the Master Agreement;

“**Acquisition Date**” means the Delivery Date of the tenth and final Ship to be acquired in relation to the Acquisition;

“**Advance**” means the principal amount of each borrowing by the Borrower under this Agreement (including for the avoidance of doubt, each Term Advance and each Revolving Advance) or (as the context may require) so much thereof for the time being outstanding to the Lender hereunder in the plural, means all of them;

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**“Agency and Trust Agreement”** means the agency and trust agreement dated the same date as this Agreement and made between the same parties;

**“Agent”** means Navios Partners Europe Finance Inc., a corporation duly incorporated and existing in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

**“Agreed Form”** means in relation to any document, that document in the form approved in writing by the Agent (acting on the instructions of all the Majority Lenders) or as otherwise approved in accordance with any other approval procedure specified in any relevant provisions of any Finance Document;

**“Applicable Limit”** means, in respect of the Revolving Facility, the maximum amount available for drawing hereunder at any relevant time \$24,100,000 as it may be reduced or increased in accordance with any provision of this Agreement;

**“Approved Broker”** means Clarkson Valuations Limited, Maersk Brokers K/S, Howe Robinson and Company Ltd., Simpson Spence & Young Shipbrokers Ltd., ICAP Shipping Limited, Arrow Valuations, and Fearnleys A/S and, in the plural, means all of them;

**“Approved Flag”** means, in relation to a Ship, any of the Liberian, Marshall Islands, Cypriot, Panamanian or the Maltese flags or such other flag as the Agent may approve as the flag on which that Ship is or, as the case may be, shall be registered;

**“Approved Flag State”** means, in relation to a Ship, any of Liberia, the Marshall Islands, Cyprus, Panama or Malta or any other country in which the Agent may approve that that Ship is or, as the case may be, shall be registered;

**“Approved Manager”** means:

- (a) in respect of the commercial and technical management of each Ship which is a container vessel, Navios Shipmanagement Inc., a company incorporated in the Marshall Islands having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands, or any other company which the Agent (acting on the instructions of the Majority Lenders) may approve from time to time as the commercial and technical manager of that Ship; and
- (b) in respect of the commercial and technical management of each Ship which is a tanker vessel, Navios Tankers Management Inc., a company incorporated in the Marshall Islands having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands, or any other company which the Agent (acting on the instructions of the Majority Lenders) may approve from time to time as the commercial and technical manager of that Ship;

**“Approved Manager’s Undertaking”** means, in relation to each Ship, a letter of undertaking including (*inter alia*) a fourth priority assignment of each Approved Manager’s rights, title and interests in the Insurances executed or, as the context may require, to be executed by each Approved Manager in favour of the Security Trustee in the Agreed Form agreeing certain matters in relation to that Approved Manager, serving as manager of that Ship and subordinating its rights against that Ship and the Owner of that Ship to the rights of the Lenders under the Finance Documents and, in the plural, means all of them;

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**“Associated Loan Agreements”** means together the Senior Loan Agreements and the Junior Loan Agreement;

**“Availability Period”** means the period commencing on the date of this Agreement and ending on:

- (a) in relation to the Term Facility, (i) 31 December 2013 or (ii) the date on which the Total Commitments in relation to the Term Facility are fully borrowed; and
- (b) in relation to the Revolving Facility, (i) the date falling on the Business Day prior to the Final Repayment Date or (ii) if the Final Exit procedure in Clause 7.11 applies, the Business Day immediately prior to date when the release of the last Ship and the making of any final payment shall occur in accordance therewith;

(or in each case such later dates as the Agent may, with the authorisation of the Lenders, agree with the Borrower);

**“Borrower”** means Navios Europe Inc., a corporation incorporated and existing in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands;

**“Borrower’s Earnings Account”** means, at any time whilst there is any amount outstanding pursuant to the Senior Loan Agreements, each account in the name of the Borrower with the relevant Senior Lender and following the repayment of the Senior Loans and discharge of the Senior Finance Documents, an account in the name of the Borrower with the Junior Agent in Hamburg designated “Navios Europe Inc. – Earnings Account” or any other account (with that or another office of the Junior Agent or with a Senior Lender) which replaces this account and is designated by the Junior Agent as the Borrower’s Earnings Account for the purposes of the Junior Loan Agreement in accordance with the Junior Agent’s instructions;

**“Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Hamburg, Piraeus and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City;

**“Commitment”** means, in relation to a Lender, the amount set opposite its name in Schedule 1, or, as the case may require, the amount specified in the relevant Transfer Certificate, as that amount may be reduced, cancelled or terminated in accordance with this Agreement (and “Total Commitments” means the aggregate of the Commitments of all the Lenders);

**“Compulsory Acquisition”** means, in respect of a Ship, requisition for title or other compulsory acquisition including, if that Ship is not released therefrom within the Relevant Period, capture, appropriation, forfeiture, seizure, detention, deprivation or confiscation howsoever for any reason (but excluding requisition for use or hire) by or on behalf of any Government Entity or other competent authority or by pirates, hijackers, terrorists or similar persons; “Relevant Period” means for the purposes of this definition of Compulsory Acquisition either (i) ninety (90) days or, (ii) if relevant underwriters confirm in writing (in terms satisfactory to the Majority Lenders) prior to the end of such ninety (90) day period that such

capture, seizure, detention or confiscation will be fully covered by the relevant Owner's war risks insurance if continuing for a further period exceeding ten (10) calendar months, the shorter of twelve (12) months and such period at the end of which cover is confirmed to attach;

**"Container Senior Security Trustee"** means ABN AMRO Bank N.V. acting through its office at Coolingsingel 93, 3012 AE Rotterdam, The Netherlands;

**"Container Senior Loan Agreement"** means the loan agreement made or, as the context may require, to be made between *inter alios* the relevant Senior Lenders as lenders, the relevant Senior Agent as agent and the relevant Senior Security Trustee as security trustee and the Borrower as borrower pursuant to which the relevant Senior Lenders shall agree to make the relevant Senior Loan available to the Borrower in order to finance part of the acquisition cost of the five Ships which are container vessels;

**"Contract Price"** means, in relation to a Ship, the aggregate amount payable by the Owner which is to be the owner thereof to the relevant Seller pursuant to the MOA to which the Owner is a party as specified in Schedule 6;

**"Contractual Currency"** has the meaning given in Clause 20.4;

**"Contribution"** means, in relation to a Lender, the part of the Facilities or either of them which is owing to that Lender;

**"Creditor Party"** means the Agent, the Security Trustee, the Mandated Lead Arranger or any Lender, whether as at the date of this Agreement or at any later time and, in the plural, means all of them;

**"Delivery Date"** means, in respect of each Ship, the date on which title to and possession of that Ship is transferred from the Seller to the relevant Owner pursuant to the relevant MOA;

**"Distributable Cash Flow"** has the meaning given in Clause 5.1;

**"Dollars"** and **"\$"** means the lawful currency for the time being of the United States of America;

**"Drawdown Date"** means, in respect of each Advance, the date requested by the Borrower for that Advance to be borrowed, or (as the context requires) the date on which that Advance is actually borrowed;

**"Drawdown Notice"** means a notice in the form set out in Schedule 2 (or in any other form which the Agent approves or reasonably requires);

**"Earnings"** means, in relation to a Ship, all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Owner owning that Ship or the Security Trustee and which arise out of the use or operation of that Ship, including (but not limited to):

- (a) except to the extent that they fall within paragraph (b):
  - (i) all freight, hire and passage moneys;

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- (ii) compensation payable to that Owner in the event of requisition of the Ship owned by it for hire;
  - (iii) remuneration for salvage and towage services;
  - (iv) demurrage and detention moneys;
  - (v) damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of that Ship; and
  - (vi) all moneys which are at any time payable under any Insurances in respect of loss of hire; and
- (b) if and whenever that Ship is employed on terms whereby any moneys falling within paragraphs (a)(i) to (vi) are pooled or shared with any other person, that proportion of the net receipts of the relevant pooling or sharing arrangement which is attributable to that Ship;

**“Earnings Account”** means each of the Owner’s Earnings Accounts and the Borrower’s Earnings Account and, in the plural, means all of them;

**“Earnings Assignment”** means, in relation to a Ship, a second priority assignment of the Earnings relative to that Ship to be executed by the Owner which is the owner thereof in favour of the Security Trustee in the Agreed Form pursuant to Clause 10.22 and, in the plural, means all of them;

**“Environmental Claim”** means:

- (a) any claim by any governmental, judicial or regulatory authority which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any Environmental Law; or
- (b) any claim by any other person which relates to an Environmental Incident or to an alleged Environmental Incident,

and **“claim”** means a claim for damages, compensation, fines, penalties or any other payment of any kind whether or not similar to the foregoing; an order or direction to take, or not to take, certain action or to desist from or suspend certain action; and any form of enforcement or regulatory action, including the arrest or attachment of any asset;

**“Environmental Incident”** means, in relation to a Ship:

- (a) any release of Environmentally Sensitive Material from that Ship; or
- (b) any incident in which Environmentally Sensitive Material is released from a vessel other than that Ship and which involves a collision between that Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which that Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or that Ship and/or the Owner which is the owner thereof and/or any operator or manager of that Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action; or

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- (c) any other incident in which Environmentally Sensitive Material is released otherwise than from that Ship and in connection with which that Ship is actually or potentially liable to be arrested and/or where the Owner which is the owner thereof and/or any operator or manager of that Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action;

“**Environmental Law**” means any law, regulation, convention and agreement relating to pollution or protection of the environment, to the carriage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material;

“**Environmentally Sensitive Material**” means oil, oil products and any other substance (including any chemical, gas or other hazardous or noxious substance) which is (or is capable of being or becoming) polluting, toxic or hazardous;

“**Event of Default**” means any of the events or circumstances described in Clause 18.1;

“**Facilities**” means collectively the Term Facility and the Revolving Facility;

“**Final Exit**” has the meaning given in Clause 7.11;

“**Final Repayment Date**” has the meaning given in Clause 7.1;

“**Finance Documents**” means together:

- (a) this Agreement;
- (b) the Agency and Trust Agreement;
- (c) the Intercreditor Deeds;
- (d) the Guarantees;
- (e) the Insurance Assignments;
- (f) the Mortgages;
- (g) the Approved Manager’s Undertakings;
- (h) the Earnings Assignments; and
- (i) any other document (whether creating a Security Interest or not) which is executed at any time by the Borrower, an Owner, the Approved Manager or any other person as security for, or to establish any form of subordination or priorities arrangement in relation to, any amount payable to the Lenders under this Agreement or any of the other documents referred to in this definition and, in the singular, means any of them;

“**Financial Indebtedness**” means, in relation to a person (the “debtor”), any actual or contingent liability of the debtor:

- (a) for principal, interest or any other sum payable in respect of any moneys borrowed or raised by the debtor;

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- (b) under any loan stock, bond, note or other security issued by the debtor;
  - (c) under any acceptance credit, guarantee or letter of credit facility made available to the debtor;
  - (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
  - (e) under any interest or currency swap or any other kind of derivative transaction entered into by the debtor or, if the agreement under which any such transaction is entered into requires netting of mutual liabilities, the liability of the debtor for the net amount;
  - (f) under receivables sold or discounted (other than any receivables to the extent that they are sold on a non-recourse basis); or
  - (g) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within (a) to (e) if the references to the debtor referred to the other person;

“**Financial Year**” means, in relation to the Borrower, the Owners and the Group, each period of 1 year commencing on 1 January in respect of which their individual or, as the case may be, consolidated accounts are or ought to be prepared;

“**Free Cash Flow**” means:

- (a) in relation to each Owner:
  - (i) revenue; plus
  - (ii) any sums released to such Owner which were previously held as minimum liquidity or otherwise retained in any pledged account pursuant to the Senior Finance Documents, except for any withdrawals from the Retention Account (as defined in the Senior Loan Agreements), which following such release are available for distribution; minus
  - (iii) the sum of:
    - (A) actual time charter and voyage expenses relating to the Ship owned by it;
    - (B) actual operating and other expenses relating to the Ship owned by it;
    - (C) actual general and administrative expenses incurred by that Owner;
    - (D) maintenance capital expenditures (other than those expenses covered by insurance or funded by any issuance of indebtedness) incurred by that Owner;

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- (E) repayments of third party indebtedness (including without limitation, any outstanding trade debt) by that Owner, including any repayments of indebtedness issued to fund maintenance capital expenditures; and
  - (F) drydock expenses in relation to the Ship owned by it (as the case may be)
- (iv) plus any decrease in Working Capital; and
  - (v) minus any increase in Working Capital; and
- (b) in relation to the Borrower and its Earnings Accounts means:
- (i) revenues, including any charterhire paid directly to the Borrower and the aggregate of the Free Cash Flow of the relevant Owners; plus
  - (ii) any sums released to the Borrower which were previously held as minimum liquidity or otherwise retained in any pledged account pursuant to the Senior Finance Documents, except for any withdrawals from the Retention Account (as defined in the Senior Loan Agreements), which following such release are available for distribution; minus
  - (iii) the sum of:
    - (A) any repayments of the Senior Loans (including accrued interest thereon) and any retentions required pursuant to the Senior Loan Agreements;
    - (B) to the extent not already paid by the relevant Owners, the actual time charter and voyage expenses relating to the relevant Ships;
    - (C) to the extent not already paid by the relevant Owners, the actual operating expenses relating to the relevant Ships;
    - (D) actual general and administrative expenses incurred by the Borrower;
    - (E) maintenance capital expenditures (other than those expenses covered by insurance or funded by any issuance of indebtedness) incurred by the Borrower; and
    - (F) repayments of third party indebtedness (including without limitation, to the extent not already paid by the relevant Owners, any outstanding trade debt) by the Borrower, including any repayments of indebtedness issued to fund maintenance capital expenditures and any repayments of the Revolving Facility (including accrued interest thereon);

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(G) required working capital to support the Owners in case of a negative Free Cash Flow at the Owner level and/or as may be required in order to maintain the minimum liquidity requirements not already covered by the Revolving Facility as set out in clause 14.6 of each Senior Loan Agreement;

(iv) plus any decrease in Working Capital; and

(v) minus any increase in Working Capital.

“**GAAP**” means generally accepted accounting principles in the United States, as in effect from time to time;

“**Government Entity**” means any national or local government body, tribunal, court or regulatory or other agency and any organisation of which such body, tribunal, court or agency is a part or to which it is subject;

“**Group**” means, together, the Borrower, the Owners and their subsidiaries (direct or indirect) from time to time during the Security Period and “member of the Group” shall be construed accordingly;

“**Guarantee**” means a guarantee of the obligations of the Borrower under this Agreement and the other Finance Documents executed or, as the context may require, to be executed by each Owner in the Agreed Form and, in the plural, means all of them;

“**HSH**” means, in relation to the Acquisition, HSH Nordbank AG, acting in such capacity through its office at Gerhart-Hauptmann-Platz 50, D-20095 Hamburg, Germany;

“**IACS**” means the International Association of Classification Societies;

“**Insurance Assignment**” means, in relation to a Ship, a fourth priority assignment of the Insurances and any Requisition Compensation relative to that Ship executed or, as the context may require, to be executed by the Owner which is the owner thereof in favour of the Security Trustee in the Agreed Form and, in the plural, means all of them;

“**Insurances**” means, in relation to a Ship:

- (a) all policies and contracts of insurance, including entries of that Ship in any protection and indemnity or war risks association, effected in respect of that Ship, its Earnings or otherwise in relation to it; and
- (b) all rights and other assets relating to, or derived from, any of the foregoing, including any rights to a return of a premium;

“**Intercreditor Deed**” means:

- (a) in relation to the Tanker Senior Loan Agreement, the intercreditor deed dated on or around the date of this Agreement and made between the Tanker Senior Security Trustee as first mortgagee, the Container Senior Security Trustee as second mortgagee, the Junior Security Trustee as third mortgagee the Security Trustee as fourth mortgagee and the Borrower; and

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(b) in relation to the Container Senior Loan Agreement, the intercreditor deed dated on or around the date of this Agreement and made between the Container Senior Security Trustee as first mortgagee, the Tanker Senior Security Trustee as second mortgagee, the Junior Security Trustee as third mortgagee the Security Trustee as fourth mortgagee and the Borrower,

and in the plural means both of them;

“**Interest Period**” means a period determined in accordance with Clause 6;

“**ISM Code**” means the International Safety Management Code (including the guidelines on its implementation), adopted by the International Maritime Organisation as the same may be amended or supplemented from time to time (and the terms “safety management system”, “Safety Management Certificate” and “Document of Compliance” have the same meanings as are given to them in the ISM Code);

“**ISPS Code**” means the International Ship and Port Facility Security Code as adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time;

“**ISSC**” means a valid and current International Ship Security Certificate issued under the ISPS Code;

“**Junior Agent**” means HSH Nordbank AG, acting through its office at Gerhart-Hauptmann Platz 50, D 20095 Hamburg, Germany;

“**Junior Creditor Party**” means the Junior Agent, the Junior Security Trustee, the Junior Mandated Lead Arranger or any Junior Lender and, in the plural, means all of them;

“**Junior Finance Documents**” means the Junior Loan Agreement, the Junior Mortgages, the third priority assignments of Insurances and Requisition Compensation of each Ship and, following the repayment of the Senior Loans, the first priority assignments of Earnings, Insurances and Requisition Compensation of each Ship and the first priority account pledges in respect of the Earnings Accounts and any other document which creates a Security Interest in order to secure the Junior Loan;

“**Junior Lenders**” means HSH Nordbank AG, acting through its office at Gerhart-Hauptmann Platz 50, D 20095 Hamburg, Germany and any other bank and/or financial institution listed in Schedule 1 of the Junior Loan Agreement or any successor appointed pursuant to the terms of the Junior Loan Agreement and which has acceded to the terms of each Intercreditor Deed;

“**Junior Loan**” means the junior loan facility of up \$173,500,000 to be provided to the Borrower by the Junior Lenders in order to finance part of the acquisition cost of the Ships or, as the context may require, the principal amount (including any capitalised interest thereon) thereof outstanding under the Junior Loan Agreement;

“**Junior Loan Agreement**” means the loan agreement made or, as the context may require, to be made between the Junior Lenders as lenders, the Junior Agent as agent, the Junior Security Trustee as security trustee and the Junior Mandated Lead Arranger as mandated lead arranger and the Borrower as borrower pursuant to which the Junior Lenders shall agree to make the Junior Loan available to the Borrower;

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**“Junior Mandated Lead Arranger”** means HSH Nordbank AG, acting through its office at Gerhart-Hauptmann Platz 50, D 20095 Hamburg, Germany;

**“Junior Mortgages”** means, in relation to the Junior Loan, the third priority mortgages on each Ship (fully subordinated and subject to any mortgage to secure the Senior Loans) in each case as security for any and all monies due to the Junior Lenders in respect of the Junior Loan and, in the singular, means any of them;

**“Junior Security Trustee”** means HSH Nordbank AG, acting through its office at Gerhart-Hauptmann Platz 50, D 20095 Hamburg, Germany;

**“Lender”** means, subject to Clause 24.6, a corporation listed in Schedule 1 or its transferee, successor or assign;

**“Major Casualty”** means, in relation to a Ship, any casualty to that Ship in respect of which the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds \$500,000 or the equivalent in any other currency;

**“Majority Lenders”** means:

- (a) before an advance is borrowed, Lenders whose Commitments total 66.66 per cent. of the Total Commitments; and
- (b) after an advance is borrowed, Lenders whose Contributions total 66.66 per cent. of the aggregate of Facilities;

**“Mandated Lead Arranger”** means Navios Acquisition Europe Finance Inc., a corporation duly incorporated and existing in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands, or any successor;

**“Market Value”** means, in relation to each Ship, the market value thereof determined in accordance with Clause 14.1;

**“Master Agreement”** means the master agreement dated on the same date as this Agreement and made between HSH, the Lenders and the Borrower which sets out the overall terms of the Acquisition;

**“Material Adverse Change”** means any event or series of events which, in the reasonable opinion of the Majority Lenders, is likely to have a Material Adverse Effect;

**“Material Adverse Effect”** means an event or series of events which, in the reasonable opinion of the Majority Lenders, has a material adverse effect on:

- (a) the business, property, assets, liabilities, operations or financial condition of the Borrower and/or any Security Party taken as a whole;

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- (b) the ability of the Borrower and/or any Security Party to (i) perform any of its obligations or (ii) discharge any of its liabilities, under any Finance Document as they fall due; or
  - (c) the validity or enforceability of any Finance Document;

“**MOA**” means, in relation to each Ship, the memorandum of agreement in the standard Norwegian Sale Form (NSF) 1993 and made or to be made between the relevant Owner and the relevant Seller;

“**Mortgage**” means, in relation to a Ship, the fourth preferred or, as the case may be, fourth priority ship mortgage on that Ship and, if required pursuant to the laws of the applicable Approved Flag State, a deed of covenant collateral thereto executed or, as the context may require to be executed by the Owner which is to be the owner thereof in favour of the Security Trustee in the Agreed Form and, in the plural, means all of them;

“**Mortgaged Ship**” means a Ship which is subject to a Mortgage at the relevant time and, in the plural, means all of them;

“**Navios Preferred Return**” means the preferred annual return of 12.7 per cent. per annum (compounded quarterly) being interest payable in accordance with Clause 5 on the Term Facility by the Borrower to the Lenders;

“**Notifying Lender**” has the meaning given in Clause 22.1 or 23.1 as the context requires;

“**Owner’s Earnings Account**” means in relation to a Ship, at any time whilst there is any amount outstanding pursuant to the Senior Loan Agreements, each account in the name of the relevant Owner with the relevant Senior Lender and following the repayment of the Senior Loans and discharge of the Senior Finance Documents, an account in the name of the Owner owning that Ship with the Junior Agent in Hamburg designated “*name of Owner* – Earnings Account” or any other account (with that or another office of the Junior Agent or with a Senior Lender) which replaces this account and is designated by the Junior Agent as the Earnings Account in respect of that Ship for the purposes of this Agreement in accordance with the Junior Agent’s instructions and, in the plural, means all of them;

“**Owners**” means each of the companies specified in Schedule 6 and, in the singular, means any of them;

“**Payment Currency**” has the meaning given in Clause 20.4;

“**Permitted Security Interests**” means:

- (a) Security Interests created by the Finance Documents;
- (b) liens for unpaid crew’s wages in accordance with usual maritime practice;
- (c) liens for salvage;
- (d) liens arising by operation of law for not more than 2 months’ prepaid hire under any charter in relation to a Ship not prohibited by this Agreement;

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- (e) liens for master's disbursements incurred in the ordinary course of trading and any other lien arising by operation of law or otherwise in the ordinary course of the trading, chartering, operation, repair or maintenance of a Ship, provided such liens do not secure amounts more than 30 days overdue (unless the overdue amount is being contested by the relevant Owner in good faith by appropriate steps) and subject, in the case of liens for repair or maintenance, to Clause 13.13(e);
  - (f) any Security Interest created in favour of a plaintiff or defendant in any action of the court or tribunal before whom such action is brought as security for costs and expenses while an Owner is prosecuting or defending such action in good faith by appropriate steps;
  - (g) Security Interests arising by operation of law in respect of taxes which are not overdue for payment other than taxes being contested in good faith by appropriate steps and in respect of which appropriate reserves have been made;
  - (h) the first and second priority Security Interests created pursuant to the Senior Loan Agreements, including any Senior Mortgages or any other Senior Finance Documents; and
  - (i) third priority and, following the repayment of the Senior Loans, first priority Security Interests created pursuant to the Junior Finance Documents;

**"Pertinent Document"** means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause 12 or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to a Servicing Bank in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c);

**"Pertinent Jurisdiction"**, in relation to a company, means:

- (a) England and Wales;
- (b) the country under the laws of which the company is incorporated or formed;
- (c) a country in which the company has the centre of its main interests or which the company's central management and control is or has recently been exercised;
- (d) a country in which the overall net income of the company is subject to corporation tax, income tax or any similar tax;
- (e) a country in which assets of the company (other than securities issued by, or loans to, related companies) having a substantial value are situated, in which the company maintains a branch or permanent place of business, or in which a Security Interest created by the company must or should be registered in order to ensure its validity or priority; and

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- (f) a country the courts of which have jurisdiction to make a winding up, administration or similar order in relation to the company, whether as a main or territorial or ancillary proceedings, or which would have such jurisdiction if their assistance were requested by the courts of a country referred to in paragraphs (b) or (c);

**“Pertinent Matter”** means:

- (a) any transaction or matter contemplated by, arising out of, or in connection with a Pertinent Document; or
- (b) any statement relating to a Pertinent Document or to a transaction or matter falling within paragraph (a),

and covers any such transaction, matter or statement, whether entered into, arising or made at any time before the signing of this Agreement or on or at any time after that signing;

**“Potential Event of Default”** means an event or circumstance which, with the giving of any notice, the lapse of time, a reasonable determination of the Majority Lenders and/or the satisfaction of any other condition, would constitute an Event of Default;

**“Prepayment Notice”** has the meaning given in Clause 7.4(b);

**“Relevant Person”** has the meaning given in Clause 18.9;

**“Relevant Portion”** has the meaning given in Clause 7.11;

**“Remaining Ships”** has the meaning given in Clause 7.11;

**“Repayment Date”** means a date on which a repayment is required to be made under Clause 7;

**“Requisition Compensation”** includes all compensation or other moneys payable by reason of any act or event such as is referred to in paragraph (b) of the definition of “Total Loss”;

**“Return Shortfalls”** means, in circumstances where for any reason the Borrower is unable (including without limitation circumstances in which the aggregate Free Cash Flow of the Owners and the Free Cash Flow of the Borrower is insufficient) to pay the Navios Preferred Returns or there is accrued but unpaid interest on the Revolving Facility, the arrears relating to that Financial Year to be paid out of the Free Cash Flow for such Financial Year and, if not so paid, to be accumulated and paid out of the Free Cash Flow in any subsequent Financial Year(s);

**“Revolving Advances”** means each Advance in an amount approved by the Agent for the purpose of providing the Borrower with working capital or, if the context may so require, so much thereof as shall for the time being be outstanding to the Lenders under this Agreement;

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**“Revolving Facility”** means a revolving credit facility as described in Clause 2 or, if the context may so require, so much thereof as shall for the time being be outstanding to the Lenders under this Agreement;

**“Secured Liabilities”** means all liabilities which the Borrower, the Owners, the other Security Parties or any of them have, at the date of this Agreement or at any later time or times, under or in connection with any Finance Document or any judgment relating to any Finance Document; and for this purpose, there shall be disregarded any total or partial discharge of these liabilities, or variation of their terms, which is effected by, or in connection with, any bankruptcy, liquidation, arrangement or other procedure under the insolvency laws of any country;

**“Security Interest”** means:

- (a) a mortgage, charge (whether fixed or floating) or pledge, any maritime or other lien or any other security interest of any kind;
- (b) the rights of a plaintiff under an action in rem in which the vessel concerned has been arrested or a writ has been issued or similar step taken; and
- (c) any arrangement entered into by a person (A) the effect of which is to place another person (B) in a position which is similar, in economic terms, to the position in which B would have been had he held a security interest over an asset of A; but paragraph (c) does not apply to a right of set off or combination of accounts conferred by the standard terms of business of a bank or financial institution;

**“Security Party”** means the Owners and any other person (except a Creditor Party, a Junior Creditor Party, a Senior Creditor Party or any Approved Manager) who, as a surety or mortgagor, as a party to any subordination or priorities arrangement, or in any similar capacity, executes a document falling within the final paragraph of the definition of “Finance Documents”;

**“Security Period”** means the period commencing on the date of this Agreement and ending on the date on which the Agent notifies the Borrower, the Security Parties and the other Creditor Parties that either:

- (a) (i) all amounts which have become due for payment by the Borrower or any Security Party under the Finance Documents have been paid;
- (ii) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;
- (iii) neither the Borrower nor any Security Party has any future or contingent liability under Clauses 19, 20 or 21 or any other provision of this Agreement or another Finance Document; and
- (iv) the Agent, the Mandated Lead Arranger, the Security Trustee and the Majority Lenders do not consider that there is a significant risk that any payment or transaction under a Finance Document would be set aside, or would have to be reversed or adjusted, in any present or possible future bankruptcy of the Borrower or a Security Party or in any present or possible future proceeding relating to a Finance Document or any asset covered (or previously covered) by a Security Interest created by a Finance Document; or

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(b) all Security Interests have been released in accordance with Clause 7.12;

“**Security Trustee**” means Navios Holdings Europe Finance Inc., a corporation duly incorporated and existing in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

“**Sellers**” means each of the sellers under each MOA as specified in Schedule 6 and, in the singular, means any of them;

“**Senior Agent**” means:

- (a) in relation to the Tanker Senior Loan Agreement, DVB Bank America N.V., acting through its office at Zeelandia Office Park, Kaya W.F.G. Mensing 14, Willemstad, Curacao; and
- (b) in relation to the Container Senior Loan Agreement, ABN AMRO Bank N.V. acting through its office at Coolsingel 93, 3012 AG, Rotterdam, the Netherlands,

and in the plural means both of them;

“**Senior Creditor Party**” means each Senior Agent, each Senior Security Trustee or any Senior Lender and, in the plural, means all of them;

“**Senior Finance Documents**” means the Senior Loan Agreements, the Senior Mortgages and any other document which creates a Security Interest in order to secure the Senior Loans;

“**Senior Lenders**” means:

- (a) in relation to the Tanker Senior Loan Agreement, DVB Bank America N.V., acting through its office at Zeelandia Office Park, Kaya W.F.G. Mensing 14, Willemstad, Curacao, Deutsche Bank AG Filiale Deutschlandgeschäft acting through its office at Adolphsplatz 7, 20457 Hamburg, Germany and any other bank and/or financial institution listed in Schedule 1 of the Tanker Senior Loan Agreement; and
- (b) in relation to the Container Senior Loan Agreement, ABN AMRO Bank N.V. acting through its office at Coolsingel 93, 3012 AE, Rotterdam, The Netherlands and any other bank and/or financial institution listed in Schedule 1 of the Container Senior Loan Agreement,

or any successor appointed pursuant to the terms of the relevant Senior Loan Agreement and which has acceded to the terms of each Intercreditor Deed;

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**“Senior Loan”** means:

- (a) in relation to the Tanker Senior Loan Agreement, the senior loan facility of up to \$80,400,000 to be provided to the Borrower by the relevant Senior Lenders; and
- (b) in relation to the Container Senior Loan Agreement, the senior loan facility of up to \$40,000,000 to be provided to the Borrower by the relevant Senior Lenders,

or in each case, as the context may require, the principal amount thereof outstanding under the relevant Senior Loan Agreement;

**“Senior Loan Agreements”** means collectively the Tanker Senior Loan Agreement and the Container Senior Loan Agreement;

**“Senior Mortgages”** means, in relation to each Senior Loan Agreement, the first or, as the case may be, second priority mortgages on each Ship in each case up to the amount of, and as security for, the relevant Senior Loan and, in the singular, means any of them;

**“Senior Security Trustee”** means:

- (a) in relation to the Tanker Senior Loan Agreement, the Tanker Senior Security Trustee; and
- (b) in relation to the Container Senior Loan Agreement, the Container Senior Security Trustee,

and in the plural means both of them;

**“Servicing Bank”** means the Agent or the Security Trustee;

**“Ship”** means each of the ships specified in Schedule 6 and, in the plural, means all of them;

**“Ship Loan”** means in relation to each Ship the loan with HSH which currently finances such Ship and, in the plural, means all of them;

**“Tanker Senior Loan Agreement”** means the loan agreement made or, as the context may require, to be made between *inter alios* the relevant Senior Lenders as lenders, the relevant Senior Agent as agent and the relevant Senior Security Trustee as security trustee and the Borrower as borrower pursuant to which the relevant Senior Lenders shall agree to make the relevant Senior Loan available to the Borrower in order to finance part of the acquisition cost of the five Ships which are product tankers;

**“Tanker Senior Security Trustee”** means DVB Bank America N.V. acting through its office at Zeelandia Office Park, Kaya W.F.G. Mensing 14, Willemstad, Curacao;

**“Term Advance”** means each Advance in an amount up to \$1,000,000 for the purpose of being invested as equity by the Borrower to the relevant Owner, to assist such Owner in financing part of the Contract Price of the relevant Ship or, if the context may so require, so much thereof as shall for the time being be outstanding to the Lenders under this Agreement;

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**“Term Facility”** means the term loan facility in a total aggregate amount of \$10,000,000 provided or, if the context may so require, to be provided to the Borrower by the Lenders in up to ten (10) Term Advances in order to fund the balance of the Vessel Cash Consideration for each of the Ships or, if the context may so require, so much thereof as shall for the time being be outstanding to the Lenders under this Agreement;

**“Total Loss”** means, in relation to a Ship:

- (a) actual, constructive, compromised, or arranged total loss of that Ship;
- (b) Compulsory Acquisition; or
- (c) any hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of such Ship not falling within the definition of Compulsory Acquisition by any Government Entity, or by persons allegedly acting or purporting to act on behalf of any Government Entity, unless such Ship be released and restored to the relevant Owner within thirty (30) (or, in the case of seizure of the Ship by pirates, ninety (90)) days after such incident;

**“Total Loss Date”** means, in relation to a Ship:

- (a) in the case of an actual loss of that Ship, the actual date and at the time such Ship was lost or, if that is unknown, the date when that Ship was last reported;
- (b) in the case of a constructive total loss of that Ship, upon the date and at the time notice of abandonment is given to the insurers (provided a claim for total loss is admitted by such insurers) or, if the insurers do not immediately admit such a claim, at the date and at the time at which either a total loss is subsequently admitted by such insurers or a total loss is subsequently adjudged by a competent court of law or arbitration tribunal to have occurred;
- (c) in the case of a compromised or arranged total loss of that Ship, on the date upon which a binding agreement as to such compromised or arranged total loss has been entered into by the then insurers of such Ship;
- (d) in the case of Compulsory Acquisition, on the last day of the Relevant Period relating thereto (as defined in the definition of Compulsory Acquisition); and
- (e) in the case of hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of a Ship (other than within the definition of Compulsory Acquisition) by any Government Entity, or by persons allegedly acting or purporting to act on behalf of any Government Entity, which deprives an Owner of the use of such Ship for more than ninety (90) days, upon the expiry of the Relevant Period where “Relevant Period” means for the purposes of this paragraph (d) either (i) ninety (90) days or, (ii) if relevant underwriters confirm in writing (in terms satisfactory to the Majority Lenders) prior to the end of such ninety (90) day period that such capture, seizure, detention or confiscation will be fully covered by the relevant Owner’s war risks insurance if continuing for a further period exceeding ten (10) calendar months, the shorter of twelve (12) months and such period at the end of which cover is confirmed to attach;

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“**Transaction Documents**” means, together, the Master Agreement, each MOA, the Junior Finance Documents and the Senior Finance Documents and, in the singular, means any of them;

“**Transfer Certificate**” has the meaning given in Clause 24.2;

“**Trust Property**” has the meaning given in clause 3.1 of the Agency and Trust Agreement;

“**Valuation Date**” has the meaning given to it in Clause 4.7;

“**Vessel Cash Consideration**” means the amount of cash paid to the Seller by the Owner pursuant to the terms of the relevant MOA in order to acquire the Ship being an amount equal to 53.3% of the market value of each container vessel and 65% of the market value of each tanker vessel as provided pursuant to the relevant Senior Loan Agreement on the Valuation Date (less, in the case of the first container vessel and the first tanker vessel to be delivered under each Senior Loan Agreement, the arrangement fee payable pursuant to such Senior Loan Agreement) plus the amount of the Term Facility as is further set out in relation to each Ship in Schedule 6 hereto; and

“**Working Capital**” means, as at the date of determination, current assets (other than cash) less current liabilities (other than any payables or accruals to the Lenders in respect of the Navios Preferred Return and any payables or accruals to the Lenders and the Junior Lenders) as calculated by reference to the most recent financial statements of that Owner or the Borrower (or by reference to any other evidence as may be accepted by the Agent).

## 1.2 Construction of certain terms.

In this Agreement:

“**administration notice**” means a notice appointing an administrator, a notice of intended appointment and any other notice which is required by law (generally or in the case concerned) to be filed with the court or given to a person prior to, or in connection with, the appointment of an administrator;

“**affiliate**” means, in relation to any person, a subsidiary of that person or a parent of that person or any other subsidiary of that parent;

“**approved**” means, for the purposes of Clause 12, approved in writing by the Agent at its discretion;

“**asset**” includes every kind of property, asset, interest or right, including any present, future or contingent right to any revenues or other payment;

“**company**” includes any partnership, joint venture and unincorporated association;

“**consent**” includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration, notarisatio and legalisation;

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“**contingent liability**” means a liability which is not certain to arise and/or the amount of which remains unascertained;

“**document**” includes a deed; also a letter or fax;

“**excess risks**” means, in relation to a Ship, the proportion of claims for general average, salvage and salvage charges not recoverable under the hull and machinery policies in respect of that Ship in consequence of its insured value being less than the value at which that Ship is assessed for the purpose of such claims;

“**expense**” means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable value added or other tax;

“**gross negligence**” means a form of negligence which is distinct from ordinary negligence, in which the due diligence and care which are generally to be exercised have been disregarded to a particularly high degree, in which the plainest deliberations have not been made and that which should be most obvious to everybody has not been followed;

“**law**” includes any form of delegated legislation, any treaty or international convention and any regulation or resolution of the Council of the European Union, the European Commission, the United Nations or its Security Council;

“**legal or administrative action**” means any legal proceeding or arbitration and any administrative or regulatory action or investigation;

“**liability**” includes every kind of debt or liability (present or future, certain or contingent), whether incurred as principal or surety or otherwise;

“**months**” shall be construed in accordance with Clause 1.3;

“**obligatory insurances**” means, in relation to a Ship, all insurances effected, or which the Owner owning that Ship is obliged to effect, under Clause 12 or any other provision of this Agreement or another Finance Document;

“**parent company**” has the meaning given in Clause 1.4;

“**person**” includes any individual, any partnership, any company; any state, political sub-division of a state and local or municipal authority; and any international organisation;

“**policy**”, in relation to any insurance, includes a slip, cover note, certificate of entry or other document evidencing the contract of insurance or its terms;

“**protection and indemnity risks**” means the usual risks (including oil pollution and freight, demurrage and defence cover) covered by a protection and indemnity association, which is a member of the International Group of P&I Clubs, including, without limitation, the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation therein of clause 8 of the Institute Time Clauses (Hulls) (1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision which may be insured by entry with such association);

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“**regulation**” includes any regulation, rule, official directive, request or guideline (either having the force of law or compliance with which is reasonable in the ordinary course of business of the party concerned) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self regulatory or other authority or organisation;

“**subsidiary**” has the meaning given in Clause 1.4;

“**successor**” includes any person who is entitled (by assignment, novation, merger or otherwise) to any person’s rights under this Agreement or any other Finance Document (or any interest in those rights) or who, as administrator, liquidator or otherwise, is entitled to exercise those rights; and in particular references to a successor include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation of it or any other person;

“**tax**” includes any present or future tax, duty, impost, levy or charge of any kind which is imposed by any state, any political sub-division of a state or any local or municipal authority (including any such imposed in connection with exchange controls), and any connected penalty, interest or fine; and

“**war risks**” includes those risks covered excluded by the standard form of English marine policy with Institute War and Strikes Clauses Hulls-Time(1/11/95) attached or similar cover.

### 1.3 Meaning of “month”.

A period of one or more “**months**” ends on the day in the relevant calendar month numerically corresponding to the day of the calendar month on which the period started (“**the numerically corresponding day**”), but:

- (a) on the Business Day following the numerically corresponding day if the numerically corresponding day is not a Business Day or, if there is no later Business Day in the same calendar month, on the Business Day preceding the numerically corresponding day; or
- (b) on the last Business Day in the relevant calendar month, if the period started on the last Business Day in a calendar month or if the last calendar month of the period has no numerically corresponding day,

and “**month**” and “**monthly**” shall be construed accordingly.

### 1.4 Meaning of “subsidiary”.

A company (S) is a subsidiary of another company (P), if it is directly or indirectly controlled by P and for this purpose “control” means either:

- (a) the ownership of more than fifty per cent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity; or
- (b) the power to direct its policies and management, whether by contract or otherwise.

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## **1.5 General Interpretation.**

In this Agreement:

- (a) references to, or to a provision of, a Finance Document or any other document are references to it as amended or supplemented, whether before the date of this Agreement or otherwise;
- (b) references to, or to a provision of, any law include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (c) words denoting the singular number shall include the plural and vice versa;
- (d) Clauses 1.1 to 1.5 apply unless the contrary intention appears; and
- (e) accounting terms not defined herein shall have a meaning in accordance with GAAP.

## **1.6 Headings.**

In interpreting a Finance Document or any provision of a Finance Document, all clauses, sub-clauses and other headings in that and any other Finance Document shall be entirely disregarded.

## **2 FACILITY**

### **2.1 Amount of facilities.**

Subject to the other provisions of this Agreement the Lenders shall make available to the Borrower:

- 2.1.1 the Term Facility of up to \$10,000,000, in up to ten (10) Term Advances as specified in Schedule 6 to part finance the acquisition cost of each Ship;
- 2.1.2 the Revolving Facility, at all times, in a minimum aggregate amount of Five million Dollars (\$5,000,000) for any purpose of the Borrower, the Owners and the Ships and such greater amount up to the Applicable Limit as is required for the purposes set out under the provisions of Clause 2.1.3 below and, at the Lenders' sole discretion, for any purpose of the Borrower, the Owners or the Ships under Clause 2.1.4 below subject at all times to documentation satisfactory to the Lenders and the Junior Agent;
- 2.1.3 such additional amounts under the Revolving Facility up to the Applicable Limit as will be required for the purposes of complying with the minimum balance requirements (as set out in Clause 14.6 of each Senior Loan Agreement) being (1) in respect of all Ships at all times pursuant to the Container Senior Loan Agreement and for the first three years pursuant to the Tankers Loan Agreement, five hundred thousand Dollars (\$500,000) from the Delivery Date of the relevant Ship and increasing to one million Dollars (\$1,000,000) per Ship within 90 days of drawdown of the relevant Ship's Advance (as defined in the relevant Senior Loan Agreements) and (2) in respect of the tanker Ships and the Tanker Senior Loan Agreement two million eight hundred and twenty thousand Dollars (\$2,820,000) per tanker Ship from the third anniversary of the first drawdown date of a tanker Ship's Advance (as defined in the Tanker Senior Loan Agreement); and

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2.1.4 in the event that the Borrower requests any further additional amount under the Revolving Facility (in excess of an amount made available pursuant to Clauses 2.1.2 and/or 2.1.3 above) for any purpose whatsoever (whether at the request of the Senior Lenders, the Junior Agent or for any other purpose), the Lenders will consider in good faith, but without commitment and in their absolute and sole discretion and may provide additional amounts under the Revolving Facility. If such additional amounts under the Revolving Facility under this Clause 2.1.4 are at the discretion of the Lenders made available to and utilised by the Borrower, it shall be subject to the Creditor Parties, the Security Parties and the Approved Managers entering into such amendment documentation to the Finance Documents and additional Finance Documents as the Creditor Parties and the Junior Agent shall require, in form and substance satisfactory to the Creditor Parties and the Junior Agent.

**2.2 Lenders' participations in Advances.**

Subject to the other provisions of this Agreement, each Lender shall participate in each Advance in the proportion which, as at the relevant Drawdown Date, its Commitment bears to the Total Commitments.

**2.3 Purpose of Advance.**

The Borrower undertakes with each Creditor Party to use each Advance only for the purpose stated in this Clause 2.

**3 POSITION OF THE LENDERS**

**3.1 Interests several.**

The rights of the Lenders under this Agreement are several.

**3.2 Individual right of action.**

Each Lender shall be entitled to sue for any amount which has become due and payable by the Borrower to it under this Agreement without joining the Agent, the Security Trustee, any other Lender as additional parties in the proceedings.

**3.3 Proceedings requiring Majority Lender consent.**

Except as provided in Clause 3.2, no Lender may commence proceedings against the Borrower or any Security Party in connection with a Finance Document without the prior consent of the Majority Lenders.

**3.4 Obligations joint and several.**

The obligations of the Lenders under this Agreement are joint and several and a failure of a Lender to perform its obligations under this Agreement shall not result in the Borrower, any Security Party or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document.

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## **4 DRAWDOWN**

### **4.1 Request for an Advance.**

Subject to the following conditions, the Borrower may request an Advance to be borrowed by ensuring that the Agent receives a completed Drawdown Notice not later than 11.00 a.m. (Athens time) 3 Business Days prior to the relevant Drawdown Date.

### **4.2 Availability.**

The conditions referred to in Clause 4.1 are that:

- (a) a Drawdown Date has to be a Business Day during the Availability Period;
- (b) each Term Advance in relation to a Ship shall not exceed \$1,000,000;
- (c) unless otherwise expressly agreed between the Borrower and the Agent, no Revolving Advance shall be made if by being drawn down it would increase the Revolving Facility to a sum in excess of the Applicable Limit prevailing at the relevant time; and
- (d) the aggregate amount of the Advances shall not exceed the Total Commitments.

### **4.3 Notification to Lenders of receipt of a Drawdown Notice.**

The Agent shall promptly notify the Lenders that it has received a Drawdown Notice and shall inform each Lender of:

- (a) the amount of the Advance to which that Drawdown Notice relates and the relevant Drawdown Date;
- (b) the amount of that Lender's participation in that Advance; and
- (c) the duration of the first Interest Period.

### **4.4 Drawdown Notice irrevocable.**

Each Drawdown Notice must be duly signed by a duly authorised signatory of the Borrower; and once served, it cannot be revoked without the prior consent of the Agent, acting on the authority of the Majority Lenders.

### **4.5 Lenders to make available Contributions.**

Subject to the provisions of this Agreement, each Lender shall, on and with value on each Drawdown Date, make available to the Agent for the account of the Borrower the amount due from that Lender on that Drawdown Date under Clause 2.2.

### **4.6 Disbursement of Advance.**

Subject to the provisions of this Agreement, the Agent shall on each Drawdown Date pay to the Borrower the amounts which the Agent receives from the Lenders under Clause 4.5; and that payment to the Borrower shall be made:

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- (a) to the Earnings Account which the Borrower specifies in the relevant Drawdown Notice; and
  - (b) in the like funds as the Agent received the payments from the Lenders.

#### 4.7 Valuations.

- (a) On a date falling no earlier than the date falling four (4) weeks prior to the final Acquisition Date and no later than the date of this Agreement (the “**Valuation Date**”), the Borrower shall provide to the Agent valuations provided to and accepted by the Senior Lenders pursuant to the terms of the Senior Loan Agreements (including the criteria set out in Clause 14.1(a), (b) and (c) which show the market value of each Ship as at such Valuation Date.
- (b) The Agent shall then prepare an updated version of Schedule 6 showing the final Vessel Cash Consideration and the amounts to be advanced pursuant to this Agreement and the Associated Loan Agreements in respect of each Ship. For the avoidance of doubt, the Contract Price in respect of each Ship shall remain the same.
- (c) The Agent shall circulate the updated Schedule 6 to the Borrower, to the Junior Agent and to each Senior Agent and the Borrower shall provide written confirmation that such updated amounts have been agreed and accepted by each Senior Agent, whereupon the updated Schedule 6 shall be binding on the Borrower.

## 5 INTEREST

### 5.1 Payment of interest

Subject to the provisions of this Agreement, payment of interest on each Advance in respect of each Interest Period relative to that Advance, shall be paid out of the Free Cash Flow as follows:

- (a) in respect of the Revolving Facility, interest shall accrue at a rate specified in Clause 5.2 and, subject to the terms of the Senior Loan Agreements, the Junior Loan Agreement and the Intercreditor Deeds, shall be paid out of the Free Cash Flow of the Borrower, after the distribution of any Free Cash Flow in the relevant Owners to the relevant Borrower’s Earnings Account; and
- (b) in respect of the Term Facility, any Free Cash Flow in the Owners shall be distributed to the relevant Borrower’s Earnings Account and the Free Cash Flow in the Borrower, after deduction and payment of any interest and principal repayable in respect of the Revolving Facility, shall be utilised to pay:
  - (i) the Navios Preferred Return; and
  - (ii) any Return Shortfalls for that current Financial Year or which have accumulated from previous Financial Years; and

thereafter (the “**Distributable Cash Flow**”) shall then be applied as follows:

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- (a) as to an amount of 80% of such Distributable Cash Flow, be paid to the Junior Agent for the benefit of the Junior Lenders and be applied in repayment of the principal amount of the Junior Loan (including any capitalised interest); and
  - (b) the remaining 20% shall be available to the Borrower.

**5.2 Normal fixed rate of interest.**

The rate of interest on each Advance in respect of an Interest Period relative to that Advance is fixed at 12.7 per cent. per annum.

**5.3 Compounding of accrued interest.**

Accrued interest in respect of the Facilities shall, if not paid in accordance with Clause 5.1(a) or 5.1(b)(i), compound and be added to the relevant Loan every 3 months during an Interest Period and on the last day of that Interest Period as part of the Return Shortfalls.

**5.4 Notification of Interest Periods and rates of normal interest.**

The Agent shall notify the Borrower and each Lender of the duration of each Interest Period, as soon as reasonably practicable after each is determined.

**6 INTEREST PERIODS – DEFAULT INTEREST**

**6.1 Commencement of Interest Periods.**

The first Interest Period applicable to an Advance shall commence on the Drawdown Date in respect of that Advance and each subsequent Interest Period shall commence, subject to Clause 6.2(b) on the expiry of the preceding Interest Period.

**6.2 Duration of normal Interest Periods.**

Subject to Clause 6.3, each Interest Period in respect of each Advance shall be:

- (a) 3 months; or
- (b) in the case of the first Interest Period applicable to the first Term Advance, a period ending on 28 March 2014; or
- (c) in the case of the first Interest Period applicable to the second and any subsequent Advance made pursuant to the Term Facility, a period ending on the last day of the Interest Period applicable to the first Advance then current, whereupon all of the Advances in relation to the Term Facility shall be consolidated and treated as a single Advance.

**6.3 Duration of Interest Periods for repayment of the Facilities.**

In respect of an amount which becomes due to be repaid under Clause 7 on a particular Repayment Date, an Interest Period shall end on that Repayment Date.

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## 6.4 Default Interest

### 6.4.1 Payment of default interest on overdue amounts.

The Borrower shall pay interest in accordance with the following provisions of this Clause 6.4 on any amount payable by the Borrower under any Finance Document which the Agent, the Security Trustee or the other designated payee does not receive on or before the relevant date, that is:

the date on which the Finance Documents provide that such amount is due for payment; or

- (b) if a Finance Document provides that such amount is payable on demand, the date on which the demand is served; or
- (c) if such amount has become immediately due and payable under Clause 18.4, the date on which it became immediately due and payable.

### 6.4.2 Default rate of interest.

Interest shall accrue on an overdue amount from (and including) the relevant date until the date of actual payment (as well after as before judgment):

in the case of any principal (including any capitalised interest) at the rate of thirteen point seven (13.7) per cent. (representing the fixed interest payable pursuant to Clause 5.2 plus one (1) per cent. per annum); and

- (e) in the case of any accrued interest which has not yet been compounded in accordance with Clause 5.3 at a rate of one (1) per cent per annum above the rate applicable to such overdue amount immediately prior to the relevant date as determined in accordance with Clause 5 (but only for any unexpired part of any then current Interest Period applicable to it whereupon it shall be compounded in accordance with Clause 5.3).

### 6.4.3 Compounding of default interest.

Any interest due under this Clause 6.4 shall be paid on the last day of the period by reference to which it was determined by being compounded and added to the relevant Facility at the end of the relevant period by reference to which it was determined.

## 7 REPAYMENT AND PREPAYMENT

### 7.1 Term Facility Repayment.

Subject to the other provisions of this Agreement, the Term Facility shall be repaid on the earlier of (i) the tenth anniversary of the Acquisition Date and (ii) 27 December 2023 (the “**Final Repayment Date**”) or, in the circumstances described in and subject to compliance with the provisions of Clause 7.11, on the date of the sale or purchase of the last Ship in accordance with the Final Exit described in Clause 7.11. For the avoidance of doubt in no case shall the amount of any repayment be greater than the amount permitted to be paid by the Senior Lenders and the Junior Lender under the terms of the Intercreditor Deeds and the Senior Loan Agreements and the Junior Loan Agreement.

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## **7.2 Revolving Facility Repayment.**

The Revolving Facility shall, subject to the terms of the Senior Loan Agreements, the Junior Loan Agreement and the Intercreditor Deeds, be repaid to the fullest extent possible at the end of each quarter out of the Free Cash Flow.

Notwithstanding the above, subject to the other provisions of this Agreement, the aggregate of all outstanding amounts under the Revolving Facility shall be repaid by the Borrower on the Final Repayment Date or, in the circumstances described in and subject to compliance with the provisions of Clause 7.11, on the date of the sale or purchase of the last Ship in accordance with the Final Exit described in Clause 7.11 whereupon the Revolving Facility shall be cancelled and the Applicable Limit shall be reduced to zero.

## **7.3 Voluntary prepayment.**

Subject to the following conditions, the Borrower may prepay the whole or any part of the Facilities on any day without any prepayment fee or penalty.

## **7.4 Conditions for voluntary prepayment.**

The conditions referred to in Clause 7.3 are that:

- (a) a partial prepayment in respect of the Facilities shall be in an amount equal to \$100,000 or higher integral multiples thereof; and
- (b) the Agent has received from the Borrower at least five (5) Business Days' prior written notice (the "**Prepayment Notice**") specifying the amount to be prepaid and the date on which the prepayment is to be made.

## **7.5 Effect of notice of prepayment.**

A Prepayment Notice may not be withdrawn or amended without the consent of the Agent, given with the authorisation of the Majority Lenders, and the amount specified in the Prepayment Notice shall become due and payable by the Borrower on the date for prepayment specified in the prepayment notice.

## **7.6 Prepayment Notice.**

The Agent shall notify the Lenders promptly upon receiving a Prepayment Notice.

## **7.7 Mandatory prepayment.**

- (a) The Borrower shall be obliged to prepay the Relevant Amount if a Ship:
  - (i) subject to compliance with Clause 10.20, is sold either by way of a sale of such Ship or by way of a sale or transfer of the shares in the relevant Owner;

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- (ii) becomes a Total Loss, on the earlier of the date falling 120 days after the Total Loss Date and the date of receipt by the Security Trustee of the proceeds of insurance relating to such Total Loss; and
  - (iii) is sold either by way of an enforced sale of the ship or by way of an enforced sale or enforced transfer of the Shares in the relevant Owner.
- (b) In this Clause 7.7:
- “Relevant Amount”** means:
- (i) in the case of the circumstances described in 7.7 (a) (i):
    - (A) prior to (and including) 30 December 2019, to the extent permitted by the Senior Loan Agreements and the Junior Loan Agreement, any amount remaining from such sale proceeds following deduction and payment of any amounts required:
      - (1) to repay any third party indebtedness on such Ship which has given rise to a maritime lien over that Ship and
      - (2) to repay any amounts then due and payable pursuant to the Senior Loan Agreement and the Junior Loan Agreement,shall be applied first in repayment of the Revolving Facility, secondly in repayment of the Term Advance relating to the relevant Ship, secondly and thirdly any remainder in an amount to be agreed between the Borrower and the Creditor Parties;
    - (B) following 30 December 2019, any amount remaining from such sale proceeds, to the extent permitted by the Senior Loan Agreements and the Junior Loan Agreement after the deduction and payment of:
      - (1) any amounts then due and payable pursuant to the Senior Loan Agreements;
      - (2) the amounts referred to in Clause 5.1(b) (when calculating the Distributable Cash Flow);
      - (3) the aggregate of the amounts required to repay third party indebtedness relating to that Ship (including without limitation any outstanding trade debts) and the Revolving Facility and interest thereon; andwhich is required in order to repay any outstanding principal on the Term Facility for that Ship, and thereafter 80% of any remaining amount shall be available to the Borrower to be paid to the Junior Agent for the benefit of the Junior Lenders and be applied in prepayment of the Junior Loan and the 20% balance of such amount shall be available to the Borrower; and

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- (ii) in the case of the circumstances described in Clause 7.7 (a) (ii):
- (A) prior to (and including) 30 December 2019 and to the extent permitted by the Senior Loan Agreements and the Junior Loan Agreement, any amount remaining from such Total Loss proceeds following the deduction of amounts required:
- (1) to repay any third party indebtedness on such Ship which has given rise to a maritime lien over that Ship; and
  - (2) to repay any amounts then due and payable pursuant to the Senior Loan Agreements and the Junior Loan Agreement,
- shall be applied first against repayment of the Revolving Facility, secondly against the Term Advance relating to that Ship and thirdly any remainder in an amount to be agreed between the Borrower and the Creditor Parties; and
- (B) following 30 December 2019, any amount remaining from such Total Loss proceeds, to the extent permitted by the Senior Loan Agreements and the Junior Loan Agreement, after the deduction and payment of:
- (1) any amounts then due and payable pursuant to the Senior Loan Agreements;
  - (2) the amounts referred to in Clause 5.1(b) (when calculating the Distributable Cash Flow);
  - (3) the aggregate of the amounts required to repay third party indebtedness relating to that Ship (including without limitation any outstanding trade debts) and the Revolving Facility and interest thereon; and
- which is required in order to repay any outstanding principal on the Term Facility relating to that Ship and thereafter 80% of any remaining amount shall be available to the Borrower to be paid to the Junior Agent for the benefit of the Junior Lenders and be applied in prepayment of the Junior Loan and the 20% balance of such amount shall be available to the Borrower; and
- (iii) at all times in the case of the circumstances described in Clause 7.7 (a) (iii), and to the extent permitted by the Senior Loan Agreements and the Junior Loan Agreement, any amount remaining from such sale proceeds following the deduction of amounts required:
- (A) to repay any third party indebtedness on such Ship which has given rise to a maritime lien over that Ship; and

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(B) to repay any amounts still due and payable pursuant to the Senior Loan Agreements and the Junior Loan Agreement.

**7.8 Amounts payable on prepayment.**

In addition to the provisions of Clause 7.7 above, each prepayment shall be made together with accrued interest (and any other amount payable under Clauses 20.1 (a), or 20.4 or otherwise) in respect of the amount being prepaid (but without premium or penalty).

**7.9 Application of partial prepayment or cancellation.**

Each partial prepayment shall be applied against (i) firstly, the Revolving Facility (including any compounded and/or accrued interest) and (ii) secondly, the Term Facility (including the Navios Preferred Return and any Return Shortfalls) applied pro-rata against the Term Advances.

**7.10 Reborrowing.**

- (a) No amount prepaid or cancelled in relation to the Term Facility may be reborrowed.
- (b) Subject to the other provisions of this Agreement, any amount prepaid in respect of the Revolving Facility may be reborrowed.

**7.11 Final Exit.**

After the earlier of (a) the tenth anniversary of the Acquisition Date and (b) 27 December 2023 and in circumstances where the Facilities have been not repaid in full at such date or in the circumstances set out in Clause 22.3 then, unless the Borrower, the Junior Creditor Parties and the Creditor Parties agree otherwise, within three (3) months of such date the Borrower shall and shall procure that each Owner shall comply with the following requirements of this Clause 7.11 (the “**Final Exit**”):

- (a) all of the Mortgaged Ships not previously sold or suffering a Total Loss as set out in Clause 7.7 (the “**Remaining Ships**”) or retained by the Borrower pursuant to Clause 7.11 (b) below, shall be sold to a third-party in accordance with the requirements of Clauses 10.20 and the proceeds of such sale shall be distributed as set out in such Clause 7.7 (b)(i)(B); or
- (b) if the Borrower or any one or all of the relevant Owners decide to keep one or all of the Remaining Ships, the Borrower shall either
  - (iv) purchase the Relevant Portion through any nominee or subsidiary of the Borrower, whereupon the Creditor Parties or the Security Trustee (as the case may be) shall transfer all their/its title and interest in the Relevant Portion and the Mortgage and all other Finance Documents related to such Ship or Ships and the Owner or Owners thereof, to any such nominee or subsidiary of the Borrower; or
  - (v) voluntarily prepay the Relevant Portion, whereupon the Security Trustee shall discharge the Mortgage on such Ship or Ships and release the relevant Owner or Owners from any and all obligations under the Finance Documents executed by them,

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in each such case the “**Relevant Portion**” shall be the amount equivalent to the minimum amount which the Lenders would have received had the relevant Ship or Ships been sold pursuant to Clause 7.11(a) (including for the avoidance of doubt on the basis of sale terms required under Clause 10.20) and the proceeds of such sale or sales had been applied pursuant to Clause 7.11(a).

- (c) following the sale or retention of the Remaining Ships any Distributable Cash Flow of the Owners and the Borrower shall be applied in the repayment of the Facilities and any interest accrued thereon and for the avoidance of doubt, provided such payment takes place within 3 months (or such longer period as may be agreed by the Agent) of the commencement of the Final Exit, there shall be no Event of Default for non-payment of the Facilities on the Final Repayment Date, **provided that** default interest calculated in accordance with Clause 6.4 shall accrue on any outstanding amount under this Agreement with effect from the date falling 3 months after the original Final Repayment Date.

#### **7.12 Release of Security Interests on ship sales and avoidance of insolvency on Final Exit.**

- (a) Following the sale, transfer or total loss of any Ship in the circumstances described in Clause 7.7(a) and the making of any payments required pursuant to Clause 7.7(b) as a result of such sale, transfer or total loss, then subject to the transfer of any remaining net worth in the relevant Owner to the Borrower (to be applied upon receipt of the relevant funds in accordance with Clause 7) as evidenced by a balance sheet or other evidence acceptable to the Agent, then the Security Trustee shall discharge any remaining Security Interests in that Ship and any other Security Interest granted in its favour by that Owner, including the relevant Guarantee.

Following the Final Exit and the making of all payments in accordance with the provisions of Clause 7.11 or, following 30 December 2019, the sale, transfer or total loss of the tenth Ship and the making of all prepayments required under Clause 7.7(b) and in either case subject to the transfer of any remaining net worth in all remaining Owners to the Borrower as evidenced by balance sheets or other evidence acceptable to the Agent, then:

all the Security Interests in the Ships and any remaining Security Interests to secure the Secured Liabilities, including any Guarantees, still held by the Security Trustee shall be deemed to have been discharged in full; and

the Borrower and the Agent shall enter into negotiations for a period of 15 Business Days (which can be extended automatically on the written request of the Borrower for a period of up to six months in total) in order to restructure (including a potential write off of) any outstanding amount of the Facilities with a view to avoiding the Borrower suffering an insolvency event of the kind described in Clause 18.1(f).

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**7.13 Paramount clause.**

In no case shall the Creditor Parties be entitled to receive amounts in respect of the Free Cash Flow or sale or Total Loss proceeds of any Ship which are in excess of the amount of the Facilities and interest thereon and any such excess shall be fully distributed to the Borrower.

**8 CONDITIONS PRECEDENT**

**8.1 Documents, fees and no default.**

Each Lender's obligation to contribute to an Advance is subject to the following conditions precedent:

- (a) that, on or before the first Drawdown Date, the Agent receives the documents described in Part A of Schedule 3 in form and substance satisfactory to the Agent and its lawyers;
- (b) that, on or before a Drawdown Date in respect of a Term Advance or the initial Revolving Advance in respect of a Ship, the Agent receives the documents described in Part B of Schedule 3 in form and substance satisfactory to the Agent and its lawyers;
- (c) that both at the date of each Drawdown Notice and at the relevant Drawdown Date none of the Senior Creditor Parties and the Junior Creditor Parties is enforcing its rights pursuant to an event of default or default under (and as defined in) any one or more of the Senior Loan Agreements and the Junior Loan Agreement. When used in this Clause 8.1(c), "enforcing" shall mean any step or action taken by any of the Senior Creditor Parties or any of the Junior Creditor Parties to recover any amount due under the Senior Loan Agreements or under the Junior Loan Agreements after first having made a demand (a "Demand") for repayment of the Senior Loans (or either of them) or the Junior Loan or declared (a "Declaration") the Senior Loans (or either of them) or the Junior Loans as being immediately due and payable.

**8.2 Waiver of conditions precedent.**

If the Majority Lenders, at their discretion, permit an Advance to be borrowed before certain of the conditions referred to in Clause 8.1 are satisfied, the Borrower shall ensure that those conditions are satisfied within 10 Business Days after the relevant Drawdown Date (or such longer period as the Agent may, with the authorisation of the Majority Lenders, specify).

**9 REPRESENTATIONS AND WARRANTIES**

**9.1 General.**

The Borrower represents and warrants to each Creditor Party as follows.

**9.2 Status.**

The Borrower is a corporation, duly incorporated, validly existing and in good standing under the laws of the Republic of the Marshall Islands.

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### 9.3 Share capital and ownership.

- (a) The Borrower has an authorised share capital divided into 500 registered ordinary shares, each fully paid and of \$1,00 value, and the legal title and beneficial ownership of all those shares is held, free of any Security Interest or other claim, by Navios Europe Holdings Inc., a Marshall Islands corporation whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands:
- (b) Navios Europe Holdings Inc. has an authorised share capital divided into 500 registered shares, each fully paid and of \$1,00 value, and the legal title and beneficial ownership of all those shares is held, free of any Security Interest or other claim, by:
  - (i) as to 47.5% of such shares, Navios Holdings Europe Finance Inc. a wholly owned subsidiary of Navios Maritime Holdings Inc.; and
  - (ii) as to 47.5% of such shares, Navios Acquisition Europe Finance Inc. a wholly owned subsidiary of Navios Maritime Acquisition Corporation; and
  - (iii) as to the other 5% of such shares, Navios Partners Europe Finance Inc. a wholly owned subsidiary of Navios Maritime Partners L.P.,

each a Marshall Islands corporation whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Republic of the Marshall Islands.

### 9.4 Corporate power.

The Borrower has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

- (a) to execute the Finance Documents and the Transaction Documents to which the Borrower is a party; and
- (b) to borrow under this Agreement and to make all the payments contemplated by, and to comply with, those Finance Documents to which it is a party.

### 9.5 Consents in force.

All the consents referred to in Clause 9.4 remain in force and nothing has occurred which makes any of them liable to revocation.

### 9.6 Legal validity; effective Security Interests.

The Finance Documents to which the Borrower is a party, do now or, as the case may be, will, upon execution and delivery (and, where applicable, registration as provided for in the Finance Documents):

- (a) constitute the Borrower's legal, valid and binding obligations enforceable against the Borrower in accordance with their respective terms; and

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- (b) create legal, valid and binding Security Interests enforceable in accordance with their respective terms over all the assets to which they, by their terms, relate,

subject to any relevant insolvency laws affecting creditors' rights generally.

**9.7 No third party Security Interests.**

Without limiting the generality of Clause 9.6, at the time of the execution and delivery of each Finance Document to which the Borrower is a party:

- (a) the Borrower will have the right to create all the Security Interests which that Finance Document purports to create; and
- (b) no third party will have any Security Interest (except for Permitted Security Interests) or any other interest, right or claim over, in or in relation to any asset to which any such Security Interest, by its terms, relates.

**9.8 No conflicts.**

The execution by the Borrower of each Finance Document and each Transaction Document to which it is a party, and the borrowing by the Borrower of the Facilities, and its compliance with each Finance Document and each Transaction Document to which it is a party will not involve or lead to a contravention of:

- (a) any law or regulation; or
- (b) the constitutional documents of the Borrower; or
- (c) any contractual or other obligation or restriction which is binding on the Borrower or any of its assets,

and will not have a Material Adverse Effect.

**9.9 No withholding taxes.**

All payments which the Borrower is liable to make under the Finance Documents to which it is a party may be made without deduction or withholding for or on account of any tax payable under any law of any Pertinent Jurisdiction.

**9.10 No default.**

No Event of Default or Potential Event of Default has occurred.

**9.11 Information.**

All information which has been provided in writing by or on behalf of the Borrower or any Security Party to any Creditor Party in connection with any Finance Document satisfied the requirements of Clause 10.5; all audited and unaudited accounts and financial statements which have been so provided satisfied the requirements of Clause 10.7; and there has been no change in the financial position or state of affairs of the Borrower, any Owner or the Group from that disclosed in the latest of those accounts which is likely to have a Material Adverse Effect.

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**9.12 No litigation.**

No legal or administrative action involving the Borrower or any Security Party (including action relating to any alleged or actual breach of the ISM Code or the ISPS Code) has been commenced or taken or, to the Borrower's knowledge, is likely to be commenced or taken which would, in either case, be likely to have a Material Adverse Effect.

**9.13 Validity and completeness of Transaction Documents.**

Each Transaction Document constitutes valid, binding and enforceable obligations of the parties thereto in accordance with its terms and:

- (a) the copies of that Transaction Document delivered to the Agent before the date of this Agreement is a true and complete copy; and
- (b) no amendments or additions to that Transaction Document have been agreed nor has the Borrower which is the party thereto or the Owner which is a party to that Transaction Document, waived any of their respective rights thereunder.

**9.14 Compliance with certain undertakings.**

At the date of this Agreement, the Borrower is in compliance with Clauses 10.2, 10.4, 10.9 and 10.13.

**9.15 Taxes paid.**

The Borrower has paid all taxes applicable to, or imposed on or in relation to the Borrower or its business and each Owner has paid or, in the case of each Owner, the Ship owned by it.

**9.16 ISM Code and ISPS Code compliance.**

All requirements of the ISM Code and the ISPS Code as they relate to the Borrower, the Owners, the Approved Manager and the Ships have been complied with.

**9.17 No Money laundering.**

The Borrower:

- (a) will not, and will procure that no Security Party, to the extent applicable, will, in connection with this Agreement or any of the other Finance Documents, contravene or permit any subsidiary to contravene, any law, official requirement or other regulatory measure or procedure implemented to combat "money laundering" (as defined in Article 1 of the Directive 2005/60/EC of the European Parliament and of the Council of the European Union of 26 October 2005) and comparable United States Federal and state laws. The Borrower shall further submit any documents and declarations on request, if such documents or declarations are required by any Creditor Party to comply with its domestic money laundering and/or legal identification requirements; and

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- (b) confirms that it is the beneficiary, acting for its own account and not for or on behalf of any person (other than the Owners) for each part of the Facilities made or to be made available to it under this Agreement. That is to say, it acts for its own account and not for or on behalf of anyone else.

The Borrower will promptly inform the Agent by written notice, if it is not or ceases to be the beneficiary and will provide in writing the name and address of the beneficiary.

The Agent shall promptly notify the Lenders of any written notice it receives under this Clause 9.17.

**9.18 No commissions etc.**

There is no agreement or understanding to allow or pay any rebate, premium, commission, discount or other benefit or payment (howsoever described) to the Borrower, any Owner, any Seller or a third party in connection with the purchase of a Ship.

**9.19 No immunity.**

Neither the Borrower nor any of its assets is entitled to immunity on grounds of sovereignty or otherwise from any legal action or proceeding (including, without limitation, suit, attachment prior to judgement, execution or other enforcement).

**9.20 Choice of law.**

The choice of the laws of England to govern the Loan Agreement and those other Finance Documents which are expressed to be governed by the laws of England constitutes a valid choice of law and the submission by the Borrower or, as the case may be, the relevant Security Parties thereunder to the non-exclusive jurisdiction of the Courts of England is a valid submission and does not contravene the laws of any Pertinent Jurisdiction and the laws of England and will be applied by the Courts of any Pertinent Jurisdiction if the Loan Agreement or those other Finance Documents or any claim thereunder comes under their jurisdiction upon proof of the relevant provisions of the laws of England.

**9.21 Subsidiaries of the Borrower.**

Save as disclosed to the Agent on or before the date of this Agreement, the Borrower has no subsidiaries other than the Owners.

**9.22 Repetition.**

The representations and warranties in this Clause 9 shall be deemed to be repeated by the Borrower:

- (a) on the date of service of each Drawdown Notice;
- (b) on each Drawdown Date; and
- (c) on the first day of each Interest Period,

as if made with reference to the facts and circumstances existing on each such day.

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## **10 GENERAL UNDERTAKINGS**

### **10.1 General.**

The Borrower undertakes with each Creditor Party to comply with the following provisions of this Clause 10 at all times during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit.

### **10.2 Title; negative pledge.**

The Borrower will and will procure that each Owner will:

- (a) as from the Delivery Date in respect of its Ship, hold the legal title to, and own the entire beneficial interest in that Ship, her Insurances and Earnings, free from all Security Interests and other interests and rights of every kind, except for those created by the Finance Documents and the effect of assignments contained in the Finance Documents and except for Permitted Security Interests; and
- (b) not create or permit to arise any Security Interest (except for Permitted Security Interests) over any other asset, present or future.

### **10.3 No disposal of assets.**

The Borrower will not and will procure the Owners will not transfer, lease or otherwise dispose of

- (a) all or a substantial part of its assets, whether by one transaction or a number of transactions, whether related or not; or
- (b) any debt payable to it or any other right (present, future or contingent right) to receive a payment, including any right to damages or compensation,

but paragraph (a) does not apply to any charter of a Ship as to which Clause 13.13 applies.

### **10.4 No other liabilities or obligations to be incurred.**

The Borrower will not and will procure the Owners will not incur any liability or obligation (including, without limitation, any Financial Indebtedness) except:

- (a) liabilities and obligations under the Finance Documents and/or the Transaction Documents and/or the Finance Documents and/or the Associated Loan Agreements to which it is or, as the case may be, will be a party or, in the case of the Owners and the Borrower, any inter-company loans between the Borrower and an Owner required to on-lend sums drawn under the Revolving Facility by the Borrower to the Owners;
- (b) liabilities or obligations reasonably incurred in the normal course of its business of trading, operating and chartering, maintaining and repairing the Ship owned by it; and
- (c) liabilities or obligations incurred pursuant to Clause 11.3(c).

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**10.5 Information provided to be accurate.**

All financial and other information, including but not limited to factual information, exhibits and reports, which is provided in writing by or on behalf of the Borrower under or in connection with any Finance Document will be true and not misleading and will not omit any material fact or consideration.

**10.6 Provision of financial statements.**

The Borrower will send to the Agent:

- (a) as soon as possible, but in no event later than 180 days after the end of each Financial Year the consolidated audited annual accounts of the Borrower including each Owner for that Financial Year (commencing with the accounts for the Financial Year ending on 31 December 2013); and
- (b) as soon as possible, but in no event later than 60 days after the end of each 6-month period ending on 30 June and 31 December in each Financial Year the semi-annual consolidated unaudited financial statements in respect of the Borrower including each Owner for that 6-month period (commencing with the accounts for the 6-month period ending on 30 June 2014), duly certified as to their correctness by a duly authorised representative of the Borrower;
- (c) as soon as possible a certificate setting out a comprehensive calculation showing *inter alia* the consolidated calculation in relation to the Borrower and the Owners of the Free Cash Flows, the applicable Navios Preferred Return, any Return Shortfalls and the Distributable Cash Flow, duly certified as to their correctness by a duly authorised representative of the Borrower and certifying compliance with all liquidity requirements and any other restrictions on distributions set out in the Senior Loan Agreements;
- (d) as soon as possible:
  - but in no event later than 30 days before the commencement of each Financial Year of the Borrower, a consolidated annual budget for the Ships but split between the tankers and the containers prepared on the basis of the operation of equivalent vessels by other affiliates of the Navios Lenders with sufficient information about each type of Ship as is reasonably required by the Agent and the Agent shall have 15 Business Days from receipt of the budget from the Borrower in which to raise any objection to the budget and reasonably request an amendment to the proposed budget;
  - but in no event later than the 45 days after the end of each Financial Year of the Borrower a comparison of the results versus the planned budget for the previous Financial Year; and
  - but in no event later than 30 days before the commencement of each Financial Year of the Borrower, a liquidity forecast for the Borrower and either each Owner or each type of Ship; and

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- (e) notification no later than 30 days after becoming aware of the same, if and when the aggregate of any costs and expenses actual incurred are likely to exceed the budget provided pursuant to 10.6 (d) above for a particular type of Ship (either tankers or containers) by an aggregate amount of more than ten (10) per cent. for such type of Ships and an updated budget for such type of Ships for the remainder of the relevant budget year, together with an explanation of and evidence why the actual costs and expenses have exceeded or are likely to exceed the budget if requested by the Agent (acting reasonably); and
  - (f) promptly after each request by the Agent, such further financial or other information in respect of the Borrower, each Ship, the Owners, the other Security Parties and the Group.

**10.7 Form of financial statements.**

All accounts delivered under Clause 10.6 will:

- (a) be prepared in accordance with all applicable laws and GAAP consistently applied;
- (b) give a true and fair view of the state of affairs of the Borrower, the Owners and the Group at the date of those accounts and of its profit for the period to which those accounts relate; and
- (c) fully disclose or provide for all significant liabilities of the Borrower, the Owners and the Group.

**10.8 Creditor notices and press releases.**

The Borrower will send the Agent, as soon as possible after they are despatched:

- (a) copies of all material communications which are despatched to the Borrower's creditors generally or any class of them; and
- (b) copies of any relevant press releases.

**10.9 Consents.**

The Borrower will or will procure the Owners will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Agent of, all consents required:

- (a) for the Borrower or that Owner to perform its obligations under any Finance Document and/or any Transaction Document to which it is or, as the case may be, will be a party;
- (b) for the validity or enforceability of any Finance Document and/or Transaction Document to which it is or, as the case may be, will be a party; and
- (c) for the Owner to continue to own and operate the Ship owned by it,

and the Borrower and/or the relevant Owner will comply with the terms of all such consents.

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**10.10 Maintenance of Security Interests.**

The Borrower will:

- (a) at its own cost, do all that it is necessary to ensure that any Finance Document validly creates the obligations and the fourth priority Security Interests which it purports to create; and
- (b) without limiting the generality of paragraph (a), at its own cost, promptly register, file, record or enrol any Finance Document with any court or authority in all Pertinent Jurisdictions, pay any stamp, registration or similar tax in all Pertinent Jurisdictions in respect of any Finance Document, give any notice or take any other step which, in the opinion of the Majority Lenders, is or has become necessary or desirable for any Finance Document to be valid, enforceable or admissible in evidence or to ensure or protect the fourth priority of any Security Interest which it creates.

**10.11 Notification of litigation.**

The Borrower will provide the Agent with details of any legal or administrative action involving the Borrower, the any Owner or a Ship owned by it, the Earnings or the Insurances in respect of that Ship, any Security Party, the Approved Manager, as soon as such action is instituted or it becomes apparent to the Borrower that it is likely to be instituted, unless it is clear that the legal or administrative action cannot be considered material in the context of any Finance Document.

**10.12 No amendment to a Transaction Document.**

The Borrower will not agree to any amendment or supplement to, or waive or fail to enforce, any Transaction Document to which it is a party or any of its provisions.

**10.13 Place of business.**

The Borrower will not establish, or do anything as a result of which it would be deemed to have, a place of business in the United Kingdom of the United States of America.

**10.14 Confirmation of no default.**

The Borrower will, within 2 Business Days after service by the Agent of a written request, serve on the Agent a notice which is signed by the authorised representative or a director of the Borrower and which:

- (a) states that no Event of Default or Potential Event of Default has occurred; or
- (b) states that no Event of Default or Potential Event of Default has occurred, except for a specified event or matter, of which all material details are given.

The Agent may serve requests under this Clause 10.14 from time to time but only if asked to do so by a Lender or Lenders having Contributions exceeding 10 per cent. of the aggregate of the Facilities or (if none of the Advances has been borrowed) Commitments exceeding 10 per cent. of the Total Commitments; and this Clause 10.14 does not affect the Borrower's obligations under Clause 10.15.

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**10.15 Notification of default.**

The Borrower will notify the Agent as soon as the Borrower becomes aware of:

- (a) the occurrence of an Event of Default or a Potential Event of Default; or
- (b) any matter which indicates that an Event of Default or a Potential Event of Default may have occurred; or
- (c) the occurrence of an event of default or a potential event of default (as defined therein) in relation to any of the Associated Loan Agreements, and will keep the Agent fully up-to-date with all developments.

**10.16 Provision of copies and translation of documents.**

The Borrower will supply the Agent with a sufficient number of copies of the documents referred to above to provide 1 copy for each Creditor Party; and if the Agent so requires in respect of any of those documents, the Borrower will provide a certified English translation prepared by a translator approved by the Agent.

**10.17 “Know your customer” checks.**

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of the Borrower or any Security Party or either Approved Manager after the date of this Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (c), any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or the Lender concerned supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or the Lender concerned (for itself or, in the case of the event described in paragraph (c), on behalf of any prospective new Lender) in order for the Agent, the Lender concerned or, in the case of the event described in paragraph (c), any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**10.18 Ownership**

The Borrower shall procure that there is no change in the legal ownership of its shares throughout the Security Period.

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**10.19 No publicity**

The Borrower shall and shall procure that any parent company of the Borrower shall only issue any press releases or other publicity in relation to the Acquisition or any of the matters connected with this Agreement in accordance with the provisions of Clause 12.2 of the Master Agreement.

**10.20 Terms of Ship sale agreements.**

The Borrower shall and shall procure that each Owner shall only enter into any agreement for the sale of a Ship or the shares in the relevant Owner to sell any of the Ships with the prior written consent of the Agent.

**10.21 Account Security.**

Immediately following the repayment of the Senior Loans and of all amounts outstanding under the Senior Loan Agreements and the release of the Senior Finance Documents, the Borrower shall, and shall procure that each Owner shall, enter into a second priority Account Pledge in favour of the Security Trustee in respect of any Accounts held by the Borrower or that Owner (as the case may be) and such pledges shall thereafter constitute an "Account Pledge" for the purpose of this Agreement.

**10.22 Assignment of Earnings.**

Immediately following the repayment of the Senior Loans and of all amounts outstanding under the Senior Loan Agreements and the release of the Senior Finance Documents, the Borrower shall procure that each Owner shall enter into a second priority Earnings Assignment in favour of the Security Trustee in respect of the Earnings relating to its Ship and such assignment shall thereafter constitute an "Earnings Assignment" for the purpose of this Agreement.

**11 CORPORATE UNDERTAKINGS**

**11.1 General.**

The Borrower also undertakes with each Creditor Party to comply with the following provisions of this Clause 11 at all times during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit in writing.

**11.2 Maintenance of status.**

The Borrower will maintain its separate corporate existence and remain in good standing under the laws of the Republic of the Marshall Islands and shall not change its registered name.

**11.3 Negative undertakings.**

The Borrower will not:

- (a) change the nature of its business; or

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- (b) pay any dividend or make any other form of distribution or effect any form of redemption, purchase or return of share capital save for Navios Preferred Returns or any repayment of principal or interest under the Revolving Facility as is permitted pursuant to the Free Cash Flow calculations and save as otherwise permitted by this Agreement. For the avoidance of doubt any amount paid to the Borrower following a sale or Total Loss of a Ship or the sale or transfer of all shares of its Owner shall, subject to compliance with the terms of Clause 7.7, be freely available for distribution by the Borrower; or
  - (c) provide any form of credit or financial assistance to:
    - (i) a person who is directly or indirectly interested in the Borrower's share or loan capital; or
    - (ii) any company in or with which such a person is directly or indirectly interested or connected (save for pursuant to the Term Facility and the Revolving Facility),or enter into any transaction with or involving such a person or company on terms which are, in any respect, less favourable to the Borrower than those which it could obtain in a bargain made at arms' length;
  - (d) open or maintain any account with any bank or financial institution except accounts (other than any accounts opened for the purposes of the Associated Loan Agreements) for the purposes of the Finance Documents;
  - (e) issue, allot or grant any person a right to any shares in its capital or repurchase or reduce its issued share capital;
  - (f) acquire any shares or other securities other than shares in each Owner and US or UK Treasury bills and certificates of deposit issued by major North American or European banks, or enter into any transaction in a derivative; or
  - (g) enter into any form of amalgamation, merger or de-merger or any form of reconstruction or reorganisation.

#### **11.4 Undertakings relating to the Owners**

The Borrower undertakes to procure that:

- (a) the Owners shall not conduct any other business than the owning and operation of the Ships;
- (b) the Owners, the Approved Managers, the Shareholder and the Borrower shall allocate and utilize any charter opportunities, operating expenses and other overhead costs, between the Owners and their Ships on the same basis and at the same or better rates as are allocated to or utilized by other affiliates of the Creditor Parties and their respective vessels;

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- (c) the Owners shall not make distributions of Free Cash Flow save as permitted pursuant to this Agreement;
  - (d) save as required pursuant to the Senior Loan Agreements, the Owners shall not put in place any mechanism to prevent or restrict the flow of Free Cash Flow up to the Borrower pursuant to Clause 17; and
  - (e) no Owner shall voluntarily dispose of a Ship except in accordance with the terms of this Agreement.

## **12 INSURANCE**

### **12.1 General.**

The Borrower also undertakes with each Creditor Party to procure that each Owner shall comply with the following provisions of this Clause 12 as from the Delivery Date in respect of its Ship and at all times thereafter during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit.

### **12.2 Maintenance of obligatory insurances.**

The Borrower shall procure that each Owner keeps the Ship owned by it insured at the expense of the Owner against:

- (a) fire and usual marine risks (including hull and machinery and excess risks);
- (b) war risks (including, without limitation, protection and indemnity war risks with a separate limit not less than hull value); and
- (c) protection and indemnity risks (including, without limitation, oil pollution risks and protection and indemnity war risks in excess of the amount for war risks (hull) to the highest amount available in the international insurance market).

### **12.3 Terms of obligatory insurances.**

The Borrower shall procure that each Owner shall effect such insurances in such amounts in such currency and upon such terms as shall from time to time be approved in writing by the Agent, but in any event as follows:

- (a) in Dollars;
- (b) in the case of fire and usual marine risks and war risks, on an agreed value basis in approved amounts but in any event not less than an amount equal to the higher of (i) an amount which when aggregated with the amount for which the other Mortgaged Ship is insured pursuant to this Clause 12.3 (b) is equal to 120 per cent. of the aggregate of the Facilities and (ii) an amount which is 120 per cent of the Market Value of the Ship owned by it;
- (c) in the case of oil pollution liability risks, for an amount equal to the highest level of cover from time to time available under basic protection and indemnity club entry (with the international group of protection and indemnity clubs) and the international marine insurance market (currently \$1,000,000,000) for any one accident or occurrence;

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- (d) in relation to protection and indemnity risks in respect of the full value and tonnage of the Ship owned by it;
  - (e) in relation to war risks insurance, extended to cover piracy and terrorism where excluded under the fire and usual marine risks insurance;
  - (f) other such risks of whatsoever nature and howsoever arising in respect of such insurance would be maintained by a prudent owner of the Ship;
  - (g) on approved terms and conditions; and
  - (h) through approved brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations which are members of the International Group of Protection and Indemnity Associations, and have a Standard & Poor's rating of at least BBB or a comparable rating by any other rating agency acceptable to the Agent (acting with the authorisation of the Majority Lenders).

#### **12.4 Further protections for the Creditor Parties.**

In addition to the terms set out in Clause 12.3, the Borrower shall, or shall procure that each Owner shall, procure that:

- (a) it and any and all third parties who are named assured or co-assured under any obligatory insurance shall assign their interest in any and all obligatory insurances and other Insurances if so required by the Agent;
- (b) whenever the Security Trustee requires, the obligatory insurances name (or be amended to name) the Security Trustee as additional named assured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Trustee, and without the Security Trustee thereby being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (c) the interest of the Security Trustee as assignee and as loss payee shall be duly endorsed on all slips, cover notes, policies, certificates of entry or other instruments of insurance in respect of the obligatory insurances;
- (d) the obligatory insurances shall name the Security Trustee as sole loss payee with such directions for payment as the Security Trustee may specify;
- (e) the obligatory insurances shall provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Trustee shall be made without set-off, counterclaim or deductions or condition whatsoever;

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- (f) the obligatory insurances shall provide that the insurers shall waive, to the fullest extent permitted by English law, their entitlement (if any) (whether by statute, common law, equity, or otherwise) to be subrogated to the rights and remedies of the Security Trustee in respect of any rights or interests (secured or not) held by or available to the Security Trustee in respect of the Secured Liabilities, until the Secured Liabilities shall have been fully repaid and discharged, except that the insurers shall not be restricted by the terms of this paragraph (f) from making personal claims against persons (other than the Borrower or any Creditor Party) in circumstances where the insurers have fully discharged their liabilities and obligations under the relevant obligatory insurances;
  - (g) the obligatory insurances shall provide that the obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Trustee or any other Creditor Party;
  - (h) the obligatory insurances shall provide that the Security Trustee may make proof of loss if the Borrower fails to do so; and
  - (i) the obligatory insurances shall provide that if any obligatory insurance is cancelled, or if any substantial change is made in the coverage which adversely affects the interest of the Security Trustee, or if any obligatory insurance is allowed to lapse for non payment of premium, such cancellation, charge or lapse shall not be effective with respect to the Security Trustee for 14 days (or 7 days in the case of war risks) after receipt by the Security Trustee of prior written notice from the insurers of such cancellation, change or lapse.

#### **12.5 Renewal of obligatory insurances.**

The Borrower shall or shall procure that each Owner shall:

- (a) at least 14 days before the expiry of any obligatory insurance effected by it:
  - (i) notify the Security Trustee of the brokers, underwriters, insurance companies and any protection and indemnity or war risks association through or with whom the Borrower proposes to renew that obligatory insurance and of the proposed terms of renewal; and
  - (ii) seek the Security Trustee's approval to the matters referred to in paragraph (i);
- (b) at least 7 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Security Trustee's approval pursuant to paragraph (a); and
- (c) procure that the approved brokers and/or the war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Security Trustee in writing of the terms and conditions of the renewal.

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**12.6 Copies of policies; letters of undertaking.**

The Borrower shall or shall procure that each Owner shall ensure that all approved brokers provide the Security Trustee with pro forma copies of all policies relating to the obligatory insurances which they are to effect or renew and of a letter or letters of undertaking in a form required by the Security Trustee and including undertakings by the approved brokers that:

- (a) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 12.4;
- (b) they will hold such policies, and the benefit of such insurances, to the order of the Security Trustee in accordance with the said loss payable clause;
- (c) they will advise the Security Trustee immediately of any material change to the terms of the obligatory insurances;
- (d) they will notify the Security Trustee, not less than 14 days before the expiry of the obligatory insurances, in the event of their not having received notice of renewal instructions from the Owner or its agents and, in the event of their receiving instructions to renew, they will promptly notify the Security Trustee of the terms of the instructions; and
- (e) they will not set off against any sum recoverable in respect of a claim relating to the Ship owned by the Owner under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of that Ship forthwith upon being so requested by the Security Trustee.

**12.7 Copies of certificates of entry; letters of undertaking.**

The Borrower shall or shall procure that each Owner shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provides the Security Trustee with:

- (a) a certified copy of the certificate of entry for that Ship;
- (b) original(s) of a letter or letters of undertaking in such form as may be required by the Security Trustee;
- (c) where required to be issued under the terms of insurance/indemnity provided by the Owner's protection and indemnity association, a certified copy of each United States of America voyage quarterly declaration (or other similar document or documents) made by the Owner in accordance with the requirements of such protections and indemnity association; and

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- (d) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to that Ship (if applicable).

**12.8 Deposit of original policies.**

The Borrower shall ensure that all policies relating to obligatory insurances effected by each of the Owners it are deposited with the approved brokers through which the insurances are effected or renewed.

**12.9 Payment of premiums.**

The Borrower shall or shall procure that each Owner shall punctually pay all premiums or other sums payable in respect of the obligatory insurances effected by it and produce all relevant receipts when so required by the Security Trustee.

**12.10 Guarantees.**

The Borrower shall or shall procure that each Owner shall ensure that any guarantees required by a protection and indemnity or war risks association are promptly issued and remain in full force and effect.

**12.11 Restrictions on employment.**

The Borrower shall procure that no Owner shall employ its Ship, nor shall permit it to be employed, outside the cover provided by any obligatory insurances.

**12.12 Compliance with terms of insurances.**

The Borrower shall procure that each Owner shall not do or omit to do (or permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part; and, in particular:

- (a) each Owner shall take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Security Trustee has not given its prior approval;
- (b) no Owner shall make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
- (c) each Owner shall make (and promptly supply copies to the Agent (upon its request)) of all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation) and, if applicable, shall procure that the Approved Manager complies with this requirement; and

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- (d) no Owner shall employ the Ship owned by it, nor allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.

**12.13 Alteration to terms of insurances.**

The Borrower shall not and shall procure that no Owner shall either make or agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance.

**12.14 Settlement of claims.**

The Borrower shall procure that no Owner shall settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty, and shall do all things necessary and provide all documents, evidence and information to enable the Security Trustee to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

**12.15 Provision of copies of communications.**

The Borrower shall or shall procure that each Owner shall provide the Security Trustee, at the time of each such communication (other than (unless specifically required by the Security Trustee) communications of an entirely routine nature), copies of all written communications between the Owner and:

- (a) the approved brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters, which relate directly or indirectly to:
  - (i) the Owner's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls;
  - (ii) any credit arrangements made between the Owner and any of the persons referred to in paragraphs (a) or (b) relating wholly or partly to the effecting or maintenance of the obligatory insurances; and
  - (iii) a claim under any obligatory insurances of its Ship.

**12.16 Provision of information and further undertakings.**

In addition, the Borrower shall promptly provide or shall procure that the relevant Owner shall promptly provide the Security Trustee (or any persons which it may designate) with any information which the Security Trustee (or any such designated person) requests for the purpose of:

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- (a) obtaining or preparing any report from an independent marine insurance broker as to the adequacy of the obligatory insurances effected or proposed to be effected; and/or
  - (b) effecting, maintaining or renewing any such insurances as are referred to in Clause 12.17 or dealing with or considering any matters relating to any such insurances,

and the Borrower shall or shall procure the Owner shall:

- (c) do all things necessary and provide the Agent and the Security Trustee with all documents and information to enable the Security Trustee to collect or recover any moneys in respect of the Insurances which are payable to the Security Trustee pursuant to the Finance Documents; and
- (d) promptly provide the Agent with full information regarding any Major Casualty or in consequence whereof that Ship has become or may become a Total Loss and agree to any settlement of such casualty or other accident or damage to that Ship only with the Agent's prior written consent,

and the Borrower shall and shall procure that the Owner shall, forthwith upon demand, indemnify the Security Trustee in respect of all fees and other expenses incurred by or for the account of the Security Trustee in connection with any such report as is referred to in paragraph (a).

#### **12.17 Mortgagee's interest and additional perils insurances.**

The Security Trustee shall be entitled from time to time to effect, maintain and renew all or any of the following insurances in such amounts, on such terms, through such insurers and generally in such manner as the Majority Lenders may from time to time consider appropriate:

- (a) a mortgagee's interest insurance providing for the indemnification of the Creditor Parties for any losses under or in connection with any Finance Document (in an amount of up to 120 per cent. of the aggregate of the Facilities) which directly or indirectly result from loss of or damage to a Ship or a liability of that Ship or of the Owner which is the owner thereof, being a loss or damage which is prima facie covered by an obligatory insurance but in respect of which there is a non-payment (or reduced payment) by the underwriters by reason of, or on the basis of an allegation concerning:
  - (i) any act or omission on the part of the Borrower, each Owner, of any operator, charterer, manager or sub-manager of that Ship or of any officer, employee or agent of such Owner or of any such person, including any breach of warranty or condition or any non-disclosure relating to such obligatory insurance;
  - (ii) any act or omission, whether deliberate, negligent or accidental, or any knowledge or privity of the Owner, any other person referred to in paragraph (i) above, or of any officer, employee or agent of the Owner or of such a person, including the casting away or damaging of that Ship and/or that Ship being unseaworthy; and/or

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(iii) any other matter capable of being insured against under a mortgagee's interest marine insurance policy whether or not similar to the foregoing; and

(b) a mortgagee's interest additional perils insurance providing for the indemnification of the Creditor Parties against, among other things, any possible losses or other consequences of any Environmental Claim, including the risk of expropriation, arrest or any form of detention of that Ship, the imposition of any Security Interest over that Ship and/or any other matter capable of being insured against under a mortgagee's interest additional perils policy whether or not similar to the foregoing, and in an amount of up to 110 per cent. of the aggregate of the Facilities,

and the Borrower shall upon demand fully indemnify the Security Trustee in respect of all premiums and other expenses which are incurred in connection with or with a view to effecting, maintaining or renewing any such insurance or dealing with, or considering, any matter arising out of any such insurance.

**12.18 Review of insurance requirements.**

The Security Trustee shall be entitled to review the requirements of this Clause 12 from time to time in order to take account of any changes in circumstances after the date of this Agreement which are, in the opinion of the Agent (acting on the instructions of the Majority Lenders), significant and capable of affecting an Owner, any of the Ships and their Insurances (including, without limitation, changes in the availability or the cost of insurance coverage or the risks to which each Owner may be subject) and the Borrower shall or shall procure that the Owners shall upon demand fully indemnify the Agent in respect of all fees and other expenses incurred by or for the account of the Agent in appointing an independent marine insurance broker or adviser to conduct such review.

**12.19 Modification of insurance requirements.**

The Security Trustee shall notify the Borrower or the relevant Owner of any proposed modification under Clause 12.18 to the requirements of this Clause 12 which the Security Trustee reasonably consider appropriate in the circumstances, and such modification shall take effect on and from the date it is notified in writing to the Borrower as an amendment to this Clause 12 and shall bind the Borrower or the relevant Owner accordingly.

**12.20 Compliance with mortgagee's instructions.**

The Security Trustee shall be entitled (without prejudice to or limitation of any other rights which it may have or acquire under any Finance Document) to require a Ship to remain at any safe port or to proceed to and remain at any safe port designated by the Security Trustee until the Owner owning that Ship implements any amendments to the terms of the obligatory insurances and any operational changes required as a result of a notice served under Clause 12.19.

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## **13 SHIP COVENANTS**

### **13.1 General.**

The Borrower also undertakes with each Creditor Party to procure that each Owner will comply with the following provisions of this Clause 13 as from the Delivery Date in respect of its Ship and at all times thereafter during the Security Period except as the Agent, with the authorisation of the Majority Lenders, may otherwise reasonably permit in writing.

### **13.2 Ship's name and registration.**

The Borrower shall procure that each Owner shall keep the Ship owned by it registered in its name under an Approved Flag; shall not do, omit to do or allow to be done anything as a result of which such registration might be cancelled or imperilled; and shall not change the name or port of registry of that Ship.

### **13.3 Repair and classification.**

The Borrower shall procure that each Owner shall, and shall procure that the Approved Manager shall, keep the Ship owned by it in a good and safe condition and state of repair, sea and cargo worthy in all respects:

- (a) consistent with first-class ship ownership and management practice;
- (b) so as to maintain the highest class free of overdue recommendations and conditions, with a classification society which is a member of IACS (other than the China Classification Society and the Russian Maritime Registry of Shipping) and acceptable to the Agent; and
- (c) so as to comply with all laws and regulations applicable to vessels registered at ports in the Approved Flag State or to vessels trading to any jurisdiction to which that Ship may trade from time to time, including but not limited to the ISM Code and the ISPS Code,

and the Agent shall be given power of attorney in the form attached as Schedule 5 to act on behalf of the Owner in order to, inspect the class records and any files held by the classification society and to require the classification society to provide the Lender or any of its nominees with any information, document or file, it might request and the classification society shall be fully entitled to rely hereon without any further inquiry.

### **13.4 Classification society undertaking.**

The Borrower shall procure that each Owner shall instruct the classification society referred to in Clause 13.3 (and procure that the classification society undertakes with the Security Trustee) in relation to its Ship:

- (a) to send to the Security Trustee, following receipt of a written request from the Security Trustee, certified true copies of all original class records and any other related records held by the classification society in relation to the Ship owned by that Owner;

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- (b) to allow the Security Trustee (or its agents), at any time and from time to time, to inspect the original class and related records of that Ship at the offices of the classification society and to take copies of them;
  - (c) to notify the Security Trustee immediately in writing if the classification society:
    - (i) receives notification from the Owner or any person that that Ship's classification society is to be changed; or
    - (ii) becomes aware of any facts or matters which may result in or have resulted in a change, suspension, discontinuance, withdrawal or expiry of that Ship's class under the rules or terms and conditions of the Owner's or that Ship's membership of the classification society;
  - (d) following receipt of a written request from the Security Trustee:
    - (i) to confirm that the Owner is not in default of any of its contractual obligations or liabilities to the classification society and, without limiting the foregoing, that it has paid in full all fees or other charges due and payable to the classification society; or
    - (ii) if the Owner is in default of any of its contractual obligations or liabilities to the classification society, to specify to the Security Trustee in reasonable detail the facts and circumstances of such default, the consequences thereof, and any remedy period agreed or allowed by the classification society.

### **13.5 Modification.**

The Borrower shall procure that no Owner shall make any modification or repairs to, or replacement of, its Ship or equipment installed on it which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.

### **13.6 Removal of parts.**

The Borrower shall procure that no Owner shall remove any material part of its Ship, or any item of equipment installed on, that Ship unless the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed, is free from any Security Interest or any right in favour of any person other than the Security Trustee and becomes on installation on that Ship the property of the Owner and subject to the security constituted by the relevant Mortgage (if applicable) **Provided that** an Owner may install equipment owned by a third party if the equipment can be removed without any risk of damage to the Ship owned by it.

### **13.7 Surveys.**

The Borrower shall procure that each Owner shall submit the Ship owned by it regularly to all periodical or other surveys which may be required for classification purposes and, if so required by the Security Trustee provide the Security Trustee, with copies of all survey reports.

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**13.8 Inspection.**

The Borrower shall procure that each Owner shall permit the Security Trustee (by surveyors or other persons appointed by it for that purpose) to board the Ship owned by it at all reasonable times to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections at the Borrower's expense and if the inspector or surveyor appointed by the Security Trustee under this Clause is of the opinion that there are any technical, commercial or operational actions being undertaken or omitted to be undertaken by the Owner which is the owner of that Ship or the Approved Manager which affect the operation or value of that Ship, the Borrower shall forthwith (at its expense) on the Security Trustee's demand remedy or procure that the relevant Owner shall remedy such action or inaction.

**13.9 Prevention of and release from arrest.**

The Borrower shall procure that each Owner shall promptly discharge:

- (a) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against the Ship owned by it, the Earnings or the Insurances;
- (b) all taxes, dues and other amounts charged in respect of that Ship, the Earnings or the Insurances; and
- (c) all other outgoings whatsoever in respect of that Ship, the Earnings or the Insurances,

and, forthwith upon receiving notice of the arrest of that Ship, or of its detention in exercise or purported exercise of any lien or claim, the Owner shall procure its release by providing bail or otherwise as the circumstances may require.

**13.10 Compliance with laws etc.**

The Borrower shall and shall procure that each Owner shall:

- (a) comply, or procure compliance with the ISM Code, the ISPS Code, all Environmental Laws and all other laws or regulations relating to the Ship owned by it, its ownership, operation and management or to the business of the Owner;
- (b) not employ the Ship owned by it nor allow its employment in any manner contrary to any law or regulation in any relevant jurisdiction including but not limited to the ISM Code and the ISPS Code; and
- (c) in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit that Ship to enter or trade to any zone which is declared a war zone by any government or by the Ship's war risks insurers unless the prior written consent of the Security Trustee has been given and the Borrower has (at its expense) effected any special, additional or modified insurance cover which the Security Trustee may require.

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**13.11 Provision of information.**

The Borrower shall procure that each Owner shall on a quarterly basis and as such other times as the Agent may request, promptly provide the Security Trustee with any information which it requests regarding:

- (a) the Ship owned by it, its employment, position and engagements;
  - (b) the Earnings and payments and amounts due to the master and crew of that Ship;
  - (c) any expenses incurred, or likely to be incurred, in connection with the operation, maintenance or repair of that Ship and any payments made in respect of that Ship;
  - (d) any towages and salvages; and
  - (e) its compliance, the Approved Manager's compliance and the compliance of that Ship with the ISM Code and the ISPS Code,
- and, upon the Security Trustee's request, provide copies of any current charter relating to that Ship, of any current charter guarantee and copies of the Owner's or the Approved Manager's Document of Compliance.

**13.12 Notification of certain events.**

The Borrower shall procure that each Owner shall immediately notify the Security Trustee by letter, of:

- (a) any casualty which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which the Ship owned by it has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requirement, condition or recommendation made by any insurer or classification society or by any competent authority which is not immediately complied with;
- (d) any arrest or detention of that Ship, any exercise or purported exercise of any lien on that Ship or its Earnings or any requisition of that Ship for hire;
- (e) any intended dry docking of that Ship;
- (f) any Environmental Claim made against the Owner or in connection with that Ship, or any Environmental Incident;
- (g) any claim for breach of the ISM Code or the ISPS Code being made against the Owner, the Approved Manager or otherwise in connection with that Ship; or
- (h) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with,

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and the Owner shall keep the Security Trustee advised in writing on a regular basis and in such detail as the Security Trustee shall require of the Owner's, the Approved Manager's or any other person's response to any of those events or matters.

**13.13 Restrictions on chartering, appointment of managers etc.**

The Borrower shall procure that no Owner shall, in relation to the Ship owned by it:

- (a) enter into any charter in relation to that Ship under which more than 2 months' hire (or the equivalent) is payable in advance;
- (b) charter that Ship otherwise than on bona fide arm's length terms at the time when that Ship is fixed;
- (c) appoint a manager of that Ship other than the Approved Manager or agree to any alteration to the terms of the Approved Manager's appointment;
- (d) de-activate or lay up that Ship; or
- (e) put that Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed \$1,000,000 (or the equivalent in any other currency) unless that person has first given to the Security Trustee and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or its Earnings for the cost of such work or for any other reason.

**13.14 Notice of Mortgage.**

The Borrower shall procure that each Owner shall keep the Mortgage relative to its Ship registered against that Ship as a valid fourth preferred or, as the case may be, fourth priority mortgage, carry on board that Ship a certified copy of that Mortgage and place and maintain in a conspicuous place in the navigation room and the Master's cabin of that Ship a framed printed notice stating that that Ship is mortgaged with fourth priority by the Owner to the Security Trustee.

**13.15 Sharing of Earnings.**

The Borrower shall procure that no Owner shall, save as permitted under the terms of this Agreement or the Associated Loan Agreements:

- (a) enter into any agreement or arrangement for the sharing of any Earnings save for any pool agreements or arrangements under normal commercial terms; or
- (b) enter into any agreement or arrangement for the postponement of any date on which any Earnings are due; the reduction of the amount of any Earnings or otherwise for the release or adverse alteration of any right of the Owner to any Earnings.

**13.16 Nuclear waste.**

The Borrower shall procure that no Owner shall permit its Ship to carry any nuclear waste or other radioactive material.

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### **13.17 Demise charters**

The Borrower shall and shall procure that the relevant Owner shall, promptly upon the entering into of any demise charter for any period in respect of a Ship, notify the Agent and provide copies of any charter relating to such Ship and, if applicable, any charter guarantee and the Borrower shall and shall procure that the relevant Owner shall procure that:

- (a) following the repayment of the Senior Loans and of all amounts outstanding under the Senior Loan Agreements and the release of the Senior Finance Documents, the relevant Owner shall execute in favour of the Security Trustee a second priority specific assignment of all its rights, title and interest in and to such charter in form and substance satisfactory to the Security Trustee; and
- (b) the charterer agrees to acknowledge to the Security Trustee the specific assignment provided pursuant to paragraph (a) above of such charter and provides to the Security Trustee a letter of undertaking of such charterer pursuant to which the charterer subordinates all its claims against the relevant Owner and the Ship to the claims of the Lenders under or in connection with the Finance Documents in form and substance satisfactory to the Lenders and in which the charterer further undertakes to the Security Trustee:
  - (i) to comply with all of the relevant Owner's undertakings in regard to the employment, insurances, operation, repairs and maintenance of the Ship contained in Clauses 12 and 13 of this Agreement as incorporated in the relevant Mortgage; and
  - (ii) to provide an assignment of its interest in the insurances of the relevant Ship in form and substance satisfactory to the Security Trustee.

## **14 VALUATIONS**

### **14.1 Valuation of Ships.**

The Market Value of a Mortgaged Ship at any date is that shown by taking a valuation issued by an Approved Broker appointed by the Agent at the cost of the Borrower or, if requested in writing by the Borrower, by the average of two valuations issued by two different Approved Brokers each appointed by the Agent, one to be selected by the Agent and the other to be selected by the Borrower both at the cost of the Borrower, provided however that if such valuations differ more than 10 per cent a third Approved Broker shall be appointed by such Approved Brokers at the cost of the Borrower (whose valuation shall prevail), each valuation to be prepared:

- (a) as at a date not more than 14 days previously;
- (b) with or without physical inspection of that Ship (as the Agent may require); and
- (c) on the basis of a sale for prompt delivery for cash on normal arm's length commercial terms as between a willing seller and a willing buyer, free of any existing charter or other contract of employment.

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**14.2 Valuations binding.**

Any valuation under Clause 14.1 shall be binding and conclusive as regards the Borrower.

**14.3 Provision of information.**

The Borrower shall promptly provide the Agent and any Approved Broker or expert acting under Clause 14.1 with any information which the Agent or that Approved Broker or expert may request for the purposes of the valuation; and, if the Borrower fails to provide the information by the date specified in the request, the valuation may be made on any basis and assumptions which that Approved Broker or the Majority Lenders (or the expert appointed by them) consider prudent.

**14.4 Payment of valuation expenses.**

Without prejudice to the generality of the Borrower's obligations under Clauses 19.1, 19.3 and 20.2, the Borrower shall, on demand, pay the Agent the amount of the fees and expenses of any Approved Broker or expert instructed by the Agent under this Clause and all legal and other expenses incurred by any Creditor Party in connection with any matter arising out of this Clause.

**15 PAYMENTS AND CALCULATIONS****15.1 Currency and method of payments.**

All payments to be made by the Lenders or by the Borrower under a Finance Document shall be made to the Agent or to the Security Trustee, in the case of an amount payable to it:

- (a) by not later than 11.00 a.m. (New York City time) on the due date;
- (b) in same day Dollar funds settled through the New York Clearing House Interbank Payments System (or in such other Dollar funds and/or settled in such other manner as the Agent shall specify as being customary at the time for the settlement of international transactions of the type contemplated by this Agreement);
- (c) in the case of an amount payable by a Lender to the Agent or by the Borrower to the Agent or any Lender, to the account of the Agent at Deutsche Bank AG, SWIFT Code DEUTDEHHXXX, Account No. 131039000, IBAN DE73200700000131039000 in favour of Navios Partners Europe Finance Inc., Reference "Navios Europe" or to such other account with such other bank as the Agent may from time to time notify to the Borrower; and
- (d) in the case of an amount payable to the Security Trustee, to such account as it may from time to time notify to the Borrower and the other Creditor Parties.

**15.2 Payment on non-Business Day.**

If any payment by the Borrower under a Finance Document would otherwise fall due on a day which is not a Business Day:

- (a) the due date shall be extended to the next succeeding Business Day; or

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- (b) if the next succeeding Business Day falls in the next calendar month, the due date shall be brought forward to the immediately preceding Business Day,

and interest shall be payable during any extension under paragraph (a) at the rate payable on the original due date.

**15.3 Basis for calculation of periodic payments.**

All interest and fees and any other payments under any Finance Document which are of an annual or periodic nature shall accrue from day to day and shall be calculated on the basis of the actual number of days elapsed and a 360 day year.

**15.4 Distribution of payments to Creditor Parties.**

Subject to Clauses 15.5, 15.6 and 15.7:

- (a) any amount received by the Agent under a Finance Document for distribution or remittance to a Lender or the Security Trustee shall be made available by the Agent to that Lender or, as the case may be, the Security Trustee by payment, with funds having the same value as the funds received, to such account as the Lender or the Security Trustee may have notified to the Agent not less than 5 Business Days previously; and
- (b) amounts to be applied in satisfying amounts of a particular category which are due to the Lenders generally shall be distributed by the Agent to each Lender pro rata to the amount in that category which is due to it.

**15.5 Permitted deductions by Agent.**

Notwithstanding any other provision of this Agreement or any other Finance Document, the Agent may, before making an amount available to a Lender, deduct and withhold from that amount any sum which is then due and payable to the Agent from that Lender under any Finance Document or any sum which the Agent is then entitled under any Finance Document to require that Lender to pay on demand.

**15.6 Agent only obliged to pay when monies received.**

Notwithstanding any other provision of this Agreement or any other Finance Document, the Agent shall not be obliged to make available to the Borrower or any Lender any sum which the Agent is expecting to receive for remittance or distribution to the Borrower or that Lender until the Agent has satisfied itself that it has received that sum.

**15.7 Refund to Agent of monies not received.**

If and to the extent that the Agent makes available a sum to the Borrower or a Lender, without first having received that sum, the Borrower or (as the case may be) the Lender concerned shall, on demand:

- (a) refund the sum in full to the Agent; and

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- (b) pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding or other loss, liability or expense incurred by the Agent as a result of making the sum available before receiving it.

**15.8 Agent may assume receipt.**

Clause 15.7 shall not affect any claim which the Agent has under the law of restitution, and applies irrespective of whether the Agent had any form of notice that it had not received the sum which it made available.

**15.9 Creditor Party accounts.**

Each Creditor Party shall maintain accounts showing the amounts owing to it by the Borrower and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrower and any Security Party.

**15.10 Agent's memorandum account.**

The Agent shall maintain a memorandum account showing the amounts advanced by the Lenders and all other sums owing to the Agent, the Security Trustee and each Lender from the Borrower and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrower and any Security Party.

**15.11 Accounts prima facie evidence.**

If any accounts maintained under Clauses 15.9 and 15.10 show an amount to be owing by the Borrower or a Security Party to a Creditor Party, those accounts shall be prima facie evidence that that amount is owing to that Creditor Party.

**16 APPLICATION OF RECEIPTS**

**16.1 Normal order of application.**

Any sums which are received or recovered by any Creditor Party under or by virtue of any Finance Document shall, except as any Finance Document may otherwise provide, be paid to the Agent and, subject to the Agent being permitted pursuant to the terms of the Intercreditor Deeds to apply such sums against the Secured Liabilities, shall be applied by the Agent:

- (a) FIRST: in or towards satisfaction of any amounts then due and payable under the Finance Documents in the following order and proportions:
- (i) firstly, in or towards satisfaction pro rata of all amounts then due and payable to the Creditor Parties under the Finance Documents other than those amounts referred to at paragraphs (ii) and (iii) (including, but without limitation, all amounts payable by the Borrower under Clauses 19, 20 and 21 of this Agreement or by the Borrower or any Security Party under any corresponding or similar provision in any other Finance Document);
  - (ii) secondly, in or towards satisfaction pro rata of any and all amounts of interest or default interest payable to the Creditor Parties under the Finance Documents; and

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(iii) thirdly, in or towards satisfaction of the Facilities; and

(b) SECONDLY: any surplus shall be paid to the Borrower or to any other person appearing to be entitled to it.

## **16.2 Variation of order of application.**

The Agent may, with the authorisation of the Majority Lenders, by notice to the Borrower, the Security Parties and the other Creditor Parties provide for a different manner of application from that set out in Clause 16.1 either as regards a specified sum or sums or as regards sums in a specified category or categories.

## **16.3 Notice of variation of order of application.**

The Agent may give notices under Clause 16.2 from time to time; and such a notice may be stated to apply not only to sums which may be received or recovered in the future, but also to any sum which has been received or recovered on or after the third Business Day before the date on which the notice is served.

## **17 PAYMENT OF EARNINGS**

The Borrower undertakes with each Creditor Party to ensure that, throughout the Security Period (and subject only to the provisions of the Earnings Assignment or any Senior Finance Documents or any Junior Finance Documents to which it is a party) all Earnings of each Ship are paid by each Owner to the relevant Owner's Earnings Account for that Ship and that subject to the relevant Senior Lender's minimum balance requirements under clause 14.6 of the relevant Senior Loan Agreement, all the Free Cash Flow from those Owner's Earnings Accounts shall be paid by each Owner to the Borrower into the Borrower's Earnings Account held in the name of the Borrower on a quarterly basis and no later than the Repayment Date falling at the end of such financial quarter.

## **18 EVENTS OF DEFAULT**

### **18.1 Events of Default.**

An Event of Default occurs if:

- (a) the Borrower or any Security Party fails to pay when due (unless received by the Agent within two (2) Business Days of such due date and the delay in receipt is caused by administrative or other delays or errors in the banking system) or (if so payable) on demand, within two (2) Business Days of the due date of such payment, any sum payable under a Finance Document or under any document relating to a Finance Document; or
- (b) any breach occurs of Clause 8.2, 10.2, 10.3, 10.4, 10.6(e), 10.17, 10.20, 10.21, 10.22, 11.2, 11.3, 11.4, 12.2 or 17; or
- (c) any breach by the Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a) or (b)) which, in the opinion of the Majority Lenders, is capable of remedy, and such default continues unremedied 15 days after written notice from the Agent requesting action to remedy the same (subject to any other applicable grace period specified in a Finance Document); or

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- (d) any representation, warranty or statement made by, or by an officer of, the Borrower or a Security Party in a Finance Document or in a Drawdown Notice or any other notice or document relating to a Finance Document is untrue or misleading in any material respect when it is made or repeated; or
  - (e) any of the following occurs in relation to any Financial Indebtedness of a Relevant Person in an amount exceeding (1) singly, five hundred thousand Dollars (\$500,000) or (2) in aggregate, One million Dollars (\$1,000,000):
    - (i) any Financial Indebtedness of a Relevant Person is not paid when due or, if so payable, on demand; or
    - (ii) any Financial Indebtedness of a Relevant Person becomes due and payable or capable of being declared due and payable prior to its stated maturity date as a consequence of any event of default unless the Relevant Person is contesting the declaration of an event of default or of the Financial Indebtedness becoming due and payable, in good faith and on substantial grounds, by appropriate proceedings and adequate reserves have been set aside for its payment if such proceedings fail; or
    - (iii) a lease, hire purchase agreement or charter creating any Financial Indebtedness of a Relevant Person is terminated by the lessor or owner or becomes capable of being terminated as a consequence of any termination event; or
    - (iv) any overdraft, loan, note issuance, acceptance credit, letter of credit, guarantee, foreign exchange or other facility, or any swap or other derivative contract or transaction, relating to any Financial Indebtedness of a Relevant Person ceases to be available or becomes capable of being terminated as a result of any event of default, or cash cover is required, or becomes capable of being required, in respect of such a facility as a result of any event of default; or
    - (v) any Security Interest in respect of any of the property which is subject of any of the Finance Documents becomes enforceable; or
  - (f) any of the following occurs in relation to a Relevant Person:
    - (i) a Relevant Person is unable to pay its debts as they fall due; or
    - (ii) any assets of a Relevant Person are subject to any form of execution, attachment, arrest, sequestration or distress or any form of freezing order and such execution, attachment, arrest, sequestration, distress or freezing order is not withdrawn or discharged within thirty (30) days; or

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- (iii) any administrative or other receiver is appointed over any asset of a Relevant Person; or
  - (iv) an administrator is appointed (whether by the court or otherwise) in respect of a Relevant Person; or
  - (v) any formal declaration of bankruptcy or any formal statement to the effect that a Relevant Person is insolvent or likely to become insolvent is made by a Relevant Person or by the directors of a Relevant Person or, in any proceedings, by a lawyer acting for a Relevant Person; or
  - (vi) a provisional liquidator is appointed in respect of a Relevant Person, a winding up order is made in relation to a Relevant Person or a winding up resolution is passed by a Relevant Person; or
  - (vii) a resolution is passed, an administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by (aa) a Relevant Person, (bb) the members or directors of a Relevant Person, (cc) a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person, or (dd) a government minister or public or regulatory authority of a Pertinent Jurisdiction for or with a view to the winding up of that or another Relevant Person or the appointment of a provisional liquidator or administrator in respect of that or another Relevant Person, or that or another Relevant Person ceasing or suspending business operations or payments to creditors, save that this paragraph does not apply to a fully solvent winding up of a Relevant Person other than the Borrower or any Owner which is, or is to be, effected for the purposes of an amalgamation or reconstruction previously approved by the Majority Lenders and effected not later than 3 months after the commencement of the winding up; or
  - (viii) an administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by a creditor of a Relevant Person (other than a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person) for the winding up of a Relevant Person or the appointment of a provisional liquidator or administrator in respect of a Relevant Person in any Pertinent Jurisdiction, unless the proposed winding up, appointment of a provisional liquidator or administrator is being contested in good faith, on substantial grounds and not with a view to some other insolvency law procedure being implemented instead and either (aa) the application or petition is dismissed or withdrawn within fifteen (15) days of being made or presented, or (bb) within fifteen (15) days of the administration notice being given or filed, or the other relevant steps being taken, other action is taken which will ensure that there will be no administration and (in both cases (aa) or (bb)) the Relevant Person will continue to carry on business in the ordinary way and without being the subject of any actual, interim or pending insolvency law procedure; or

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- (ix) a Relevant Person or its directors take any steps (whether by making or presenting an application or petition to a court, or submitting or presenting a document setting out a proposal or proposed terms, or otherwise) with a view to obtaining, in relation to that or another Relevant Person, any form of moratorium, suspension or deferral of payments, reorganisation of debt (or certain debt) or arrangement with all or a substantial proportion (by number or value) of creditors or of any class of them or any such moratorium, suspension or deferral of payments, reorganisation or arrangement is effected by court order, by the filing of documents with a court, by means of a contract or in any other way at all; or
  - (x) in a country other than England, any event occurs, any proceedings are opened or commenced or any step is taken which, in the reasonable opinion of the Majority Lenders is similar to any of the foregoing; or
  - (g) the Borrower or any Security Party ceases or suspends carrying on its business which, in the reasonable opinion of the Majority Lenders, is material in the context of this Agreement; or
  - (h) it becomes unlawful in any Pertinent Jurisdiction or impossible:
    - (i) for the Borrower, any Owner or any other Security Party to discharge any liability under a Finance Document or to comply with any other obligation which the Majority Lenders consider material under a Finance Document; or
    - (ii) for the Agent, the Security Trustee or the Lenders to exercise or enforce any right under, or to enforce any Security Interest created by, a Finance Document; or
  - (i) any official consent necessary to enable any Owner to own, operate or charter its Ship or to enable the Borrower, any Owner or any Security Party to comply with any provision which the Majority Lenders reasonably consider material of a Finance Document or a Transaction Document is not granted, expires without being renewed, is revoked or becomes liable to revocation or any condition of such a consent is not fulfilled unless the Borrower or the relevant Owner contests any denial, expiration or revocation (other than with respect to a Finance Documents) and on the condition that, in the reasonable opinion of the Majority Lenders:
    - (i) there are real prospects of such contest being successfully granted/upheld by the competent authorities; or
    - (ii) such contest being made in good faith; or
  - (j) if without the Majority Lenders' prior consent (not to be unreasonably withheld), a change has occurred after the date of this Agreement in the legal and beneficial ownership of any of the shares in the Borrower or any Owner or in the control of the voting rights attaching to any of those shares; or

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- (k) any provision which the Majority Lenders consider material of a Finance Document proves to have been or becomes invalid or unenforceable, or a Security Interest created by a Finance Document proves to have been or becomes invalid or unenforceable or such a Security Interest proves to have ranked after, or loses its priority to, another Security Interest (save for Permitted Security Interests) or any other third party claim or interest; or
  - (l) the security constituted by a Finance Document becomes invalid or unenforceable or ceases to remain in full force and effect; or
  - (m) any event of default occurs or there is any non-payment under the Senior Loan Agreements or either of them or the Junior Loan Agreement; or
  - (n) any other event occurs or any other circumstances arise or develop including, without limitation:
    - (i) a change in the financial position, state of affairs or prospects of the Borrower, any Owner, any other Security Party or the Group; or
    - (ii) any accident or other event involving any Ship or another vessel owned, chartered or operated by a Relevant Person; or
    - (iii) the threat or commencement of legal or administrative action involving the Borrower, any Owner, a Ship, either of the Approved Manager or any Security Party,

which constitutes a Material Adverse Change.

## **18.2 Actions following an Event of Default.**

On, or at any time after, the occurrence of an Event of Default and always subject to the provisions of the Intercreditor Deeds:

- (a) the Agent may, and if so instructed by the Majority Lenders, the Agent shall:
  - (i) serve on the Borrower a notice stating that the Facilities, all accrued interest and all other amounts accrued or owing under this Agreement are immediately due and payable or are due and payable on demand; and/or
  - (ii) serve on the Borrower a notice requiring the Borrower immediately to prepay the whole of the Facilities;
  - (iii) take any other action which, as a result of the Event of Default or any notice served under paragraph (i) or (ii), the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law; and/or
- (b) the Security Trustee may, and if so instructed by the Agent, acting with the authorisation of the Majority Lenders, the Security Trustee shall take any action which, as a result of the Event of Default or any notice served under paragraph (a) (i) or (a) (ii), the Security Trustee, the Agent, the Mandated Lead Arranger and/or the Lenders are entitled to take under any Finance Document or any applicable law.

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**18.3 Termination of Commitments in relation to the Revolving Facility.**

Following the service of a notice under Clause 18.2(a)(i) and provided that any one or more of the Senior Creditor Parties or the Junior Creditor Parties are enforcing (with the word “enforcing” having the meaning as that given to it in Clause 8.1(c)) their rights pursuant to an event of default or default under (and as defined in any one or more of) the Senior Loan Agreements and the Junior Loan Agreement, the Agent may serve on the Borrower a notice stating that the Commitments and all other obligations of each Lender to the Borrower in respect of the Revolving Facility or otherwise under this Agreement shall be cancelled whereupon such obligation shall be immediately cancelled.

**18.4 Acceleration of Facilities.**

On the service of a notice under Clause 18.2(a)(i), the Facilities, all accrued interest and all other amounts accrued or owing from the Borrower or any Security Party under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.

**18.5 Action without notice.**

The Agent may serve a notice under Clauses 18.2(a)(ii) and it and/or the Security Trustee may take any action referred to in Clause 18.2 if no such notice is served or simultaneously with or at any time after the service of such notice.

**18.6 Notification of Creditor Parties and Security Parties.**

The Agent shall send to each Lender, the Security Trustee and each Security Party a copy or the text of any notice which the Agent serves on the Borrower under Clause 18.2; but the notice shall become effective when it is served on the Borrower, and no failure or delay by the Agent to send a copy or the text of the notice to any other person shall invalidate the notice or provide the Borrower or any Security Party with any form of claim or defence.

**18.7 Creditor Party’s rights unimpaired.**

Nothing in this Clause shall be taken to impair or restrict the exercise of any right given to individual Lenders under a Finance Document or the general law; and, in particular, this Clause is without prejudice to Clause 3.1.

**18.8 Exclusion of Creditor Party liability.**

No Creditor Party, and no receiver or manager appointed by the Security Trustee, shall have any liability to the Borrower or a Security Party:

- (a) for any loss caused by an exercise of rights under, or enforcement of a Security Interest created by, a Finance Document or by any failure or delay to exercise such a right or to enforce such a Security Interest; or

- 
- (b) as mortgagee in possession or otherwise, for any income or principal amount which might have been produced by or realised from any asset comprised in such a Security Interest or for any reduction (however caused) in the value of such an asset,

except that this does not exempt a Creditor Party or a receiver or manager from liability for losses shown to have been directly and mainly caused by the dishonesty or the wilful misconduct of such Creditor Party's own officers and employees or (as the case may be) such receiver's or manager's own partners or employees.

#### **18.9 Relevant Persons.**

In this Clause 18, a "**Relevant Person**" means the Borrower and each Owner.

#### **18.10 Interpretation.**

In Clause 18.1(f) references to an event of default or a termination event include any event, howsoever described, which is similar to an event of default in a facility agreement or a termination event in a finance lease; and in Clause 18.1(g) "**petition**" includes an application.

### **19 EXPENSES**

#### **19.1 Costs of negotiation, preparation etc.**

- (a) The Creditor Parties and the Borrower and the Security Parties shall each bear their own costs in connection with the negotiation, preparation, printing and execution of any Finance Document or any related document (including for the avoidance of doubt any other Transaction Document contemplated at the date of this Agreement, including the MoAs), save for the costs or expenses of any translation or registration in connection with the Mortgages which shall be borne by the Borrower and/or the relevant Owners.
- (b) The negotiation, preparation, printing and entry into any Finance Documents or Transaction Documents not contemplated as at the date of this Agreement and entered into after the date of this Agreement (other than the MOAs entered into pursuant to this Agreement) shall be borne by the Borrower.

#### **19.2 Costs of variations, amendments, enforcement etc.**

The Borrower shall pay to the Agent, on the Agent's demand, for the account of the Creditor Party concerned, the amount of all expenses incurred by a Creditor Party in connection with:

- (a) any amendment or supplement (or any proposal for such an amendment or supplement) requested (or, in the case of a proposal, made) by or on behalf of the Borrower and relating to a Finance Document or any other Pertinent Document;
- (b) any consent, waiver or suspension of rights by the Lenders, the Majority Lenders or the Creditor Party concerned or any proposal for any of the foregoing requested (or, in the case of a proposal, made) by or on behalf of the Borrower under or in connection with a Finance Document or any other Pertinent Document; or
- (c) any step taken by any Creditor Party concerned with a view to the preservation, protection, exercise or enforcement of any rights or Security Interest created by a Finance Document or for any similar purpose including, without limitation, any proceedings to recover or retain proceeds of enforcement or any other proceedings following enforcement proceedings until the date all outstanding indebtedness to the Creditor Parties under the Finance Documents and any other Pertinent Document is repaid in full.

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**19.3 Documentary taxes.**

The Borrower shall promptly pay any tax payable on or by reference to any Finance Document, and shall, on the Agent's demand, fully indemnify each Creditor Party against any claims, expenses, liabilities and losses resulting from any failure or delay by the Borrower to pay such a tax.

**19.4 Certification of amounts.**

A notice which is signed by 2 officers of a Creditor Party, which states that a specified amount, or aggregate amount, is due to that Creditor Party under this Clause 19 and which indicates the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

**20 INDEMNITIES****20.1 Indemnities regarding borrowing and repayment of Facilities.**

The Borrower shall fully indemnify the Agent and each Lender on the Agent's demand and the Security Trustee on its demand in respect of all claims, expenses, liabilities and losses which are made or brought against or incurred by that Creditor Party as a result of or in connection with:

- (a) any failure (for whatever reason) by the Borrower to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrower on the amount concerned under Clause 6.4); and
- (b) the occurrence and/or continuance of an Event of Default or a Potential Event of Default and/or the acceleration of repayment of the Facilities under Clause 18,

and in respect of any tax (other than tax on its overall net income) for which a Creditor Party is liable in connection with any amount paid or payable to that Creditor Party (whether for its own account or otherwise) under any Finance Document.

**20.2 Miscellaneous indemnities.**

The Borrower shall fully indemnify each Creditor Party severally on their respective demands, without prejudice to any of their other rights under any of the Finance Documents, in respect of all claims, expenses, liabilities and losses which may be made or brought against or sustained or incurred by a Creditor Party, in any country, as a result of or in connection with any action taken, under or in connection with any Finance Document by the Agent, the Security Trustee or any other Creditor Party or by any receiver appointed under a Finance Document, other than claims, expenses, liabilities and losses which are shown to have been directly and mainly caused by the dishonesty, gross negligence or wilful misconduct of the officers or employees of the Creditor Party concerned.

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Without prejudice to its generality, Clause 20.1 and this Clause 20.2 cover any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code, the ISPS Code or any Environmental Law.

### **20.3 Environmental Indemnity.**

Without prejudice to its generality, Clause 20.3 covers any claims, demands, proceedings, liabilities, taxes, losses or expenses of every kind which arise, or are asserted, under or in connection with any law relating to safety at sea, pollution or the protection of the environment, the ISM Code or the ISPS Code.

### **20.4 Currency indemnity.**

If any sum due from the Borrower or any Security Party to a Creditor Party under a Finance Document or under any order, award or judgment relating to a Finance Document (a “**Sum**”) has to be converted from the currency in which the Finance Document provided for the Sum to be paid (the “**Contractual Currency**”) into another currency (the “**Payment Currency**”) for the purpose of:

- (a) making, filing or lodging any claim or proof against the Borrower or any Security Party, whether in its liquidation, any arrangement involving it or otherwise; or
- (b) obtaining an order, judgment or award from any court or other tribunal in relation to any litigation or arbitration proceedings; or
- (c) enforcing any such order, judgment or award,

the Borrower shall as an independent obligation, within 3 Business Days of demand, indemnify the Creditor Party to whom that Sum is due against any cost, loss or liability arising when the payment actually received by that Creditor Party is converted at the available rate of exchange back into the Contractual Currency including any discrepancy between (A) the rate of exchange actually used to convert the Sum from the Payment Currency into the Contractual Currency and (B) the available rate of exchange.

In this Clause 20.4, the “**available rate of exchange**” means the rate at which the Creditor Party concerned is able at the opening of business (London time) on the Business Day after it receives the Sum to purchase the Contractual Currency with the Payment Currency.

The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

If any Creditor Party receives any Sum in a currency other than the Contractual Currency, the Borrower shall indemnify in full the Creditor Party concerned against any cost, loss or liability arising directly or indirectly from any conversion of such Sum to the Contractual Currency.

This Clause 20.4 creates a separate liability of the Borrower which is distinct from its other liabilities under the Finance Documents and which shall not be merged in any judgment or order relating to those other liabilities.

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**20.5 Certification of amounts.**

A notice which is signed by 2 officers of a Creditor Party, which states that a specified amount, or aggregate amount, is due to that Creditor Party under this Clause 20 and which indicates the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

**20.6 Sums deemed due to a Lender.**

For the purposes of this Clause 20, a sum payable by the Borrower to the Agent or the Security Trustee for distribution to a Lender shall be treated as a sum due to that Lender.

**21 NO SET-OFF OR TAX DEDUCTION**

**21.1 No deductions.**

All amounts due from the Borrower under a Finance Document shall be paid:

- (a) without any form of set off, counter-claim or condition; and
- (b) free and clear of any tax deduction except a tax deduction which the Borrower is required by law to make.

**21.2 Grossing-up for taxes.**

If, at any time, the Borrower is required by law, regulation or regulatory requirement to make a tax deduction from any payment due under a Finance Document:

- (a) the Borrower shall notify the Agent as soon as it becomes aware of the requirement;
- (b) the amount due in respect of the payment shall be increased by the amount necessary to ensure that, after the making of such tax deduction, each Creditor Party receives on the due date for such payment (and retains free from any liability relating to the tax deduction) a net amount which is equal to the full amount which it would have received had no such tax deduction been required to be made; and
- (c) the Borrower shall pay the full amount of the tax required to be deducted to the appropriate taxation authority promptly in accordance with the relevant law, regulation or regulatory requirement, and in any event before any fine or penalty arises.

**21.3 Indemnity and evidence of payment of taxes.**

The Borrower shall fully indemnify each Creditor Party on the Agent's demand in respect of all claims, expenses, liabilities and losses incurred by any Creditor Party by reason of any failure of the Borrower to make any tax deduction or by reason of any increased payment not being made on the due date for such payment in accordance with Clause 21.2. Within 30 days after making any tax deduction, the Borrower shall deliver to the Agent any receipts, certificates or other documentary evidence satisfactory to the Agent that the tax had been paid to the appropriate taxation authority.

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## 21.4 Tax Credits.

A Creditor Party which receives for its own account a repayment or credit in respect of tax on account of which the Borrower has made an increased payment under Clause 21.2 shall pay to the Borrower a sum equal to the proportion of the repayment or credit which that Creditor Party allocates to the amount due from the Borrower in respect of which the Borrower made the increased payment:

- (a) the Creditor Party shall not be obliged to allocate to this transaction any part of a tax repayment or credit which is referable to a class or number of transactions;
- (b) nothing in this Clause 21.4 shall oblige a Creditor Party to arrange its tax affairs in any particular manner, to claim any type of relief, credit, allowance or deduction instead of, or in priority to, another or to make any such claim within any particular time;
- (c) nothing in this Clause 21.4 shall oblige a Creditor Party to make a payment which would leave it in a worse position than it would have been in if the Borrower had not been required to make a tax deduction from a payment; and
- (d) any allocation or determination made by a Creditor Party under or in connection with this Clause 21.4 shall be conclusive and binding on the Borrower and the other Creditor Parties.

## 21.5 Exclusion of tax on overall net income.

In this Clause 21 “**tax deduction**” means any deduction or withholding from any payment due under a Finance Document for or on account of any present or future tax except tax on a Creditor Party’s overall net income.

## 22 ILLEGALITY, ETC

### 22.1 Illegality.

This Clause 22 applies if a Lender (the “**Notifying Lender**”) notifies the Agent that it has become, or will with effect from a specified date, become:

- (a) unlawful or prohibited as a result of the introduction of a new law, an amendment to an existing law or a change in the manner in which an existing law is or will be interpreted or applied; or
- (b) contrary to, or inconsistent with, any regulation,

for the Notifying Lender to perform, maintain or give effect to any of its obligations under this Agreement in the manner contemplated by this Agreement or to fund or maintain the Facilities.

### 22.2 Notification of illegality.

The Agent shall promptly notify the Borrower, the Security Parties, the Security Trustee and the other Lenders of the notice under Clause 22.1 which the Agent receives from the Notifying Lender.

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### 22.3 Avoiding illegality.

On the Agent notifying the Borrower under Clause 22.2, then the Borrower shall co-operate in good faith with the Agent for a period of 30 Business Days to re-structure the transaction to ensure the Notifying Lender can perform, maintain or give effect to any of its obligations under this Agreement in the manner contemplated by this Agreement or to fund or maintain the part of the Facilities provided by the Notifying Lender or to transfer the part of the Facilities provided by the Notifying Lender to an affiliate of the Notifying Lender or to a Junior Lender or any other bank or financial institution not affected by the circumstances affecting the Notifying Lender and shall enter into, and ensure that the Security Parties enter into, such documents as may be required by the Agent to give effect to such revised structure, if at the end of such 30 Business Day period, such restructuring has not been successfully completed to the satisfaction of the Agent and the Notifying Lender, the Notifying Lender's Commitment shall be immediately cancelled; and thereupon or, if later, on the date specified in the Notifying Lender's notice under Clause 22.1 as the date on which the notified event would become effective the Borrower shall (a) initially seek to find an equivalent refinancing with a Junior Lender, or any other a bank or financial institution acceptable to the Creditor Parties; (b) and if it is not able to achieve a refinancing it shall prepay the Facilities in full from its own available resources if any, and (c) only if any of the Facilities remain outstanding (after the actions in paragraphs (a) and (b) have been performed follow the Final Exit procedure set out in Clause 7.11 and make any payment required in accordance with Clause 7.7(b).

## 23 INCREASED COSTS

### 23.1 Increased costs.

This Clause 23 applies if a Lender (the “**Notifying Lender**”) notifies the Agent that the Notifying Lender considers that as a result of:

- (a) the introduction or alteration after the date of this Agreement of a law or an alteration after the date of this Agreement in the manner in which a law is interpreted or applied (disregarding any effect which relates to the application to payments under this Agreement of a tax on the Lender's overall net income); or
- (b) complying with any regulation (including any which relates to capital adequacy or liquidity controls or which affects the manner in which the Notifying Lender allocates capital resources to its obligations under this Agreement) which is introduced, or altered, or the interpretation or application of which is altered, after the date of this Agreement,

the Notifying Lender (or a parent company of it) has incurred or will incur an “**increased cost**”.

### 23.2 Meaning of “increased cost”.

In this Clause 23, “**increased cost**” means, in relation to a Notifying Lender:

- (a) an additional or increased cost incurred as a result of, or in connection with, the Notifying Lender having entered into, or being a party to, this Agreement or a Transfer Certificate, of funding or maintaining its Commitment or Contribution or performing its obligations under this Agreement, or of having outstanding all or any part of its Contribution or other unpaid sums;

- 
- (b) a reduction in the amount of any payment to the Notifying Lender under this Agreement or in the effective return which such a payment represents to the Notifying Lender or on its capital;
  - (c) an additional or increased cost of funding all or maintaining all or any of the advances comprised in a class of advances formed by or including the Notifying Lender's Contribution or (as the case may require) the proportion of that cost attributable to the Contribution; or
  - (d) a liability to make a payment, or a return foregone, which is calculated by reference to any amounts received or receivable by the Notifying Lender under this Agreement,

but not an item attributable to a change in the rate of tax on the overall net income of the Notifying Lender (or a parent company of it) or an item covered by the indemnity for tax in Clause 20.1 or by Clause 21 or an item arising directly out of the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004, in the form existing on the date of this Agreement ("Basel II") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Creditor Party or any of its affiliates).

For the purposes of this Clause 23.2 the Notifying Lender may in good faith allocate or spread costs and/or losses among its assets and liabilities (or any class of its assets and liabilities) on such basis as it considers appropriate.

**23.3 Notification to Borrower of claim for increased costs.**

The Agent shall promptly notify the Borrower and the Security Parties of the notice which the Agent received from the Notifying Lender under Clause 23.1.

**23.4 Payment of increased costs.**

On the Agent notifying the Borrower under Clause 23.3, then the Borrower shall co-operate in good faith with the Agent for a period of 15 Business Days to re-structure the transaction to ensure the Notifying Lender no longer incurs such the increased cost and ensure that the Security Parties enter into, such documents as may be required by the Agent to give effect to such revised structure, if at the end of such 15 Business Day period, such restructuring has not been successfully completed to the satisfaction of the Agent and the Notifying Lender, the Borrower shall pay to the Agent, not later than 10 days after the Agent's demand, for the account of the Notifying Lender the amounts which the Agent from time to time notifies the Borrower that the Notifying Lender has specified to be necessary to compensate the Notifying Lender for the increased cost.

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## 24 TRANSFERS

### 24.1 Transfer by Borrower.

The Borrower may not assign or transfer any of its rights, liabilities or obligations under any Finance Document.

### 24.2 Transfer by a Lender.

Subject to Clause 24.4 and to Clause 24.15, a Lender (the “**Transferor Lender**”) may at any time, without the prior consent of the Borrower or any Security Party but with the prior consent of HSH as Junior Lender (such consent not to be unreasonably withheld), cause:

- (a) its rights in respect of all or part of its Contribution; or
- (b) its obligations in respect of all or part of its Commitment; or
- (c) a combination of (a) and (b); or
- (d) all or part of its credit risk under this Agreement and the other Finance Documents,

to be syndicated to or, (in the case of its rights) assigned, pledged or transferred to, or (in the case of its obligations) pledged or assumed by, any third party (a “**Transferee Lender**”) by delivering to the Agent a completed certificate in the form set out in Schedule 4 with any modifications approved or required by the Agent (a “**Transfer Certificate**”) executed by the Transferor Lender and the Transferee Lender.

However any rights and obligations of the Transferor Lender in its capacity as Agent or Security Trustee will have to be dealt with separately in accordance with the Agency and Trust Agreement.

### 24.3 Transfer Certificate, delivery and notification.

As soon as reasonably practicable after a Transfer Certificate is delivered to the Agent, it shall (unless it has reason to believe that the Transfer Certificate may be defective):

- (a) sign the Transfer Certificate on behalf of itself, the Borrower, the Security Parties, the Security Trustee and each of the other Lenders;
- (b) on behalf of the Transferee Lender, send to the Borrower and each Security Party and the Junior Agent letters or faxes notifying them of the Transfer Certificate and attaching a copy of it; and
- (c) send to the Transferee Lender copies of the letters or faxes sent under paragraph (b) above.

### 24.4 Effective Date of Transfer Certificate.

A Transfer Certificate becomes effective on the date, if any, specified in the Transfer Certificate as its effective date, **Provided that** it is signed by the Agent under Clause 24.3 on or before that date.

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**24.5 No transfer without Transfer Certificate.**

Except as provided in Clause 24.14, no assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, the Borrower, any Security Party, either Approved Manager, any Junior Creditor Party, the Agent or the Security Trustee unless (i) it is effected, evidenced or perfected by a Transfer Certificate and (ii) the relevant Transferee Lender, if required, becomes a party to the Intercreditor Deeds.

**24.6 Lender re-organisation; waiver of Transfer Certificate.**

However, if a Lender enters into any merger, de-merger or other reorganisation as a result of which all its rights or obligations vest in another person (the “**successor**”), the Agent may, if it sees fit, by notice to the successor and the Borrower and the Security Trustee waive the need for the execution and delivery of a Transfer Certificate; and, upon service of the Agent’s notice, the successor shall become a Lender with the same Commitment and Contribution as were held by the predecessor Lender.

**24.7 Effect of Transfer Certificate.**

A Transfer Certificate takes effect in accordance with English law as follows:

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender’s title and of any rights or equities which the Borrower or any Security Party had against the Transferor Lender;
- (b) the Transferor Lender’s Commitment is discharged to the extent specified in the Transfer Certificate;
- (c) the Transferee Lender becomes a Lender with the Contribution previously held by the Transferor Lender and a Commitment of an amount specified in the Transfer Certificate;
- (d) the Transferee Lender becomes bound by all the provisions of the Finance Documents which are applicable to the Lenders generally, including those about pro-rata sharing and the exclusion of liability on the part of, and the indemnification of, the Agent and the Security Trustee and, to the extent that the Transferee Lender becomes bound by those provisions (other than those relating to exclusion of liability), the Transferor Lender ceases to be bound by them;
- (e) any part of the Facilities or either of them which the Transferee Lender advances after the Transfer Certificate’s effective date ranks in point of priority and security in the same way as it would have ranked had it been advanced by the transferor, assuming that any defects in the transferor’s title and any rights or equities of the Borrower or any Security Party against the Transferor Lender had not existed;
- (f) the Transferee Lender becomes entitled to all the rights under the Finance Documents which are applicable to the Lenders generally, including but not limited to those relating to the Majority Lenders and those under Clause 19, and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them; and

- 
- (g) in respect of any breach of a warranty, undertaking, condition or other provision of a Finance Document or any misrepresentation made in or in connection with a Finance Document, the Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.

The rights and equities of the Borrower or any Security Party referred to above include, but are not limited to, any right of set off and any other kind of cross-claim.

**24.8 Maintenance of register of Lenders.**

During the Security Period the Agent shall maintain a register in which it shall record the name, Commitment, Contribution and administrative details (including the lending office) from time to time of each Lender holding a Transfer Certificate and the effective date (in accordance with Clause 24.4) of the Transfer Certificate; and the Agent shall make the register available for inspection by any Lender, the Security Trustee and the Borrower during normal banking hours, subject to receiving at least 3 Business Days' prior notice.

**24.9 Reliance on register of Lenders.**

The entries on that register shall, in the absence of manifest error, be conclusive in determining the identities of the Lenders and the amounts of their Commitments and Contributions and the effective dates of Transfer Certificates and may be relied upon by the Agent and the other parties to the Finance Documents for all purposes relating to the Finance Documents.

**24.10 Authorisation of Agent to sign Transfer Certificates.**

The Borrower, the Security Trustee and each Lender irrevocably authorises the Agent to sign Transfer Certificates on its behalf. The Borrower and each Security Party irrevocably agrees to the transfer procedures set out in this Clause 24 and to the extent the cooperation of the Borrower and/or any Security Party shall be required to effect any such transfer, the Borrower and such Security Party shall take all necessary steps to afford such cooperation **Provided that** this shall not result in any additional costs to the Borrower or such Security Party.

**24.11 Registration fee.**

In respect of any Transfer Certificate, the Agent shall be entitled to recover a registration fee of \$2,500 from the Transferor Lender or (at the Agent's option) the Transferee Lender.

**24.12 Sub-participation; subrogation assignment.**

Subject to Clause 24.15, a Lender may sub-participate all or any part of its rights and/or obligations under or in connection with the Finance Documents without the Borrower' prior consent and without serving a notice thereon and the Lenders may assign without the Borrower' prior consent and without serving a notice thereon, in any manner and terms agreed by the Majority Lenders, the Agent and the Security Trustee, all or any part of those rights to an insurer or surety who has become subrogated to them.

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**24.13 Disclosure of information.**

A Lender may, without the prior consent of the Borrower or any Security Party, disclose to a potential Transferee Lender or sub participant as well as, where relevant, to rating agencies, trustees and accountants, any financial or other information which that Lender has received in relation to the Facilities, the Borrower, any Security Party or their affairs and collateral or security provided under or in connection with any Finance Document, their financial circumstances and any other information whatsoever, as that Lender may deem reasonably necessary or appropriate in connection with the potential syndication, the assessment of the credit risk and the ongoing monitoring of the Facilities by any potential Transferee Lender and that Lender shall be released from its obligation of secrecy and confidentiality.

In the event any such potential Transferee Lender, sub-participant, rating agency, trustee or accountant is not already bound by any legal obligation of secrecy or banking confidentiality, the Lender concerned shall require such other party to sign a confidentiality agreement. The Borrower shall, and shall procure that any other Security Party shall:

- (a) provide the Creditor Parties (or any of them) with all information deemed, reasonably, necessary by the Creditor Parties (or any of them) for the purposes of any transfer or sub-participation to be effected pursuant to this Clause 24;
- (b) procure that the directors and officers of the Borrower or any Security Party are available to participate in any meeting with any Transferee Lender or any rating agency at such times and places as the Creditor Parties may reasonably request on notice to the Borrower or that Security Party; and
- (c) permit any Transferee Lender to board any Ship at all reasonable times to inspect its condition with reasonable notice to the Borrower (after taking into consideration the relevant Ships' schedule).

**24.14 Security over Lenders' rights.**

In addition to the other rights provided to Lenders under this Clause 24, each Lender may without consulting with or obtaining consent from the Borrower or any Security Party, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities, except that no such charge, assignment or Security Interest shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for the Lender as a party to any of the Finance Documents; or

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- (ii) require any payments to be made by the Borrower, either Approved Manager or any Security Party or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

#### **24.15 Navios Lender's right of first refusal.**

Prior to any transfer pursuant to Clause 24.2 above or any sub-participation pursuant to Clause 24.12 above, the Lender concerned shall give prior notice to the other Lenders of its intention to transfer or sub-participate its participation in the Facilities or either of them and each Lender shall have the right to either (a) to purchase through a nominee by paying the amount referred to in paragraph (b) of this Clause 24.15 or (b) prepay the relevant portion of the Loan intended to be transferred in full as a voluntary prepayment according to Clause 7.4. or any other amount mutually agreed with the Lenders.

### **25 VARIATIONS AND WAIVERS**

#### **25.1 Required consents.**

- (a) Subject to Clause 25.2 (Exceptions) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Creditor Parties and the Borrower.
- (b) Any instructions given by the Majority Lenders will be binding on all the Creditor Parties.
- (c) The Agent may effect, on behalf of any Creditor Party, any amendment or waiver permitted by this Clause.

#### **25.2 Exceptions**

- (a) An amendment or waiver that has the effect of changing or which relates to:
  - (i) the definition of "Majority Lenders" or "Finance Documents" in Clause 1.1 (Definitions);
  - (ii) an extension to the date of payment of any amount under the Finance Documents;
  - (iii) a reduction in the fixed interest rate or a reduction in the amount of any payment of principal, interest fees, commission or other amount payable under any of the Finance Documents;
  - (iv) an increase in or an extension of any Lender's Commitment;
  - (v) any provision which expressly requires the consent of all the Lenders; or
  - (vi) Clause 3 (Position of the Lenders), Clause 10.5, 10.6 and 10.7, Clause 24 (Transfers) or this Clause 25.2;

- 
- (vii) any release of any Security Interest, guarantee, indemnities or subordination arrangement created by any Finance Document;
  - (viii) any change of the currency in which the Facilities are provided or any amount is payable under any of the Finance Documents;
  - (ix) extend the Availability Period;
  - (x) change clauses 21 (grossing-up) and 15.4 (distribution of payment to Creditor Parties),

may not be effected without the consent of all the Lenders.

- (b) An amendment or waiver which relates to the rights or obligations of the Agent, the Mandated Lead Arranger or the Security Trustee may not be effected without the consent of the Agent, the Mandated Lead Arranger or the Security Trustee, as the case may be.

### **25.3 Exclusion of other or implied variations.**

Except for a document which satisfies the requirements of Clauses 25.1 and 25.2, no document, and, subject to Clause 25.4, no act, course of conduct, failure or neglect to act, delay or acquiescence on the part of the Creditor Parties or any of them (or any person acting on behalf of any of them) shall result in the Creditor Parties or any of them (or any person acting on behalf of any of them) being taken to have varied, waived, suspended or limited, or being precluded (permanently or temporarily) from enforcing, relying on or exercising:

- (a) a provision of this Agreement or another Finance Document; or
- (b) an Event of Default; or
- (c) a breach by the Borrower or a Security Party of an obligation under a Finance Document or the general law; or
- (d) any right or remedy conferred by any Finance Document or by the general law,

and there shall not be implied into any Finance Document any term or condition requiring any such provision to be enforced, or such right or remedy to be exercised, within a certain or reasonable time.

### **25.4 Deemed consent.**

With respect to any amendment, variation, waiver, suspension or limit requested by any party to this Agreement and which requires the approval of all the Lenders or the Majority Lenders (as the case may be), the Agent shall provide each Lender with written notice of such request accompanied by such detailed background information as may be reasonably necessary (in the opinion of the Agent) to determine whether to approve such action. A Lender shall be deemed to have approved such action if such Lender fails to object to such action by written notice to the Agent within 10 days of that Lender's receipt of the Agent's notice or such other time as the Agent may state in the relevant notice as being the time available for approval of such action.

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## 26 NOTICES

### 26.1 General.

Unless otherwise specifically provided, any notice under or in connection with any Finance Document shall be given by letter or fax; and references in the Finance Documents to written notices, notices in writing and notices signed by particular persons shall be construed accordingly.

### 26.2 Addresses for communications.

A notice by letter or fax shall be sent:

(a) to the Borrower: c/o Navios Shipmanagement Inc.  
85, Akti Miaouli  
PIRAEUS 185 38  
Fax No: +30 210 4172070

for the attention of: Vassiliki Papaefthymiou

to a Lender: c/o Navios Shipmanagement Inc.  
85, Akti Miaouli  
PIRAEUS 185 38  
Fax No: +30 210 4172070

for the attention of: Vassiliki Papaefthymiou

(b) to the Agent, the Mandated Lead Arranger  
and Security Trustee:

c/o Navios Shipmanagement Inc.  
85, Akti Miaouli  
PIRAEUS 185 38  
Fax No: +30 210 4172070

for the attention of: Vassiliki Papaefthymiou

or to such other address as the relevant party may notify the Agent or, if the relevant party is the Agent, the Mandated Lead Arranger or the Security Trustee, the Borrower, the Lenders and the Security Parties.

### 26.3 Effective date of notices.

Subject to Clauses 26.4 and 26.5:

(a) a notice which is delivered personally or posted shall be deemed to be served, and shall take effect, at the time when it is delivered; and

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(b) a notice which is sent by fax shall be deemed to be served, and shall take effect, 2 hours after its transmission is completed.

**26.4 Service outside business hours.**

However, if under Clause 26.4 a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or
- (b) on such a business day, but after 5 p.m. local time,

the notice shall (subject to Clause 26.5) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

**26.5 Illegible notices.**

Clauses 26.3 and 26.6 do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

**26.6 Electronic communication.**

Any communication to be made between the Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent and the relevant Creditor Party:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (c) notify each other of any change to their respective addresses or any other such information supplied to them.

Any electronic communication made between the Agent and a Lender will be effective only when actually received in readable form and, in the case of any electronic communication made by a Creditor Party to the Agent, only if it is addressed in such a manner as the Agent shall specify for this purpose.

**26.7 English language.**

Any notice under or in connection with a Finance Document shall be in English.

**26.8 Meaning of “notice”.**

In this Clause 26, “**notice**” includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

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## **27 SUPPLEMENTAL**

### **27.1 Rights cumulative, non-exclusive.**

The rights and remedies which the Finance Documents give to each Creditor Party are:

- (a) cumulative;
- (b) may be exercised as often as appears expedient; and
- (c) shall not, unless a Finance Document explicitly and specifically states so, be taken to exclude or limit any right or remedy conferred by any law.

### **27.2 Severability of provisions.**

If any provision of a Finance Document is or subsequently becomes void, unenforceable or illegal, that shall not affect the validity, enforceability or legality of the other provisions of that Finance Document or of the provisions of any other Finance Document.

### **27.3 Counterparts.**

A Finance Document may be executed in any number of counterparts.

### **27.4 Third party rights.**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

### **27.5 Benefit and binding effect.**

The terms of this Agreement shall be binding upon, and shall enure to the benefit of, the parties hereto and their respective (including subsequent) successors and permitted assigns and transferees.

## **28 LAW AND JURISDICTION**

### **28.1 English law.**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

### **28.2 Exclusive English jurisdiction.**

Subject to Clause 28.3, the courts of England shall have exclusive jurisdiction to settle any Dispute.

### **28.3 Choice of forum for the exclusive benefit of the Creditor Parties.**

Clause 28.2 is for the exclusive benefit of the Creditor Parties, each of which reserves the right:

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- (a) to commence proceedings in relation to any Dispute in the courts of any country other than England and which have or claim jurisdiction to that Dispute; and
  - (b) to commence such proceedings in the courts of any such country or countries concurrently with or in addition to proceedings in England or without commencing proceedings in England.

The Borrower shall not commence any proceedings in any country other than England in relation to a Dispute.

**28.4 Process agent.**

The Borrower irrevocably appoints HFW Nominees Ltd. at their office for the time being, presently at Friary Court, 65 Crutched Friars, London, EC3N 2AE, England to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with a Dispute.

**28.5 Creditor Party rights unaffected.**

Nothing in this Clause 28 shall exclude or limit any right which any Creditor Party may have (whether under the law of any country, an international convention or otherwise) with regard to the bringing of proceedings, the service of process, the recognition or enforcement of a judgment or any similar or related matter in any jurisdiction.

**28.6 Meaning of “proceedings” and “Dispute”.**

In this Clause 28, “**proceedings**” means proceedings of any kind, including an application for a provisional or protective measure and a “**Dispute**” means any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) or any non-contractual obligation arising out of or in connection with this Agreement.

**THIS AGREEMENT** has been entered into on the date stated at the beginning of this Agreement.

EXECUTION PAGE

**BORROWER**

**SIGNED** by )  
**TODD JOHNSON** ) /s/ Todd Johnson  
for and on behalf of )  
**NAVIOS EUROPE INC.** )  
in the presence of: )  
Christina Economides )  
/s/ CE

**LENDERS**

**SIGNED** by )  
**PETER KALLIFIDAS** ) /s/ Peter Kallifidas  
for and on behalf of )  
**NAVIOS PARTNERS** )  
**EUROPE FINANCE INC.** )  
in the presence of: )  
Christina Economides )  
/s/ CE

**SIGNED** by )  
**PETER KALLIFIDAS** ) /s/ Peter Kallifidas  
for and on behalf of )  
**NAVIOS ACQUISITION** )  
**EUROPE FINANCE INC.** )  
in the presence of: )  
Christina Economides )  
/s/ CE

**SIGNED** by )  
**PETER KALLIFIDAS** ) /s/ Peter Kallifidas  
for and on behalf of )  
**NAVIOS HOLDINGS** )  
**EUROPE FINANCE INC.** )  
in the presence of: )  
Christina Economides )  
/s/ CE

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**AGENT**

**SIGNED** by )  
**PETER KALLIFIDAS** ) /s/ Peter Kallifidas  
for and on behalf of )  
**NAVIOS PARTNERS** )  
**EUROPE FINANCE INC.** )  
in the presence of: )  
Christina Economides )  
/s/ CE

**MANDATED LEAD ARRANGER**

**SIGNED** by )  
**PETER KALLIFIDAS** ) /s/ Peter Kallifidas  
for and on behalf of )  
**NAVIOS ACQUISITION** )  
**EUROPE FINANCE INC.** )  
in the presence of: )  
Christina Economides )  
/s/ CE

**SECURITY TRUSTEE**

**SIGNED** by )  
**PETER KALLIFIDAS** ) /s/ Peter Kallifidas  
for and on behalf of )  
**NAVIOS HOLDINGS** )  
**EUROPE FINANCE INC.** )  
in the presence of: )  
Christina Economides )  
/s/ CE

FIRST SUPPLEMENTAL INDENTURE (this “**First Supplemental Indenture**”), dated as of February 20, 2014, among Navios Maritime Holdings Inc., a Marshall Islands corporation, (the “**Company**”), Navios Maritime Finance II (US) Inc., a Delaware corporation (together with the Company, the “**Co-Issuers**”), and Navios Holdings Europe Finance Inc., a Marshall Islands corporation and a direct wholly owned subsidiary of the Company ( “**Holdings Europe**”) and Triangle Shipping Corporation and Esmeralda Shipping Corporation, each a Marshall Islands corporation and indirect wholly owned subsidiary of the Company (together with Holdings Europe, the “**Guaranteeing Subsidiaries**”), the other Guarantors (as defined in the Indenture referred to herein) and Wells Fargo Bank, National Association, as trustee (or its permitted successor) under the Indenture referred to below (the “**Trustee**”) and as collateral trustee (or its permitted successor) under the Indenture referred to below (the “**Collateral Trustee**”).

WITNESSETH

WHEREAS, the Co-Issuers and the Guarantors have heretofore executed and delivered to the Trustee an indenture (the “**Indenture**”), dated as of November 29, 2013 providing for the issuance of 7.375% First Priority Ship Mortgage Notes due 2022 (the “**Notes**”);

WHEREAS, the Indenture provides that under certain circumstances each Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which each Guaranteeing Subsidiary shall unconditionally guarantee all of the Co-Issuers’ obligations under the Notes and the Indenture on the terms and conditions set forth herein (the “**Note Guarantee**”); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this First Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, each Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. Each Guaranteeing Subsidiary hereby agrees to provide an unconditional Guarantee, on and subject to the terms, conditions and limitations set forth in the Notation of Guarantee and in the Indenture, including, but not limited, to Article Ten thereof.

4. NEW YORK LAW TO GOVERN. THIS FIRST SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

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5. COUNTERPARTS. The parties may sign any number of copies of this First Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

6. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

7. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this First Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by each Guaranteeing Subsidiary and the Co-Issuers.

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IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Navios Holdings Europe Finance Inc., as Guarantor

By: /s/ Alexandros Laios

Name: Alexandros Laios

Title: Secretary / Director

Triangle Shipping Corporation

Esmeralda Shipping Corporation, as Guarantors

By: /s/ Anna Kalathakis

Name: Anna Kalathakis

Title: Treasurer/Director

NAVIOS MARITIME HOLDINGS INC.

By: /s/ Vasiliki Papaefthymiou

Name: Vasiliki Papaefthymiou

Title: Executive Vice President, Legal

NAVIOS MARITIME FINANCE II (US) INC.

By: /s/ Vasiliki Papaefthymiou

Name: Vasiliki Papaefthymiou

Title: President

[Signature Page to First Supplemental Indenture]

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DIESIS SHIPMANAGEMENT LTD  
MANDORA SHIPPING LTD  
SOLANGE SHIPPING LTD.  
TULSI SHIPMANAGEMENT CO.  
CINTHARA SHIPPING LTD  
RAWLIN SERVICES COMPANY  
MAUVE INTERNATIONAL S.A.  
AQUIS MARINE CORP.  
FAITH MARINE LTD.  
VECTOR SHIPPING CORPORATION  
ARAMIS NAVIGATION INC.  
DUCALE MARINE INC.  
HIGHBIRD MANAGEMENT INC.  
RED ROSE SHIPPING CORP.  
GINGER SERVICES CO.  
QUENA SHIPMANAGEMENT INC.  
ASTRA MARITIME CORPORATION  
PRIMAVERA SHIPPING CORPORATION  
PUEBLO HOLDINGS LTD  
BEAUFIKS SHIPPING CORPORATION  
ROWBOAT MARINE INC.  
CORSAIR SHIPPING LTD.  
PHAROS NAVIGATION S.A.  
SIZZLING VENTURES INC.  
SHIKHAR VENTURES S.A.  
TAHARQA SPIRIT CORP.  
RHEIA ASSOCIATES CO.  
RUMER HOLDING LTD.  
KLEIMAR NV  
NAV HOLDINGS LIMITED  
NAVIOS CORPORATION  
ANEMOS MARITIME HOLDINGS INC.  
NAVIOS SHIPMANAGEMENT INC.  
AEGEAN SHIPPING CORPORATION  
ARC SHIPPING CORPORATION  
MAGELLAN SHIPPING CORPORATION  
IONIAN SHIPPING CORPORATION  
APOLLON SHIPPING CORPORATION  
HERAKLES SHIPPING CORPORATION  
ACHILLES SHIPPING CORPORATION  
KYPROS SHIPPING CORPORATION  
HIOS SHIPPING CORPORATION  
MERIDIAN SHIPPING ENTERPRISES INC.  
MERCATOR SHIPPING CORPORATION  
HORIZON SHIPPING ENTERPRISES CORPORATION  
STAR MARITIME ENTERPRISES CORPORATION  
NAVIOS HANDYBULK INC.  
NAVIOS INTERNATIONAL INC.  
NOSTOS SHIPMANAGEMENT CORP.  
PORTOROSA MARINE CORP.  
WHITE NARCISSUS MARINE S.A.  
HESTIA SHIPPING LTD.  
SERENITY SHIPPING ENTERPRISES INC.,  
as Guarantors

By: /s/ Vasiliki Papaefthymiou  
Name: Vasiliki Papaefthymiou  
Title: Director and Authorized Officer

[Signature Page to First Supplemental Indenture]

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KLEIMAR LTD., as Guarantor

By: /s/ George Achiotis

Name: George Achiotis

Title: Secretary and Director

NAVIMAX CORPORATION, as Guarantor

By: /s/ Shunji Sasada

Name: Shunji Sasada

Title: President

NAVIOS TANKERS MANAGEMENT INC.

By: /s/ Alexandros Laios

Name: Alexandros Laios

Title: Secretary/Director

[Signature Page to First Supplemental Indenture]

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WELLS FARGO BANK, NATIONAL ASSOCIATION, as  
Trustee

By: /s/ Martin Reed

Name: Martin Reed

Title: Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION, as  
Collateral Trustee

By: /s/ Martin Reed

Name: Martin Reed

Title: Vice President

[Signature Page to First Supplemental Indenture]

FIFTH SUPPLEMENTAL INDENTURE (this “**Fifth Supplemental Indenture**”), dated as of February 20, 2014, among Navios Maritime Holdings Inc., a Marshall Islands corporation (the “**Company**”), Navios Maritime Finance II (US) Inc., a Delaware corporation, (“**Navios Finance**” and, together with the Company, the “**Co-Issuers**”), and Navios Holdings Europe Finance Inc., a Marshall Islands corporation and a direct wholly owned subsidiary of the Company (“**Holdings Europe**”) and Triangle Shipping Corporation and Esmeralda Shipping Corporation, each a Marshall Islands corporation and indirect wholly owned subsidiary of the Company (together with Holdings Europe, the “**Guaranteeing Subsidiaries**”), the other Guarantors (as defined in the Indenture referred to herein) and Wells Fargo Bank, National Association, as trustee (or its permitted successor) under the Indenture referred to below (the “**Trustee**”).

WITNESSETH

WHEREAS, the Co-Issuers and the Guarantors have heretofore executed and delivered to the Trustee an indenture (as amended and supplemented, the “**Indenture**”), dated as of January 28, 2011 providing for the issuance of 8 1/8% Senior Notes due 2019 (the “**Notes**”);

WHEREAS, the Indenture provides that under certain circumstances Each Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which Each Guaranteeing Subsidiary shall unconditionally guarantee all of the Co-Issuers’ obligations under the Notes and the Indenture on the terms and conditions set forth herein (the “**Note Guarantee**”); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Fifth Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, Each Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. Each Guaranteeing Subsidiary hereby agrees to provide an unconditional Guarantee, on and subject to the terms, conditions and limitations set forth in the Notation of Guarantee and in the Indenture, including, but not limited, to Article Ten thereof.

4. NEW YORK LAW TO GOVERN. THIS FIFTH SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

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5. COUNTERPARTS. The parties may sign any number of copies of this Fifth Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

6. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

7. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Fifth Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by Each Guaranteeing Subsidiary and the Co-Issuers.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Fifth Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Navios Holdings Europe Finance Inc., as Guarantor

By: /s/ Alexandros Laios

Name: Alexandros Laios

Title: Secretary / Director

Triangle Shipping Corporation

Esmeralda Shipping Corporation, as Guarantors

By: /s/ Anna Kalathakis

Name: Anna Kalathakis

Title: Treasurer / Director

NAVIOS MARITIME HOLDINGS INC.

By: /s/ Vasiliki Papaefthymiou

Name: Vasiliki Papaefthymiou

Title: Executive Vice President, Legal

NAVIOS MARITIME FINANCE II (US) INC.

By: /s/ Vasiliki Papaefthymiou

Name: Vasiliki Papaefthymiou

Title: President

[Signature Page to Fifth Supplemental Indenture]

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DIESIS SHIPMANAGEMENT LTD  
MANDORA SHIPPING LTD  
SOLANGE SHIPPING LTD.  
TULSI SHIPMANAGEMENT CO.  
CINTHARA SHIPPING LTD  
RAWLIN SERVICES COMPANY  
MAUVE INTERNATIONAL S.A.  
AQUIS MARINE CORP.  
FAITH MARINE LTD.  
VECTOR SHIPPING CORPORATION  
ARAMIS NAVIGATION INC.  
DUCALE MARINE INC.  
HIGHBIRD MANAGEMENT INC.  
RED ROSE SHIPPING CORP.  
GINGER SERVICES CO.  
QUENA SHIPMANAGEMENT INC.  
ASTRA MARITIME CORPORATION  
PRIMAVERA SHIPPING CORPORATION  
PUEBLO HOLDINGS LTD  
BEAUFIKS SHIPPING CORPORATION  
ROWBOAT MARINE INC.  
CORSAIR SHIPPING LTD.  
PHAROS NAVIGATION S.A.  
SIZZLING VENTURES INC.  
SHIKHAR VENTURES S.A.  
TAHARQA SPIRIT CORP.  
RHEIA ASSOCIATES CO.  
RUMER HOLDING LTD.  
KLEIMAR NV  
NAV HOLDINGS LIMITED  
NAVIOS CORPORATION  
ANEMOS MARITIME HOLDINGS INC.  
NAVIOS SHIPMANAGEMENT INC.  
AEGEAN SHIPPING CORPORATION  
ARC SHIPPING CORPORATION  
MAGELLAN SHIPPING CORPORATION  
IONIAN SHIPPING CORPORATION  
APOLLON SHIPPING CORPORATION  
HERAKLES SHIPPING CORPORATION  
ACHILLES SHIPPING CORPORATION  
KYPROS SHIPPING CORPORATION  
HIOS SHIPPING CORPORATION  
MERIDIAN SHIPPING ENTERPRISES INC.  
MERCATOR SHIPPING CORPORATION  
HORIZON SHIPPING ENTERPRISES CORPORATION  
STAR MARITIME ENTERPRISES CORPORATION  
NAVIOS HANDYBULK INC.  
NAVIOS INTERNATIONAL INC.  
NOSTOS SHIPMANAGEMENT CORP.  
PORTOROSA MARINE CORP.  
WHITE NARCISSUS MARINE S.A.  
HESTIA SHIPPING LTD.  
SERENITY SHIPPING ENTERPRISES INC.,  
as Guarantors

By: /s/ Vasiliki Papaefthymiou  
Name: Vasiliki Papaefthymiou  
Title: Director and Authorized Officer

[Signature Page to Fifth Supplemental Indenture]

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KLEIMAR LTD., as Guarantor

By: /s/ George Achiotis

Name: George Achiotis

Title: Secretary and Director

NAVIMAX CORPORATION, as Guarantor

By: /s/ Shunji Sasada

Name: Shunji Sasada

Title: President

NAVIOS TANKERS MANAGEMENT INC.

By: /s/ Alexandros Laios

Name: Alexandros Laios

Title: Secretary/Director

[Signature Page to Fifth Supplemental Indenture]

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WELLS FARGO BANK, NATIONAL ASSOCIATION, as  
Trustee

By: /s/ Martin Reed

Name: Martin Reed

Title: Vice President

[Signature Page to Fifth Supplemental Indenture]