



---

---

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 6-K**

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

Dated: February 16, 2009

Commission File No. 001-33311

**NAVIOS MARITIME HOLDINGS INC.**

85 Akti Miaouli Street, Piraeus, Greece 185 38  
(Address of Principal Executive Offices)

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

Indicate by check mark whether the registrant by furnishing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

Yes  No

---

---

**TABLE OF CONTENTS**

[SIGNATURES](#)

[EXHIBIT INDEX](#)

[EX-99.1: LOAN AGREEMENT](#)

[EX-99.2: 2% CONVERTIBLE SENIOR PROMISSORY NOTE](#)

---

**Loan Agreement; Convertible Promissory Note**

On February 16, 2009, Pueblo Holdings Ltd. and Surf Maritime Co. (collectively, the “Borrowers”), subsidiaries of Navios Maritime Holdings Inc. (“Navios”) entered into a \$120.0 million term loan facility with the banks and institutions identified therein (the “Loan Facility”). The Loan Facility is available to partially finance the acquisition of two capesize newbuilding drybulk carriers to be constructed or any other vessels of the same type and size as may be approved by the lenders. Amounts drawn under the Loan Facility are payable in semi-annual installments, depending on the amount drawn, over a ten year period commencing six months following the drawdown date. Navios Holdings is a guarantor of the Loan Facility. To date, no amounts have been drawn under the Loan Facility. The interest rate of the Loan Facility is LIBOR plus 1.9% per annum, subject to certain conditions in the Loan Facility.

The Loan Facility contains covenants that, among other things, prevent the Borrowers from changing the nature of its business or incurring additional indebtedness. The Loan Facility requires compliance with various covenants, including those covenants contained in the senior notes indenture of Navios Holdings, as well as compliance with specified financial covenants. The Loan Facility identifies certain events that will constitute an event of default, including, (i) the non-compliance with certain covenants and (ii) if there is a default, in certain circumstances, under the Navios Holdings senior notes indenture.

A copy of the Loan Facility is furnished as Exhibit 99.1 to this Report and is incorporated herein by reference.

On February 18, 2009, Navios Holdings took delivery of the Navios Vega, a 2009 built, 58,792 dwt Ultra Handymax vessel. The total acquisition price of the vessel amounted to approximately \$73.5 million. The acquisition of the vessel was financed by Navios Holdings’ existing cash and by issuing a \$33.5 million 2% Convertible Senior Promissory Note (the “Note”). The Note is due on February 18, 2012. The Note bears interest at the rate of 2% per annum and is payable semi-annually in arrears on August 18 and February 18 of each year, commencing on August 18, 2009. The Note may be converted into shares of Navios Holdings’ common stock at any time on or before the maturity date. Outstanding principal amounts, and accrued and unpaid interest thereon may be converted into shares of Navios Holdings’ common stock at a price of \$11.00 per share of common stock. The conversion price is subject to adjustment for stock splits, stock dividends and similar events. The minimum principal amount of the Note that may be converted at any time is \$5,000,000. No fractional shares shall be issued upon conversion.

The Note, or any portion thereof, may be redeemed by Navios Holdings at any time on five days prior written notice for an amount equal to the principal amount thereof plus all accrued and unpaid interest thereon, plus a premium of 5% if such redemption occurs prior to February 18, 2010.

The Note will be Navios Holdings’ unsecured obligation and shall rank senior in right of payment to all other unsecured indebtedness incurred by Navios Holdings, except that the obligations under the Note will rank pari passu with any unsecured indebtedness incurred by Navios Holdings that is designated by it, at the time of such incurrence, as senior indebtedness or that is not designated subordinated indebtedness.

It shall be an event of default under the Note in the event Navios Holdings: (i) fails to make any payments when due with respect to the principal, interest or any other sums due under the Note; provided however, with respect to interest payments, Navios Holdings has a fifteen (15) day cure period; (ii) file, voluntarily or involuntarily for bankruptcy protection; (iii) default on the payment of other currently outstanding or future indebtedness which indebtedness, individually or in the aggregate is in excess of \$20.0 million; and (iv) have a judgment or decree entered against us involving a liability of \$20.0 million or more that is not otherwise vacated, discharged, satisfied or stayed pending appeal within 60 days of entry. If an event of default occurs, the principal amount of this Note then outstanding, together with all interest accrued thereon and unpaid as of the date of such event of default, shall automatically become immediately due and payable.

This information contained in this Report is hereby incorporated by reference into the Navios Registration Statements on Form F-3, File Nos. 333-136936, 333-129382 and 333-141872 and on Form S-8, File No. 333-147186.

---

**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: February 25, 2009

---

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Exhibit</u>
99.1	Loan Agreement.
99.2	2% Convertible Senior Promissory Note.

Date 16 February 2009

PUEBLO HOLDINGS LTD. and  
SURF MARITIME CO.  
as joint and several Borrowers

-and-

THE BANKS AND FINANCIAL INSTITUTIONS  
LISTED IN SCHEDULE 1  
as Lenders

-and-

DEKABANK DEUTSCHE GIROZENTRALE  
as Bookrunner and Arranger

-and-

DEKABANK DEUTSCHE GIROZENTRALE  
as Agent and Security Trustee

-----

LOAN AGREEMENT

-----

relating to a facility of up to US\$120,000,000 to part-finance  
the acquisition of two capesize newbuilding dry bulk carriers  
to be constructed or any other vessels of the same type and size  
as may be approved by the Lenders

WATSON, FARLEY & WILLIAMS  
PIRAEUS

INDEX

CLAUSE		PAGE
-----		-----
1	INTERPRETATION	4
2	FACILITY	20
3	POSITION OF THE LENDERS	20
4	DRAWDOWN	21
5	INTEREST	23
6	INTEREST PERIODS	25
7	DEFAULT INTEREST	25
8	REPAYMENT AND PREPAYMENT	26
9	CONDITIONS PRECEDENT	28
10	REPRESENTATIONS AND WARRANTIES	29
11	GENERAL UNDERTAKINGS	32
12	CORPORATE UNDERTAKINGS	35
13	INSURANCE	36
14	SHIP COVENANTS	41
15	SECURITY COVER	45
16	PAYMENTS AND CALCULATIONS	47
17	APPLICATION OF RECEIPTS	48
18	APPLICATION OF EARNINGS	49
19	EVENTS OF DEFAULT	50
20	FEES AND EXPENSES	54
21	INDEMNITIES	56
22	NO SET-OFF OR TAX DEDUCTION	58
23	ILLEGALITY, ETC	58
24	INCREASED COSTS	59
25	SET-OFF	60
26	JOINT AND SEVERAL LIABILITY	61



27	TRANSFERS AND CHANGES IN LENDING OFFICES	61
28	VARIATIONS AND WAIVERS	64
29	NOTICES	65
30	SUPPLEMENTAL	67
31	LAW AND JURISDICTION	67
SCHEDULE 1	LENDERS AND COMMITMENTS	
SCHEDULE 2	THE SHIPS, THE SHIPBUILDING CONTRACTS, THE APPROVED CHARTERS	
SCHEDULE 3	DRAWDOWN NOTICE	
SCHEDULE 4	CONDITION PRECEDENT DOCUMENTS	
SCHEDULE 5	TRANSFER CERTIFICATE	
SCHEDULE 6	FORM OF COMPLIANCE CERTIFICATE	
SCHEDULE 7	INDENTURE EXCERPT	
EXECUTION PAGES		69

THIS AGREEMENT is made on 16 February 2009

BETWEEN:

- (1) PUEBLO HOLDINGS LTD. and SURF MARITIME CO. as joint and several BORROWERS;
- (2) THE BANKS AND FINANCIAL INSTITUTIONS listed in Schedule 1, as LENDERS;
- (3) DEKABANK DEUTSCHE GIROZENTRALE, as BOOKRUNNER;
- (4) DEKABANK DEUTSCHE GIROZENTRALE, as ARRANGER;
- (5) DEKABANK DEUTSCHE GIROZENTRALE, as AGENT; and
- (6) DEKABANK DEUTSCHE GIROZENTRALE, as SECURITY TRUSTEE.

BACKGROUND

The Lenders have agreed to make available to the Borrowers as joint and several borrowers a term loan facility of up to the lesser of (a) \$120,000,000 and (b) 60 per cent. of the aggregate Initial Market Value of the Ships for the purpose of financing part of the acquisition cost of each Ship.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 DEFINITIONS. Subject to Clause 1.5, in this Agreement:

"ACCOUNT BANK" means a first class bank or financial institution nominated by the Borrowers and approved by the Agent as the bank or financial institution with which each Earnings Account will be opened and maintained;

"ADVANCES" means, together, the Ship A Advance and the Ship B Advance and in the singular means either of them;

"ACCOUNTS PLEDGE" means in relation to each Earnings Account, a deed creating security in respect of the Earnings Account to be executed by the relevant Borrower in favour of all of the Creditor Parties in the Agreed Form and in the plural means both of them;

"AFFECTED LENDER" has the meaning given in Clause 5.7;

"AGENCY AND TRUST AGREEMENT" means the agency and trust agreement executed or to be executed between the Borrowers, the Lenders, the Bookrunner, the Arranger, the Agent and the Security Trustee in the Agreed Form;

"AGENT" means DekaBank Deutsche Girozentrale, acting in such capacity through its office at Mainzer Landstra(βe) 16, 60329 Frankfurt am Main, Germany, 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 reasonably approved in writing by the Agent (acting on the instructions of the Lenders) or as otherwise approved in accordance with any other approved procedure specified in any relevant provision of any Finance Document;

"APPROVED BROKER" means each of H. Clarkson & Company Limited of London, England, Barry Rogliano Salles S.A. of Paris, France, R.S. Platou Shipbrokers A.S. of Oslo, Norway, Arrow Sale & Purchase (UK) Ltd. of London, England, Simpson Spence & Young of London, England, Fearnley AS of Oslo, Norway and Maersk Shipbrokers of Copenhagen and any other firm of brokers as may be accepted by the Agent in its sole discretion and, in the plural, means all of them;

"APPROVED FLAG" means the Greek, Bahamas, Panamanian, Maltese, Liberian or Marshall Islands flag or such flag as the Agent may, with the authorisation of the Majority Lenders, approve as the flag on which a Ship shall be registered;

"APPROVED FLAG STATE" means any country in which the Agent may with the authorisation of the Majority Lenders, approve that a Ship be registered;

"APPROVED CHARTER" means:

(a) in relation to Ship A, the Ship A Charter;

- (b) in relation to Ship B, the Ship B Charter; and
- (c) any other Charter approved by the Majority Lenders and insured by the Charter Insurer,

and, in the plural, means all of them;

"APPROVED CHARTERER" means:

- (a) in relation to Ship A, during the period when the Ship A Charter is in place, the company referred to in the first column of Part C of Schedule 2 as being the charterer of Ship A; and
- (b) in relation to Ship B, during the period when the Ship B Charter is in place, the company referred to in the first column of Part C of Schedule 2 as being the Charterer of Ship B; and
- (c) in relation to any other Approved Charter, any charterer of that Ship approved by the Majority Lenders,

and, in the plural, means all of them;

"APPROVED MANAGER" means in relation to a Ship, Navios Shipmanagement Inc. a corporation incorporated under the laws of the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands, MH 96960 or any other company which the Agent may, with the authorisation of the Lenders, approve from time to time as the commercial, technical and operational manager of a Ship;

"ARRANGER" means DekaBank Deutsche Girozentrale, acting in such capacity through its office at Mainzer Landstra(beta)e 16, 60329 Frankfurt am Main, Germany;

"ASSIGNMENT OF WARRANTY CLAIMS" means, in relation to each Ship, a deed of assignment in respect of the rights and benefits under any Warranty Claims to be executed by the relevant Borrower in favour of the Security Trustee, in the Agreed Form, and, in the plural, means both of them;

"AVAILABILITY PERIOD" means the period commencing on the date of this Agreement and ending on:

- (a) in the case of each Advance, the Final Availability Date relevant to that Advance (or, in each case, such later date as the Agent may, with the authorisation of all the Lenders, agree with the Borrower); or
- (b) if earlier, the date on which the Total Commitments are fully borrowed, cancelled or terminated;

"BOOKRUNNER" means DekaBank Deutsche Girozentrale, acting in such capacity through its office at Mainzer Landstra(beta)e 16, 60329 Frankfurt am Main, Germany;

"BORROWER A" means Pueblo Holdings Ltd., a corporation incorporated under the laws of the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands, MH 96960 (and includes its respective successors);

"BORROWER B" means Surf Maritime Co., a corporation incorporated under the laws of the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake

Road, Ajeltake Island, Majuro, the Marshall Islands, MH 96960 (and includes its respective successors);

"BORROWERS" means together Borrower A and Borrower B and, in the singular, means either of them;

"BUILDER" means the company referred to in the first column of Part B of Schedule 2;

"BUSINESS DAY" means a day (other than a Saturday or Sunday) on which banks are open in London, Frankfurt, Athens, Piraeus (and, in relation to any day on which a payment is required to be made to the Builder, also in Seoul) and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City;

"CHARTER" means, in relation to a Ship, any time charterparty or other contract of employment (other than the Initial Charter relative to the Ship) in respect of that Ship for a term of more than 11 consecutive months in duration or any bareboat charter to be entered into by the Borrower owning that Ship and an Approved Charterer on such terms and conditions acceptable to the Lenders (in their sole and absolute discretion) as the same may be amended, supplemented from time to time, and in the plural, means all of them;

"CHARTER ASSIGNMENT" means, in relation to each Approved Charter, a deed of assignment of the rights of the relevant Borrower in respect of that Approved Charter and any guarantee of such Approved Charter (if such a guarantee is provided to the Borrower owning that Ship) in favour of the Security Trustee, in the Agreed Form and, in the plural, means all of them;

"CHARTER INSURER" means the company listed as insurer in Part D of Schedule 2;

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);

"COMPLIANCE DATE" means 30 June and 31 December in each calendar year (or such other dates as of which the Corporate Guarantor prepares the consolidated financial statements which it is required to deliver to the Agent pursuant to Clause 11.6 of this Agreement);

"COMPLIANCE CERTIFICATE" means a certificate in the form set out in Schedule 6 (or in any other form which the Agent, acting with the authorisation of all the Lenders, approves or requires);

"CONTRACTUAL CURRENCY" has the meaning given in Clause 21.5;

"CONTRIBUTION" means, in relation to a Lender, the part of the Loan which is owing to that Lender;

"CORPORATE GUARANTOR" means Navios Maritime Holdings Inc., a corporation incorporated under the laws of the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands, MH 96960;

"CORPORATE GUARANTEE" means a guarantee to be given by the Corporate Guarantor in favour of the Security Trustee guaranteeing the obligations of the Borrowers under this Agreement and the other Finance Documents in the Agreed Form PROVIDED HOWEVER that during the validity of both of the Initial Charters and as long as no Event of Default exists, the amount guaranteed under such Corporate Guarantee shall be limited to 75 per cent. of the Secured Liabilities;

"CREDIT DEFAULT INSURANCE" means in relation to each Initial Charter, the insurance policy dated 10 October 2007 and entered into between the Corporate Guarantor and the Charter Insurer;

"CREDIT DEFAULT INSURANCE ASSIGNMENT" means in respect to both Ships an assignment of the rights and benefits of the Corporate Guarantor under the Credit Default Insurance related to the Ships in favour of the Security Trustee in the Agreed Form;

"CREDITOR PARTY" means the Agent, the Bookrunner, the Arranger, the Security Trustee or any Lender, whether as at the date of this Agreement or at any later time;

"DELIVERY DATE" means, in respect of a Ship, the date on which title to and possession of such Ship is transferred from the Builder to the relevant Borrower pursuant to the relevant Shipbuilding Contract;

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

"DRAWDOWN DATE" means, in relation to an Advance, the date requested by the Borrowers for such Advance to be made, or (as the context requires) the date on which that Advance is actually made;

"DRAWDOWN NOTICE" means a notice in the form set out in Schedule 3 (or in any other form which the Agent, acting with the authorisation of all the Lenders, 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 Borrower owning that Ship or the Security Trustee and which arise out of the use or operation of such Ship, including (but not limited to):

- (a) all freight, hire and passage moneys, compensation payable to the Borrower owning that Ship or the Security Trustee in the event of requisition of such Ship for hire, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of such Ship;
- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings including, without limitation, Credit Default Insurances in respect of Initial Charter; and
- (c) if and whenever a Ship is employed on terms whereby any moneys falling within paragraphs (a) or (b) above 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 such Ship;

"EARNINGS ACCOUNT" means in relation to each Ship, an account in the name of the Borrower owning that Ship with the Account Bank in Piraeus, Greece designated "name of the relevant Borrower- Earnings Account" or any other account (with that or another office of the Account Bank) which is designated by the Agent as the Earnings Account in relation to each Ship for the purposes of this Agreement and, in the plural, means both 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 each Ship:

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

"ENVIRONMENTAL LAW" means any law 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 19.1;

"FINAL AVAILABILITY DATE" means in relation to:

- (a) the Ship A Advance, the Intended Delivery Date of Ship A;
- (b) the Ship B Advance, the Intended Delivery Date of Ship B;

in each case such later date as the Agent may, with the authorisation of all the Lenders, agree with the Borrowers;

"FINAL MATURITY DATE" means in relation to each Advance, the date falling on the tenth anniversary of the Delivery Date of the Ship financed by that Advance;

"FINANCE DOCUMENTS" means:

- (a) this Agreement;
- (b) the Agency and Trust Agreement;
- (c) the Corporate Guarantee;
- (d) the General Assignments;
- (e) the Assignments of Warranty Claims;
- (f) the Accounts Pledges;
- (g) the Mortgages;
- (h) the Charter Assignments;
- (i) the Managers' Undertakings;
- (j) the Credit Default Insurance Assignment; and
- (k) any other document (whether creating a Security Interest or not) which is executed at any time by any Borrower, the Corporate Guarantor 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;

"FINANCIAL INDEBTEDNESS" means, in relation to a person (the "DEBTOR"), a liability of the debtor (in the case of the Corporate Guarantor, a liability in excess of \$7,000,000):

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

under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within paragraphs (a) to (e) if the references to the debtor referred to the other person; "FINANCIAL YEAR" means, in relation to the



Corporate Guarantor, each period of 1 year commencing on 1 January in respect of which its audited accounts are or ought to be prepared;

"GENERAL ASSIGNMENT" means, in relation to each Ship, a general assignment of the Earnings, the Insurances and any Requisition Compensation of such Ship to be executed by the Borrower which is the owner of such Ship in favour of the Security Trustee in the Agreed Form and, in the plural, means both of them;

"GROUP" means the Corporate Guarantor and its subsidiaries (whether direct or indirect and including, but not limited to, each Borrower and the Approved Manager) from time to time during the Security Period and "MEMBER OF THE GROUP" shall be construed accordingly;

"IACS" means the International Association of Classification Societies;

"INDENTURE" means the Indenture dated as of 18 December 2006 issued by the Corporate Guarantor and others for 9 1/2% Senior Notes due on 18 December 2014;

"INDENTURE EXCERPT" means the excerpt from the Indenture set out in Schedule 7;

"INITIAL CHARTER" means, in relation to:

(d) Ship A, the Ship A Charter; and

(e) Ship B, the Ship B Charter, and, in the plural, means both of them;

"INITIAL MARKET VALUE" means, in relation to each Ship, the Market Value thereof as at the Drawdown Date of the Advance related to such Ship determined in accordance with the valuations referred to in paragraph 6 of Part B of Schedule 4;

"INSURANCES" means in relation to each Ship:

(a) all policies and contracts of insurance, including entries of such Ship in any protection and indemnity or war risks association, which are effected in respect of such 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;

"INTENDED DELIVERY DATE" means, in relation to a Ship, the date on which it is intended that title and possession of such Ship is transferred from the Builder to the relevant Borrower pursuant to the Shipbuilding Contract applicable to that Ship, being namely:

(a) in relation to Ship A, 30 September 2009; and

(b) in relation to Ship B, 30 June 2009;

or any other date as may be agreed pursuant to the applicable Shipbuilding Contract;

"INTEREST PERIOD" means a period determined in accordance with Clause 6;

"ISM CODE" means, in relation to its application to the relevant Approved Manager, each Borrower and its Ship and its operation:

- (a) 'The International Management Code for the Safe Operation of Ships and for Pollution Prevention', currently known or referred to as the 'ISM Code', adopted by the Assembly of the International Maritime Organisation by Resolution A.741(18) on 4 November 1993 and incorporated on 19 May 1994 into chapter IX of the International Convention for the Safety of Life at Sea 1974 (SOLAS 1974); and
- (b) all further resolutions, circulars, codes, guidelines, regulations and recommendations which are now or in the future issued by or on behalf of the International Maritime Organisation or any other entity with responsibility for implementing the ISM Code, including without limitation, the 'Guidelines on implementation or administering of the International Safety Management (ISM) Code by Administrations' produced by the International Maritime Organisation pursuant to Resolution A.788(19) adopted on 25 November 1995,

as the same may be amended, supplemented or replaced from time to time;

"ISM CODE DOCUMENTATION" includes:

- (a) the document of compliance (DOC) and safety management certificate (SMC) issued pursuant to the ISM Code in relation to the Ships or any of them within the periods specified by the ISM Code; and
- (b) all other documents and data which are relevant to the ISM SMS and its implementation and verification which the Agent may require; and
- (c) any other documents which are prepared or which are otherwise relevant to establish and maintain the Ships' compliance or the compliance of the Borrowers (or either of them) with the ISM Code which the Agent may require;

"ISM SMS" means, in relation to each Ship, the safety management system for such Ship which is required to be developed, implemented and maintained by the Borrowers under the ISM Code;

"ISPS CODE" means the International Ship and Port Facility Security Code constituted pursuant to resolution A.924(22) of the International Maritime Organisation ("IMO") now set out in Chapter XI-2 of the Safety of Life at Sea Convention (SOLAS) 1974 (as amended) and the mandatory ISPS Code as adopted by a Diplomatic Conference of the IMO on Maritime Security in December 2002 and includes any amendments or extensions to it and any regulation issued pursuant to it but shall only apply insofar as it is applicable law in each Ship's flag state and any jurisdiction on which a Ship is operated;

"ISPS CODE DOCUMENTATION" includes:

- (a) the International Ship Security Certificate issued pursuant to the ISPS Code in relation to each Ship within the period specified in the ISPS Code; and
- (b) all other documents and data which are relevant to the ISPS Code and its implementation and verification which the Agent may require;

"ISSC" means a valid and current international ship security certificate issued under the ISPS Code;

"LENDER" means, subject to Clause 27.6:

- (a) a bank or financial institution listed in Schedule 1 and acting through its branch indicated in Schedule 1 (or through another branch notified to the Agent under

Clause 27.14) unless it has delivered a Transfer Certificate or Certificates covering the entire amounts of its Commitment and its Contribution; and

(b) the holder for the time being of a Transfer Certificate;

(and includes their respective successors);

"LIBOR" means, for an Interest Period:

- (a) the rate per annum equal to the offered quotation for deposits in Dollars for a period equal to, or as near as possible equal to, the relevant Interest Period which appears on Reuters BBA Page LIBOR 01 at or about 11.00 a.m. (London time) on the Quotation Date for that Interest Period (and, for the purposes of this Agreement, "Reuters BBA Page LIBOR 01" means the display designated as "Reuters BBA Page LIBOR 01" on the Reuters Money News Service or such other page as may replace Reuters BBA Page LIBOR 01 on that service or on such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association Interest Settlement Rates for Dollars); or
- (b) if no rate is quoted on Reuters BBA Page LIBOR 01, the rate per annum determined by the Agent to be the arithmetic mean (rounded upwards, if necessary, to the nearest one-sixteenth of one per cent.) of the rates per annum notified to the Agent by each Lender as the rate at which deposits in Dollars are offered to that Lender by leading banks in the London Interbank Market at that Lender's request at or about 11.00 a.m. (London time) on the Quotation Date for that Interest Period for a period equal to that Interest Period and for delivery on the first Business Day of it;

"LOAN" means the principal amount for the time being outstanding under this Agreement;

"MAJOR CASUALTY" means, in relation to each 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 the Loan has been made, Lenders whose Commitments total at least 66.66 per cent. of the Total Commitments; and
- (b) after the Loan has been made, Lenders whose Contributions total at least 66.66 per cent. of the Loan;

"MANAGEMENT AGREEMENT" means, in relation to each Ship, an agreement made or to be made between (i) the relevant Borrower and (ii) the Approved Manager in respect of the commercial and technical management of that Ship to be in form and substance in all respects acceptable to the Lenders and, in the plural, means both of them;

"MANAGER'S UNDERTAKING" means, in relation to each Ship, the letter of undertaking executed or to be executed by the Approved Manager in favour of the Security Trustee in the Agreed Form agreeing certain matters in relation to the commercial and technical management of such Ship and subordinating the rights of the Approved Manager against such Ship and the Borrower which is the owner of such Ship to the rights of the Creditor Parties under the Finance Documents and, in the plural, means both of them;

"MARGIN" means, 1.90 per cent. per annum;

"MARKET VALUE" means, in respect of each Ship, the market value thereof determined from time to time in accordance with Clause 15.3;

"MATERIAL ADVERSE CHANGE" means any event or series of events which, in the opinion of the Majority Lenders, is likely to have a Material Adverse Effect;

"MATERIAL ADVERSE EFFECT" means a material adverse effect on:

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

"MORTGAGE" means, in relation to each Ship, a first preferred or as the case may be, priority ship mortgage on that Ship under the relevant Approved Flag (and including any collateral deed of covenant if required under the laws of the relevant Approved Flag State) executed or to be executed by the relevant Borrower in favour of the Security Trustee, in each case to be in the Agreed Form and, in the plural, means both of them;

"NEGOTIATION PERIOD" has the meaning given in Clause 5.10;

"NOTIFYING LENDER" has the meaning given in Clause 23.1 or Clause 24.1 as the context requires;

"PAYMENT CURRENCY" has the meaning given in Clause 21.5;

"PERMITTED SECURITY INTERESTS" means:

- (a) Security Interests created by the Finance Documents;
- (b) liens for unpaid master's and 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 any Ship not prohibited by this Agreement;
- (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 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 Borrower owning such Ship in good faith by appropriate steps) and subject, in the case of liens for repair or maintenance, to Clause 14.14(g);
- (f) any Security Interest created in favour of a plaintiff or defendant in any proceedings or arbitration as security for costs and expenses where a Borrower is actively prosecuting or defending such proceedings or arbitration in good faith;

(g) Security Interests arising by operation of law in respect of taxes which are not overdue for payment or in respect of taxes being contested in good faith by appropriate steps and in respect of which appropriate reserves have been made; and

(h) the Indenture;

"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 in 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 a 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

(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 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);

"PURCHASE PRICE" means:

(a) in respect of Ship A the total amount of \$109,000,000 payable to the Builder pursuant to the Shipbuilding Contract A; and

(b) in respect of Ship B the total amount of \$108,500,000 payable to the Builder pursuant to the Shipbuilding Contract B;

"QUOTATION DATE" means, in relation to any Interest Period (or any other period for which an interest rate is to be determined under any provision of a Finance Document), the day on which quotations would ordinarily be given by leading banks in the London Interbank Market for deposits in the currency in relation to which such rate is to be determined for delivery on the first day of that Interest Period or other period;

"RELEVANT PERSON" has the meaning given in Clause 19.9;

"REPAYMENT DATE" means a date on which a repayment is required to be made under Clause 8;

"REQUISITION COMPENSATION" includes, in relation to a Ship, 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";

"SECURITY COVER RATIO" means the ratio which is determined, at any time, by comparing the aggregate of the amounts referred to in paragraphs (a) and (b) of Clause 15.1 against the Loan at the relevant time;

"SECURED LIABILITIES" means all liabilities which the Borrowers, the 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), pledge, assignment, trust, trust receipt, consignment, any maritime or other lien of any kind;
- (b) any other security interest of a kind not included in paragraph (a) of this definition;
- (c) a conditional sale agreement (including an agreement to sell subject to retention of title), hire purchase agreement, lease or contract of bailment that in effect secures payment or performance of a liability or obligation;
- (d) right of set-off or flawed asset arrangement that in effect secures payment or performance of a liability or obligation; and
- (e) without limiting the generality of the preceding paragraphs of this definition, any other transaction or instrument that in substance or by operation of law, now or in the future, creates an interest, right or claim in relation to property (real or personal) that secures the payment or performance of a liability or obligation, without regard to:

- (i) the form of the transaction or instrument; or

- (ii) the identity of the person who has title to the relevant property

PROVIDED HOWEVER THAT, in the case of the Corporate Guarantor, Security Interest shall be deemed to include any of the interests described under (a) to (e) (inclusive) above as long as same constitute a Material Adverse Change;

"SECURITY PARTY" means the Approved Manager, the Corporate Guarantor and any other person (except a Creditor Party) 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 last 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 Borrowers, the Security Parties and the Lenders and the other Creditor Parties that:

- (a) all amounts which have become due for payment by either Borrower or any Security Party under the Finance Documents have been paid;
- (b) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;

- (c) neither either Borrower nor any Security Party has any future or contingent liability under Clause 20, 21 or 22 below or any other provision of this Agreement or another Finance Document; and
- (d) the Agent, the Security Trustee and all the 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 a 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;

"SECURITY TRUSTEE" means DekaBank Deutsche Girozentrale, acting in such capacity through its office at Mainzer Landstra(βe) 16, 60329 Frankfurt am Main, Germany, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

"SELLER" means:

- (a) in relation to Ship A, the company referred to in the second column of Part B of Schedule 2 as the seller of Ship A (the "SELLER A"); and
- (b) in relation to Ship B, the company referred to in the second column of Part B of Schedule 2 as the seller of Ship B (the "SELLER B");

"SHIP A" means the ship described in Part A of Schedule 2;

"SHIP A SHIPBUILDING CONTRACT" means the shipbuilding contract in respect of Ship A described in Part B of Schedule 2, as the same may be further supplemented and/or amended from time to time;

"SHIP A ADVANCE" means an amount of up to \$60,000,000 to be made available by the Lenders pursuant to Clause 2.1(a) as that amount may be reduced, cancelled or terminated in accordance with this Agreement or, where the context so requires, the principal amount of such Advance which has been advanced to the Borrowers and which is for the time being outstanding under this Agreement;

"SHIP A CHARTER" means the time charterparty in respect of Ship A as described in Part C of Schedule 2 as the same may be further supplemented and/or amended from time to time;

"SHIP B" means the ship described in Part A of Schedule 2;

"SHIP B SHIPBUILDING CONTRACT" means the shipbuilding contract in respect of Ship B described in Part B of Schedule 2, as the same may be further supplemented and/or amended from time to time;

"SHIP B ADVANCE" means an amount of up to \$60,000,000 to be made available by the Lenders pursuant to Clause 2.1(b) as that amount may be reduced, cancelled or terminated in accordance with this Agreement or, where the context so requires, the principal amount of such Advance which has been advanced to the Borrowers and which is for the time being outstanding under this Agreement;

"SHIP B CHARTER" means the time charterparty in respect of Ship B as described in Part C of Schedule 2, as the same may be further supplemented and/or amended from time to time;

"SHIPS" means, together, Ship A and Ship B and, in the singular, means either of them;

"SHIPBUILDING CONTRACTS" means together, Ship A Shipbuilding Contract and Ship B Shipbuilding Contract and, in the singular, means either of them;

"SUMMARY OF TERMS" means the summary of terms dated 23 December 2008 issued by the Agent and accepted by the Corporate Guarantor on 29 December 2008;

"TOTAL LOSS" means, in relation to each Ship:

- (a) actual, constructive, compromised, agreed or arranged total loss of that Ship;
- (b) any expropriation, confiscation, requisition or acquisition of that Ship, whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration, which is effected by any government or official authority or by any person or persons claiming to be or to represent a government or official authority (excluding a requisition for hire for a fixed period not exceeding 1 year without any right to an extension) unless it is within 1 month redelivered to the relevant Borrower's full control;
- (c) any arrest, capture, seizure or detention of that Ship (including any hijacking or theft) unless it is within 1 month redelivered to the relevant Borrower's full control;

"TOTAL LOSS DATE" means, in relation to each Ship:

- (a) in the case of an actual loss of that Ship, the date on which it occurred or, if that is unknown, the date when that Ship was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of that Ship, the earliest of:
  - (i) the date on which a notice of abandonment is given to the insurers; and
  - (ii) the date of any compromise, arrangement or agreement made by or on behalf of the Borrower who is the owner thereof with that Ship's insurers in which the insurers agree to treat that Ship as a total loss; and
- (c) in the case of any other type of total loss, on the date (or the most likely date) on which it appears to the Agent that the event constituting the total loss occurred;

"TRANSFER CERTIFICATE" has the meaning given in Clause 27.2;

"TRUST PROPERTY" has the meaning given in clause 3.1 of the Agency and Trust Agreement;

"US GAAP" means generally accepted accounting principles as from time to time in effect in the United States of America; and

"WARRANTY CLAIMS" means, in respect of each Shipbuilding Contract, the claims that the relevant Borrower may have against the Builder in respect of the warranty for the relevant Ship provided by the Builder pursuant to the terms of such Shipbuilding Contract.

#### 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;

"APPROVED" means, for the purposes of Clause 13, approved in writing by the Agent;

"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, notarisisation and legalisation;

"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, fax or telex;

"CHARTER" means any Charter where any remaining duration shall be taken into account especially for the purposes of calculating Market Value;

"EXCESS RISKS" means, in relation to each 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;

"LAW" includes any order or decree, 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 each Ship, all insurances effected, or which the Borrower who is the owner thereof is obliged to effect, under Clause 13 or any other provision of this Agreement or another Finance Document;

"PARENT COMPANY" has the meaning given in Clause 1.4;

"PERSON" includes 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 covered by a protection and indemnity association managed in London, including pollution risks and 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 in them of Clause 6 of the International Hull Clauses (1/11/02 or 1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/11/95) or clause 8 of the Institute Time Clauses (Hulls) (1/10/83) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision;

"REGULATION" includes any regulation, rule, official directive, request or guideline whether or not having the force of law 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 other 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 the risk of mines and all risks excluded by clause 29 of the International Hull Clauses (1/11/02 or 1/11/03), clause 24 of the Institute Time Clauses (Hulls) (1/11/95) or clause 33 of the Institute Time Clauses (Hulls) (1/10/83).

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:

- (a) a majority of the issued shares in S (or a majority of the issued shares in S which carry unlimited rights to capital and income distributions) are directly owned by P or are indirectly attributable to P; and

- (b) P has direct or indirect control over a majority of the voting rights attaching to the issued shares of S; or
  - (c) P has the direct or indirect power to appoint or remove a majority of the directors of S; or
- and any company of which S is a subsidiary is a parent company of S.

1.5 GENERAL INTERPRETATION. In this Agreement:

- (a) references in Clause 1.1 to a Finance Document or any other document being in the form of a particular appendix include references to that form with any modifications to that form which the Agent (with the authorisation of all the Lenders in the case of substantial modifications) approves or reasonably requires;
- (b) 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;
- (c) 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;
- (d) words denoting the singular number shall include the plural and vice versa; and
- (e) Clauses 1.1 to 1.5 apply unless the contrary intention appears.

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

2 FACILITY

2.1 AMOUNTS AND PURPOSES OF ADVANCES. Subject to the other provisions of this Agreement, the Lenders shall make a term loan facility not exceeding the lesser of (i) \$120,000,000 and (ii) 60 per cent. of the aggregate Initial Market Value of the Ships available to the Borrowers in two Advances, one in respect of each Ship as follows:

- (a) the Ship A Advance shall be in the principal amount of up to the lesser of (i) \$60,000,000 and (ii) 60 per cent. of the Initial Market Value of Ship A to be made available by the Lenders to the Borrowers for the purpose of assisting Borrower A in financing part of the acquisition cost of Ship A; and
- (b) the Ship B Advance shall be in the principal amount of up to the lesser of (i) \$60,000,000 and (ii) 60 per cent. of the Initial Market Value of Ship B to be made available by the Lenders to the Borrowers for the purpose of assisting Borrower B in financing part of the acquisition cost of Ship B.

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 ADVANCES. The Borrowers undertake with each Creditor Party to use each Advance only for the purpose stated in the preamble to this Agreement.

3 POSITION OF THE LENDERS

3.1 INTERESTS OF LENDERS SEVERAL. The rights of the Lenders under this Agreement are several.

- 3.2 INDIVIDUAL LENDER'S RIGHT OF ACTION. Each Lender shall be entitled, having obtained the prior consent of all the Lenders to sue for any amount which has become due and payable by the Borrowers to it under this Agreement without joining the Agent, the Security Trustee or any other Lender as additional parties in the proceedings.
- 3.3 PROCEEDINGS BY INDIVIDUAL LENDER. No Lender may, without the prior consent of all the Lenders, bring proceedings in respect of:
- (a) any other liability or obligation of the Borrowers or any of them or a Security Party under or connected with a Finance Document; or
  - (b) any misrepresentation or breach of warranty by the Borrowers or any of them or a Security Party in or connected with a Finance Document.
- 3.4 OBLIGATIONS OF LENDERS SEVERAL. The obligations of the Lenders under this Agreement are several; and a failure by a Lender to perform its obligations under this Agreement shall not result in:
- (a) the obligations of any other Lender being increased; nor
  - (b) any Borrower, any Security Party or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document, and in no circumstances shall a Lender have any responsibility for a failure of another Lender to perform its obligations under this Agreement.
- 3.5 PARTIES BOUND BY CERTAIN ACTIONS OF MAJORITY LENDERS. Each Lender, each Borrower and each Security Party shall be bound by:
- (a) any determination made, or action taken, by the Majority Lenders under any provision of a Finance Document;
  - (b) any instruction or authorisation given by the Majority Lenders to the Agent or the Security Trustee under or in connection with any Finance Document;
  - (c) any action taken (or in good faith purportedly taken) by the Agent or the Security Trustee in accordance with such an instruction or authorisation.
- 3.6 RELIANCE ON ACTION OF AGENT. However, the Borrowers and each Security Party:
- (a) shall be entitled to assume that the Majority Lenders have duly given any instruction or authorisation which, under any provision of a Finance Document, is required in relation to any action which the Agent has taken or is about to take; and
  - (b) shall not be entitled to require any evidence that such an instruction or authorisation has been given.
- 3.7 CONSTRUCTION. In Clauses 3.4 and 3.5 references to action taken include (without limitation) the granting of any waiver or consent, an approval of any document and an agreement to any matter.
- 4 DRAWDOWN
- 4.1 REQUEST FOR ADVANCE. Subject to the following conditions, the Borrowers may request an Advance to be made by ensuring that the Agent receives a completed Drawdown

Notice not later than 11.00 a.m. (Frankfurt time) 2 Business Days prior to the intended Drawdown Date.

4.2 AVAILABILITY. The conditions referred to in Clause 4.1 are that:

- (a) the Drawdown Date has to be a Business Day during the Availability Period;
- (b) each Advance shall be in the principal amount of up to the lesser of (i) \$60,000,000 and (ii) 60 per cent. of the Initial Market Value of the Ship to be financed by that Advance;
- (c) the aggregate amount of the Advances shall not exceed \$120,000,000; and
- (d) if any part of the Total Commitments has not been borrowed before the Final Availability Date relating to Advance B, the Total Commitments shall on that date be permanently cancelled by an amount equal to such undrawn amount.

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 and the Drawdown Date thereof;
- (b) the amount of that Lender's participation in such Advance; and
- (c) the duration of the first Interest Period relating to such Advance.

4.4 DRAWDOWN NOTICE IRREVOCABLE. Each Drawdown Notice must be signed by a director or other authorised person of each Borrower; and once served, a Drawdown Notice cannot be revoked without the prior consent of the Agent, acting on the authority of all the 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 Borrowers the amount due from that Lender under Clause 2.2.

4.6 DISBURSEMENT OF ADVANCE. Subject to the provisions of this Agreement, the Agent shall on the relevant Drawdown Date pay to the Borrowers the amounts which the Agent receives from the Lenders under Clause 4.5; and that payment to the Borrowers shall be made:

- (a) to the account(s) which the Borrowers specify in the Drawdown Notice; and
- (b) in the like funds as the Agent received the payments from the Lenders.

PROVIDED THAT notwithstanding the provisions of this Clause 4.6, an Advance or any part thereof to be used to part-finance amounts payable pursuant to the relevant Shipbuilding Contract upon delivery of the relevant Ship may, upon drawdown thereof, be placed in a suspense account in the name and to the order of the Agent held with a bank nominated by the Borrowers, and shall only be released to the Builder as the case may be, upon satisfaction of the conditions precedent set out in Part B of Schedule 4, and

PROVIDED FURTHER THAT in case the Borrowers have already paid out of their own funds part of the amount to be financed by the proceeds of an Advance, the Lenders shall pay such amount of the Advance to the account specified in Clause 4.6(a) upon the Borrowers providing to the Agent evidence satisfactory to the Agent in its discretion that such payment has been affected to the appropriate parties.

- 4.7 DISBURSEMENT OF ADVANCE TO THIRD PARTY. The payment by the Agent under Clause 4.6 to the Builder shall constitute the making of an Advance and the Borrowers shall at that time become indebted, as principal and direct obligor, to each Lender in an amount equal to that Lender's Contribution in that Advance.
- 5 INTEREST
- 5.1 PAYMENT OF NORMAL INTEREST. Subject to the provisions of this Agreement, interest on each Advance in respect of each Interest Period shall be paid by the Borrowers on the last day of that Interest Period.
- 5.2 NORMAL RATE OF INTEREST. Subject to the provisions of this Agreement, the rate of interest on each Advance in respect of an Interest Period shall be the aggregate of (a) the Margin and (b) LIBOR for that Interest Period PROVIDED THAT where the Borrowers request, and the Lenders agree to, an Interest Period of longer than twelve months, the applicable rate of interest shall be the aggregate of the Margin and the fixed rate agreed between the Lenders and the Borrowers and advised by the Agent to the Borrowers.
- 5.3 PAYMENT OF ACCRUED INTEREST. In the case of an Interest Period longer than 6 months, accrued interest shall be paid every 6 months during that Interest Period and on the last day of that Interest Period.
- 5.4 NOTIFICATION OF INTEREST PERIODS AND RATES OF NORMAL INTEREST. The Agent shall notify the Borrowers and each Lender of:
- (a) each rate of interest; and
  - (b) the duration of each Interest Period;
- as soon as reasonably practicable after each is determined.
- 5.5 OBLIGATION OF LENDERS TO QUOTE. Each Lender shall use all reasonable efforts to supply any quotation required of it for the purposes of fixing a rate of interest under this Agreement.
- 5.6 ABSENCE OF QUOTATIONS BY LENDERS. If any Lender fails to supply a quotation when required, the Agent shall determine the relevant rate of interest in accordance with the following provisions of this Clause 5.
- 5.7 MARKET DISRUPTION. The following provisions of this Clause 5 apply if:
- (a) at least until 11.00 a.m. (London) time 1 Business Day before the start of an Interest Period, any Lender notifies the Agent that LIBOR fixed by the Agent would not accurately reflect the cost to that Lender of funding its Contribution (or any part of it) during the Interest Period in the London Interbank Dollar Market at or about 11.00 a.m. (London time) on the second Business day before the commencement of the Interest Period; or
  - (b) at least until 11.00 a.m. (London time) 1 Business Day before the start of an Interest Period, the Agent is notified by a Lender (the "AFFECTED LENDER") that for any reason it is unable to obtain Dollars in the London Interbank Market in order to fund its Contribution (or any part of it) during the Interest Period.
- 5.8 NOTIFICATION OF MARKET DISRUPTION. The Agent shall promptly notify the Borrowers and each of the Lenders stating the circumstances falling within Clause 5.7 which have caused its notice to be given.

- 5.9 SUSPENSION OF DRAWDOWN. If the Agent's notice under Clause 5.8 is served before an Advance is made then:
- (a) in a case falling within Clause 5.7(a), the Advance to take place after Clauses 5.10, 5.11 and 5.12 have been applied; and
  - (b) in a case falling within Clause 5.7(b), the Affected Lender's obligation to participate in the Loan shall be suspended while the circumstances referred to in the Agent's notice continue.
- 5.10 NEGOTIATION OF ALTERNATIVE RATE OF INTEREST. Notwithstanding whether the Agent's notice under Clause 5.8 is served before or after an Advance is made, the Borrowers, the Agent and the Lenders or (as the case may be) the Affected Lender shall use reasonable endeavours to agree, within the 30 days after the date on which the Agent serves its notice under Clause 5.8 (the "NEGOTIATION PERIOD"), an alternative interest rate or (as the case may be) an alternative basis for the Lenders or (as the case may be) the Affected Lender to fund or continue to fund their or its Contribution to the relevant Advance or Advances during the Interest Period concerned.
- 5.11 APPLICATION OF AGREED ALTERNATIVE RATE OF INTEREST. Any alternative interest rate or an alternative basis which is agreed during the Negotiation Period shall take effect in accordance with the terms agreed.
- 5.12 ALTERNATIVE RATE OF INTEREST IN ABSENCE OF AGREEMENT. If an alternative interest rate or alternative basis is not agreed within the Negotiation Period, and the relevant circumstances are continuing at the end of the Negotiation Period, then the Agent shall, with the agreement of each Lender or (as the case may be) the Affected Lender, set an interest period and interest rate representing the cost of funding of the Lenders or (as the case may be) the Affected Lender in Dollars or in any available currency of their or its Contribution to the relevant Advance or Advances plus the Margin PROVIDED THAT they will provide the Borrowers with supporting documentation; and the procedure provided for by this Clause 5.10 shall be repeated if the relevant circumstances are continuing at the end of the interest period so set by the Agent.
- 5.13 NOTICE OF PREPAYMENT. If the Borrowers do not agree with an interest rate set by the Agent under Clause 5.10, the Borrowers may give the Agent not less than 15 Business Days' notice of their intention to prepay the relevant Advance or Advances at the end of the interest period set by the Agent.
- 5.14 PREPAYMENT; TERMINATION OF COMMITMENTS. A notice under Clause 5.13 shall be irrevocable; the Agent shall promptly notify the Lenders or (as the case may require) the Affected Lender of the Borrowers' notice of intended prepayment; and:
- (a) on the date on which the Agent serves that notice, the Total Commitments or (as the case may require) the Commitment of the Affected Lender so far as they relate to the relevant Advance or Advances shall be cancelled; and
  - (b) on the last Business Day of the interest period set by the Agent, the Borrowers shall prepay (without premium or penalty) the Loan or, as the case may be, the Affected Lender's Contribution, together with accrued interest thereon at the applicable rate plus the Margin and, if the prepayment or repayment is not made on the last day of the interest period set by the Agent, any sums payable under Clause 21.1(b).
- 5.15 APPLICATION OF PREPAYMENT. The provisions of Clause 8 shall apply in relation to the prepayment.

6 INTEREST PERIODS

- 6.1 COMMENCEMENT OF INTEREST PERIODS. The first Interest Period applicable to an Advance shall commence on the Drawdown Date thereof and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.
- 6.2 DURATION OF NORMAL INTEREST PERIODS. Subject to Clauses 6.3 and 6.4, each Interest Period in respect of each Advance shall be:
- (a) 6 or 12 months as notified by the Borrowers to the Agent not later than 11.00 a.m. (Frankfurt time) 3 Business Days before the commencement of the Interest Period; or
  - (b) 6 months, if the Borrowers fail to notify the Agent by the time specified in paragraph (a); or
  - (c) such other period as the Agent with the authorisation of the Lenders may agree with the Borrowers.
- 6.3 DURATION OF INTEREST PERIODS FOR REPAYMENT INSTALMENTS. In respect of an amount due to be repaid under Clause 8 on a particular Repayment Date, an Interest Period shall end on that Repayment Date.
- 6.4 NON-AVAILABILITY OF MATCHING DEPOSITS FOR INTEREST PERIOD SELECTED. If, after the Borrowers have selected and the Lenders have agreed an Interest Period longer than 6 months, any Lender notifies the Agent by 11.00 a.m. (Frankfurt time) on the third Business Day before the commencement of the Interest Period that it is not satisfied that deposits in Dollars for a period equal to the Interest Period will be available to it in the London Interbank Market when the Interest Period commences, the Interest Period shall be of 6 months.

7 DEFAULT INTEREST

- 7.1 PAYMENT OF DEFAULT INTEREST ON OVERDUE AMOUNTS. The Borrowers shall pay interest in accordance with the following provisions of this Clause 7 on any amount payable by the Borrowers or either of them 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:
- (a) 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 19.4, the date on which it became immediately due and payable.
- 7.2 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) at the rate per annum determined by the Agent to be 2 per cent. above:
- (a) in the case of an overdue amount of principal, the higher of the rates set out at Clauses 7.3 (a) and (b); or
  - (b) in the case of any other overdue amount, the rate set out at Clause 7.3(b).



- 7.3 CALCULATION OF DEFAULT RATE OF INTEREST. The rates referred to in Clause 7.2 are:
- (a) the rate applicable to the overdue principal amount immediately prior to the relevant date (but only for any unexpired part of any then current Interest Period);
  - (b) the Margin plus, in respect of successive periods of any duration (including at call) up to 3 months which the Agent may select from time to time:
    - (i) LIBOR; or
    - (ii) if the Agent determines that Dollar deposits for any such period are not being made available to a Lender or (as the case may be) Lenders by leading banks in the London Interbank Market in the ordinary course of business, a rate from time to time determined by the Agent by reference to the cost of funds to the Agent from such other sources as the Agent may from time to time determine.
- 7.4 NOTIFICATION OF INTEREST PERIODS AND DEFAULT RATES. The Agent shall promptly notify the Lenders and the Borrowers of each interest rate determined by the Agent under Clause 7.3 and of each period selected by the Agent for the purposes of paragraph (b) of that Clause; but this shall not be taken to imply that the Borrowers are liable to pay such interest only with effect from the date of the Agent's notification.
- 7.5 PAYMENT OF ACCRUED DEFAULT INTEREST. Subject to the other provisions of this Agreement, any interest due under this Clause shall be paid on the last day of the period by reference to which it was determined; and the payment shall be made to the Agent for the account of the Creditor Party to which the overdue amount is due.
- 7.6 COMPOUNDING OF DEFAULT INTEREST. Any such interest which is not paid at the end of the period by reference to which it was determined shall thereupon be compounded.
- 8 REPAYMENT AND PREPAYMENT
- 8.1 AMOUNT OF REPAYMENT INSTALMENTS. The Borrowers shall repay each Advance by 20 consecutive semi-annual repayment instalments as follows:
- (a) in the case of the first to the fourth instalments (inclusive), in the amount of \$3,250,000 each;
  - (b) in the case of the fifth to the eighth instalments (inclusive) in the amount of \$3,500,000 each;
  - (c) in the case of the ninth to the fourteenth instalments (inclusive) in the amount of \$3,750,000 each; and
  - (d) in the case of the fifteenth to the twentieth instalments (inclusive) in the amount of \$1,750,000 each;
- PROVIDED THAT if the amount of either Advance drawdown is less than \$60,000,000 then the repayments instalments applicable to that Advance shall be reduced pro rata by an amount in aggregate equal to such undrawn amount.
- 8.2 REPAYMENT DATES. The first instalment of each Advance shall be repaid on the date falling 6 months after the Drawdown Date of such Advance, each subsequent instalment shall be repaid at semi-annual intervals thereafter and the last instalment of such Advance shall be repaid on the date falling on the earlier of (a) the tenth anniversary of the Drawdown Date of such Advance and (b) the Final Maturity Date of such Advance.

- 8.3 FINAL REPAYMENT DATE. On the final Repayment Date, the Borrowers shall additionally pay to the Agent for the account of the Creditor Parties all other sums then accrued or owing under any Finance Document.
- 8.4 VOLUNTARY PREPAYMENT. Subject to the following conditions, the Borrowers may prepay the whole or any part of the Loan or any Advance on the last day of an Interest Period.
- 8.5 CONDITIONS FOR VOLUNTARY PREPAYMENT. The conditions referred to in Clause 8.4 are that:
- (a) a partial prepayment shall be \$1,000,000 or a multiple of \$1,000,000
  - (b) the Agent has received from the Borrowers at least 5 Business Days' prior written notice specifying the amount to be prepaid and the date on which the prepayment is to be made; and
  - (c) the Borrowers have provided evidence satisfactory to the Agent that any consent required by the Borrowers or any of them or any Security Party in connection with the prepayment has been obtained and remains in force, and that any regulation relevant to this Agreement which affects a Borrower or any Security Party has been complied with;
- 8.6 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 all the Lenders, and the amount specified in the prepayment notice shall become due and payable by the Borrowers on the date for prepayment specified in the prepayment notice.
- 8.7 NOTIFICATION OF NOTICE OF PREPAYMENT. The Agent shall notify the Lenders promptly upon receiving a prepayment notice, and shall provide any Lender which so requests with a copy of any document delivered by the Borrowers under Clause 8.5(c).
- 8.8 MANDATORY PREPAYMENT. Without prejudice to the provisions of Clause 15, the Borrowers shall be obliged to prepay the is sold, becomes a Total Loss or is refinanced:
- (a) in the case of a sale, on or before the date on which the sale is completed by delivery of the Ship to the buyer;
  - (b) in the case of 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; or
  - (c) in the case the Ship is refinanced, on the date on which the Mortgage is discharged to enable the Ship to be refinanced
- PROVIDED HOWEVER THAT if after such prepayment the Security Cover Ratio is less than the ratio referred to in Clause 15.1, the Borrowers shall prepay such additional amount which, after giving credit to the prepayment, results in the Security Cover Ratio being equal to the Security Cover Ratio required to be maintained pursuant to Clause 15.1.
- Subject to no Event of Default or any Potential Event of Default being in occurrence or continuing at the time a prepayment is made under this Clause 8.8, any balance arising from the proceeds of a Ship which is sold or becomes a Total Loss after the prepayment required by this Clause 8.8 has been made shall be released to the Borrowers or to such other person as the Borrowers may direct.
- 8.9 AMOUNTS PAYABLE ON PREPAYMENT. A prepayment shall be made together with accrued interest (and any other amount payable under Clause 21 or otherwise) in respect of the

amount prepaid and, if the prepayment is not made on the last day of an Interest Period together with any sums payable under Clause 21.1(b) but without premium or penalty.

- 8.10 PREPAYMENT FEE. If an Advance is prepaid as a result of a sale or refinancing of a Ship by a bank or financial institution (other than the Lender) on or prior to the sixth anniversary of the second Drawdown Date, the Borrowers shall pay, together with such prepaid amount, to the Agent a prepayment fee equal to the 0.50 per cent of the amount of such Advance immediately prior to such prepayment.
- 8.11 APPLICATION OF PARTIAL PREPAYMENT. Each partial prepayment shall be applied:
- (a) if made pursuant to Clause 8.4, against the repayment instalments specified in Clause 8.1 pro rata;
  - (b) if made pursuant to Clause 8.8, first towards full repayment of the Advance related to the Ship being sold, refinanced or becoming a Total Loss and thereafter towards pro rata reduction of the repayment instalments specified in Clause 8.1 of the other Advance.
- 8.12 NO REBORROWING. No amount prepaid may be reborrowed.

## 9 CONDITIONS PRECEDENT

- 9.1 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 service of the Drawdown Notice relative to Advance A to be drawn down, the Agent receives the documents described in Part A of Schedule 4 in form and substance satisfactory to the Agent and its lawyers;
  - (b) that, on the Drawdown Date of any Advance but prior to such Advance, the Agent receives the documents described in Part B of Schedule 4 in form and substance satisfactory to it and its lawyers;
  - (c) that, on the Drawdown Date of each Advance, the Agent receives the fees referred to in Clause 20.1 related to such Advance and has received payment of the expenses referred to in Clause 20.2; and
  - (d) that both at the date of each Drawdown Notice and at each Drawdown Date:
    - (i) no Event of Default has occurred and is continuing or would result from the borrowing of the relevant Advance;
    - (ii) the representations and warranties in Clause 10 and those of a Borrower or any Security Party which are set out in the other Finance Documents would be true and not misleading if repeated on each of those dates with reference to the circumstances then existing; and
    - (iii) none of the circumstances contemplated by Clause 5.7 has occurred and is continuing; and
    - (iv) there has been no Material Adverse Change in the financial condition, state of affairs or prospects of the Borrowers or either of them or the Corporate Guarantor from that applying at the date of this Agreement;
  - (e) that, if the ratio set out in Clause 15.1 were applied immediately following the making of the relevant Advance, the Borrowers would not be obliged to provide additional security or prepay part of the Loan under that Clause;

- (f) that the Agent has received, and found to be acceptable to it, any further opinions, consents, agreements and documents in connection with the Finance Documents which the Agent may, with the authorisation of all the Lenders, request by notice to the Borrowers prior to the relevant Drawdown Date.
- 9.2 WAIVER OF CONDITIONS PRECEDENT. If all the Lenders, at their discretion, permit an Advance to be borrowed before certain of the conditions referred to in Clause 9.1 are satisfied, the Borrowers shall ensure that those conditions are satisfied within 5 Business Days after the relevant Drawdown Date (or such longer period as the Agent may, with the authorisation of all the Lenders, specify).
- 10 REPRESENTATIONS AND WARRANTIES
- 10.1 GENERAL. Each Borrower represents and warrants to each Creditor Party as follows.
- 10.2 STATUS. Each Borrower is duly incorporated and validly existing and in good standing under the laws of the Republic of Marshall Islands;
- 10.3 SHARE CAPITAL AND OWNERSHIP. Each Borrower has an authorised share capital of 500 registered and/or bearer shares without par value, all of which shares have been issued in bearer form and are wholly owned directly or indirectly by the Corporate Guarantor and all those shares are held free of any Security Interest or other claim.
- 10.4 CORPORATE POWER. Each Borrower has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:
- (a) to execute the relevant Shipbuilding Contract, to purchase and pay for its Ship under the relevant Shipbuilding Contract and register its Ship in its name under an Approved Flag;
  - (b) to enter into, and perform its obligations under, the Approved Charter to which it is a party
  - (c) to execute the Finance Documents to which it is a party; and
  - (d) to borrow under this Agreement and to make all the payments contemplated by, and to comply with, those Finance Documents to which such Borrower is a party.
- 10.5 CONSENTS IN FORCE. All the consents referred to in Clause 10.4 remain in force and nothing has occurred which makes any of them liable to revocation.
- 10.6 LEGAL VALIDITY; EFFECTIVE SECURITY INTERESTS. The Finance Documents to which a 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 such Borrower's legal, valid and binding obligations enforceable against such Borrower in accordance with their respective terms; and
  - (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.
- 10.7 NO THIRD PARTY SECURITY INTERESTS. Without limiting the generality of Clause 10.6, at the time of the execution and delivery of each Finance Document to which each Borrower is a party except for Permitted Security Interests:

- (a) such 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.
- 10.8 NO CONFLICTS. The execution by each Borrower of each Finance Document to which it is a party and the borrowing by that Borrower of the Loan, and its compliance with each Finance Document will not involve or lead to a contravention of:
- (a) any law or regulation; or
  - (b) the constitutional documents of that Borrower; or
  - (c) any contractual or other obligation or restriction which is binding on that Borrower or any of its assets,  
and will not have a Material Adverse Effect.
- 10.9 SUBORDINATION OF INDENTURE. The obligations of:
- (a) the Borrowers, if any, under the Indenture and the Notes or the Guarantees (as each term is defined in the Indenture) issued thereunder are fully subordinated to the obligations of the Borrowers under this Agreement and the other Finance Documents; and
  - (b) the Corporate Guarantor, under the Indenture and the Notes (as such term is defined in the Indenture) issued thereunder are fully subordinated to the obligations of the Corporate Guarantor under the Corporate Guarantee to the extent of the value of the assets securing this Agreement.
- 10.10 NO WITHHOLDING TAXES. All payments which a Borrower is liable to make under the Finance Documents may be made without deduction or withholding for or on account of any tax payable under any law of any Pertinent Jurisdiction.
- 10.11 NO DEFAULT. No Event of Default has occurred and is continuing.
- 10.12 INFORMATION. All information which has been provided in writing by or on behalf of the Borrowers or any Security Party to any Creditor Party in connection with any Finance Document satisfied the requirements of Clause 11.5; all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.7 and are true, correct and not misleading and present fairly and accurately the financial position of the Borrowers; and there has been no change in the financial position or state of affairs of any Borrower, or the Corporate Guarantor from that disclosed in the latest of those accounts which is likely to have a Material Adverse Effect.
- 10.13 NO LITIGATION. No legal or administrative action involving any 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 any Borrower's knowledge, is likely to be commenced or taken which, in either case would be likely to have a Material Adverse Effect.
- 10.14 VALIDITY AND COMPLETENESS OF INITIAL CHARTERS AND SHIPBUILDING CONTRACTS.
- (a) The copies of each Initial Charter and each Shipbuilding Contract delivered to the Agent before the date of this Agreement are true and complete copies;

- (b) each Initial Charter and each Shipbuilding Contract constitutes valid, binding and enforceable obligations of the Builder and the relevant Approved Charterer, the Builder and the Borrower which is party to it respectively in accordance with its terms;
  - (c) neither the Builder nor either of the Borrowers is in breach of its respective obligations under the terms of each Initial Charter and each Shipbuilding Contract; and
  - (d) other than those already advised to the Agent and which have been documented prior to the date of this Agreement, no amendments or additions to either Initial Charter or either Shipbuilding Contracts have been agreed nor have the Borrowers, the relevant Approved Charterer and the Builder (or any of them) waived any of their respective rights under either Initial Charter or either Shipbuilding Contract.
- 10.15 NO REBATES, ETC. There is no agreement or understanding to allow or pay any rebate, premium, commission, discount or other benefit or payment (howsoever described) to a Borrower, an Approved Charterer or the Builder or any third party in connection with the purchase by a Borrower of a Ship at the relevant Purchase Price of the chartering of a Ship other than as disclosed to the Agent in writing on or prior to the date of this Agreement.
- 10.16 COMPLIANCE WITH CERTAIN UNDERTAKINGS. At the date of this Agreement, each Borrower is in compliance with Clauses 11.2, 11.4, 11.9 and 11.14.
- 10.17 TAXES PAID. Each Borrower has paid all taxes applicable to, or imposed on or in relation to such Borrower, its business or its Ship.
- 10.18 ISM CODE AND ISPS CODE COMPLIANCE. All requirements of the ISM Code and the ISPS Code as they relate to a Borrower, the Approved Manager and a Ship shall be complied on or prior to the Delivery Date of that Ship.
- 10.19 NO MONEY LAUNDERING. Each 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 (91/308/EEC) of the Council of the European Communities) and comparable United States Federal and state laws. Each 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
  - (b) confirm that it is the beneficiary within the meaning of Section 8 of the German Anti Money Laundering Act (Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten (Geldwaschegesetz)), with such Borrower acting for its own account and not for or on behalf of any other person for each part of the Loan 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 and under its full responsibility and exclusively for the purposes specified in this Agreement.

Each Borrower will promptly inform the Agent by written notice, if it ceases to be a 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 10.18.

11 GENERAL UNDERTAKINGS

- 11.1 GENERAL. Each Borrower 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.
- 11.2 TITLE; NEGATIVE PLEDGE AND PARI PASSU RANKING. Each Borrower will:
- (a) hold the legal title to, and own the entire beneficial interest in:
- (i) from the date hereof, the Approved Charter and the Shipbuilding Contract to which it is a party; and
- (ii) the Ship it is acquiring and her Insurances and her Earnings from the Delivery Date applicable thereto and at all times thereafter, its Ship,
- 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;
- (b) not create or permit to arise any Security Interest (except for Permitted Security Interests) over any other asset, present or future; and
- (c) procure that its liabilities under the Finance Documents to which it is a party do and will rank at least pari passu with all its other present and future unsecured liabilities, except for liabilities which are mandatorily preferred by law.
- 11.3 NO DISPOSAL OF ASSETS. Neither Borrower will 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.
- 11.4 NO OTHER LIABILITIES OR OBLIGATIONS TO BE INCURRED. Neither Borrower will incur any liability or obligation except liabilities and obligations under the Shipbuilding Contract and the Finance Documents to which it is a party and liabilities or obligations reasonably incurred in the ordinary course of its business of operating and chartering its Ship and all other matters reasonably incidental thereto.
- 11.5 INFORMATION PROVIDED TO BE ACCURATE. All financial and other information which is provided in writing by or on behalf of a Borrower under or in connection with any Finance Document will be true and not misleading and will not omit any material fact or consideration.
- 11.6 PROVISION OF FINANCIAL STATEMENTS. The Borrowers 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 of the Borrowers (commencing with the Financial Year ended 31 December 2008) the annual audited consolidated accounts of the Corporate Guarantor for that Financial Year; and
- (b) as soon as possible, but in no event later than 90 days after the end of each financial quarter in each Financial Year of the Borrowers ending on 31 March, 30 June, and 30 September (commencing with the financial statements for the financial quarter ending on 31 March 2009) the unaudited consolidated quarterly accounts of the Corporate

Guarantor which are certified as to their correctness by the chief financial officer of the Corporate Guarantor; and

- (c) promptly after each request by the Agent, such further financial information about the Borrowers, the Corporate Guarantor, the Approved Manager and the Corporate Guarantor as the Agent may reasonably require.
- 11.7 FORM OF FINANCIAL STATEMENTS. All accounts (audited and unaudited) delivered under Clause 11.6 will:
- (a) be prepared in accordance with all applicable laws and US GAAP consistently applied;
  - (b) in the case of the annual audited accounts of the Corporate Guarantor, be audited by an internationally renowned accounting firm whose report shall not include any material qualifications;
  - (c) give a true and fair view of the state of affairs of the relevant person at the date of those accounts and of its profit for the period to which those accounts relate; and
  - (d) fully disclose or provide for all significant liabilities of the Corporate Guarantor.
- 11.8 CONSENTS. Each Borrower will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Agent of, all consents required:
- (a) for such Borrower to perform its obligations under any Finance Document to which it is a party;
  - (b) for the validity or enforceability of any Finance Document to which it is a party;
  - (c) for such Borrower to continue to own and operate the Ship owned by it, and such Borrower will comply with the terms of all such consents.
- 11.9 MAINTENANCE OF SECURITY INTERESTS. The Borrowers will:
- (a) at their own cost, do all that it reasonably can to ensure that any Finance Document validly creates the obligations and the 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 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 priority of any Security Interest which it creates.
- 11.10 NOTIFICATION OF LITIGATION. Each Borrower will provide the Agent with details of any legal or administrative action involving that Borrower, any Security Party, the Approved Manager or any Ship, its Earnings or its Insurances exceeding \$500,000 as soon as such action is instituted or it becomes apparent to that Borrower that it is likely to be instituted, unless it is clear to that Borrower and the Lenders that the legal or administrative action cannot be considered material and relevant in the context of any Finance Document.
- 11.11 NO AMENDMENT TO THE SHIPBUILDING CONTRACTS. Each Borrower agrees not to enter into any amendment or supplement to, or waive or fail to enforce, the Shipbuilding Contract to which it is a party or any of its provisions.



- 11.12 NO AMENDMENT TO THE APPROVED CHARTERS. Each Borrower will ensure that no Borrower shall agree to any amendment or supplement to, or waive or fail to enforce, any Approved Charter to which it is a party or any of its provisions.
- 11.13 PRINCIPAL PLACE OF BUSINESS. Each Borrower confirms that its business operation and management shall be conducted as presently conducted and, throughout the Security Period, will (i) maintain its place of business and keep its corporate documents and records, at the address stated at Clause 29.2(a); and (ii) neither Borrower nor the Corporate Guarantor will establish, or do anything as a result of which it would be deemed to have, a place of business or operations or management effected from England or the United States of America.
- 11.14 NOTIFICATION OF DEFAULT. The Borrowers will notify the Agent as soon as a Borrower becomes aware of:
- (a) the occurrence of an Event of Default; or
  - (b) any matter which indicates that an Event of Default may have occurred, and will keep the Agent fully up-to-date with all developments.
- 11.15 PROVISION OF FURTHER INFORMATION. The Borrowers will, as soon as practicable after receiving the request, provide the Agent with any additional financial or other information relating:
- (a) to the Borrowers, the Ships, the Earnings or the Insurances; or
  - (b) to any other matter relevant to, or to any provision of, a Finance Document, which may reasonably be requested by the Agent, the Security Trustee or any Lender at any time.
- 11.16 PROVISION OF COPIES AND TRANSLATION OF DOCUMENTS. The Borrowers 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 Borrowers will provide a certified English translation prepared by a translator approved by the Agent.
- 11.17 CHARTER ASSIGNMENT. A Borrower shall, in the case it enters into a Charter, at the request of the Agent, execute in favour of the Security Trustee a Charter Assignment in respect of that Charter and shall deliver to the Agent such other documents equivalent to those referred to at paragraphs 3, 4 and 5 of Part A of Schedule 4 hereof.
- 11.18 FINANCIAL COVENANTS. The Borrowers shall procure that:
- (a) the ratio of Consolidated Cash Flow (defined and applied as set out in the Indenture Excerpt, which definition shall not be varied without the Lenders' consent, irrespective of any variation of the Indenture itself) to Fixed Charges (defined and applied as set out in the Indenture Excerpt, which definition shall not be varied without the Lenders' consent, irrespective of any variation of the Indenture itself) on a 12 month trailing basis shall at all times be at least 2 to 1; and
  - (b) Total Liabilities divided by the Total Assets (adjusted for market values of vessels calculated in accordance with Clause 15.3) shall not exceed 75%.

For the purposes of this Clause 11.18 the following expressions shall have the following meanings:

"TOTAL ASSETS" and "TOTAL LIABILITIES" means respectively the total assets and total liabilities of the Corporate Guarantor as evidenced at any relevant time by its financial statements as described in Clause 11.6, in which they shall have been calculated by reference to the meanings assigned to them in accordance with US GAAP provided that the value of any vessel shall be calculated in accordance with Clause 15.3 and not as set out in the latest financial statements.

- 11.19 INDENTURE. The Borrowers shall procure that the Corporate Guarantor shall comply with all of the obligations undertaken by the Corporate Guarantor under the Indenture which are set out in the Indenture Excerpt and the Borrowers further agree that:
- (a) any terms defined in the Indenture shall have those meanings when used in the Indenture Excerpt;
  - (b) no waiver or variation of any term of the 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 the Indenture) or a Legal Defeasance (as defined in the 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 term of the Indenture without the prior written consent of the Lenders.
- 11.20 COMPLIANCE CHECK. Compliance with these Financial Covenants contained in Clause 11.18 shall be determined by reference (a) to the unaudited consolidated accounts for the first six months in each Financial Year of the Corporate Guarantor and (b) to the audited consolidated accounts for that Financial Year of the Corporate Guarantor for each Financial Year delivered to the Agent pursuant to this Agreement. The Borrowers shall deliver to the Agent semi-annually, at the same time they deliver the consolidated accounts to the Agent pursuant to Clause 11.18, a Compliance Certificate signed by the chief financial officer of the Corporate Guarantor.
- 11.21 GENERAL AND ADMINISTRATIVE COSTS. The Borrowers and the Corporate Guarantor shall ensure that the payment of all the general and administrative costs of the Borrowers in connection with the ownership and operation of the Ships (including, without limitation, the payment of the management fees pursuant to the Management Agreements) shall be fully subordinated to the payment obligations of the Borrowers and the Corporate Guarantor under this Agreement and the other Finance Documents throughout the Security Period.
- 11.22 KNOW YOUR CUSTOMER. The Borrowers will provide to (or procure that there is sent to) the Agent such documents and evidence as any Creditor Party shall require in relation to each of the Borrowers or any Security Party, based on applicable laws and regulations and each Creditor Party's own internal guidelines relating to the verification of the identity and knowledge of its customers.
- 12 CORPORATE UNDERTAKINGS
- 12.1 GENERAL. Each Borrower also undertakes with each Creditor Party to comply with the following provisions of this Clause 12 at all times during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit.
- 12.2 MAINTENANCE OF STATUS. Each Borrower will maintain its separate corporate existence and remain in good standing under the laws of the Republic of the Marshall Islands.

- 12.3 NEGATIVE UNDERTAKINGS. No Borrower will:
- (a) change the nature of its business; or
  - (b) provide any form of credit or financial assistance to:
    - (i) a person who is directly or indirectly interested in such Borrower's share or loan capital; or
    - (ii) any company in or with which such a person is directly or indirectly interested or connected,or enter into any transaction with or involving such a person or company on terms which are, in any respect, less favourable to such Borrower than those which it could obtain in a bargain made at arms' length;
  - (c) open or maintain any account with any bank or financial institution except accounts with the Account Bank for the purposes of the Finance Documents;
  - (d) acquire any shares or other securities other than 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;
  - (e) issue, allot or grant any person a right or permit the occurrence of any Security Interest to any shares in its capital or repurchase or reduce its issued share capital;
  - (f) enter into any form of amalgamation, merger or de-merger or any form of reconstruction or reorganisation; or
  - (g) incur any further indebtedness or enter into any form of guarantee except indebtedness reasonably incurred in the ordinary course of its business.
- 12.4 OWNERSHIP/MANAGEMENT. The Borrowers undertake to ensure that, throughout the Security Period and without the prior written consent of the Agent, there shall be no change in the beneficial ownership of any of the shares in either of the Borrowers or in the control or management of either of the Borrowers except for changes approved in writing by the Agent or which result in the shares being beneficially owned by a member of the Group.
- 12.5 SUBORDINATION OF RIGHTS. The Borrower shall ensure and procure that all its obligations in respect of any loan made available to it by any member of the Group shall be fully subordinated to the rights of the Creditor Parties under the Finance Documents under terms and conditions acceptable by the Agent (acting upon the instructions of the Majority Lenders):
- 13 INSURANCE
- 13.1 GENERAL. Each Borrower undertakes with each Creditor Party to comply with the following provisions of this Clause 13 at all times during the Security Period (after a Ship has been delivered to it pursuant to the relevant Shipbuilding Contract) except as the Agent may, with the authorisation of the Majority the Lenders, otherwise permit.
- 13.2 MAINTENANCE OF OBLIGATORY INSURANCES. Each Borrower shall keep the Ship owned by it insured at the expense of such Borrower against:
- (a) fire and usual marine risks (including hull and machinery and excess risks);

- (b) war risks;
- (c) protection and indemnity risks;
- (d) in respect of the Initial Charters, Credit Default Insurance; and
- (e) any other risks against which the Security Trustee considers, having regard to practices and other circumstances prevailing at the relevant time, it would in the opinion of the Security Trustee be reasonable for such Borrower to insure and which are mutually agreed between the Security Trustee and such Borrower.

13.3 TERMS OF OBLIGATORY INSURANCES. Each Borrower shall effect such insurances:

- (a) in Dollars;
- (b) in the case of fire and usual marine risks and war risks, in an amount on an agreed value basis at least the greater of (i) the market value of its Ship and (ii) an amount so that the aggregate insured values of the Ships at any time subject to a Mortgage is at least 120 per cent. of the Loan; and
- (c) in the case of oil pollution liability risks, for an aggregate amount equal to the highest level of cover from time to time available (for the time being \$1,000,000,000) under basic protection and indemnity club entry (with the international group of protection and indemnity clubs) and in the international marine insurance market;
- (d) in relation to protection and indemnity risks in respect of the full tonnage of the Ship owned by it; and
- (e) on such terms as shall from time to time be approved in writing by the Agent.

13.4 FURTHER PROTECTIONS FOR THE CREDITOR PARTIES. In addition to the terms set out in Clause 13.3, each Borrower shall procure that the obligatory insurances shall:

- (a) upon the occurrence of an Event of Default and while it is continuing (except in relation to risks referred to in Clause 13.2(c)), 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 Lender, but 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 and shall procure that no other assured shall be additionally named without the prior written consent of the Security Trustee;
- (b) name the Security Trustee as loss payee with such directions for payment as the Security Trustee may specify;
- (c) 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;
- (d) provide that the insurers shall waive, to the fullest extent permitted by the applicable 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 (d) from making personal claims against persons (other than the Borrowers or any Creditor Party) in circumstances where the insurers have fully discharged their liabilities and obligations under the relevant obligatory insurances;

- (e) provide that such obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Trustee;
- (f) provide that the Security Trustee may make proof of loss if such Borrower fails to do so; and
- (g) 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.

13.5 RENEWAL OF OBLIGATORY INSURANCES. Each Borrower shall:

- (a) at least 14 days before the expiry of any obligatory insurance:
  - (i) notify the Security Trustee of the brokers (or other insurers) and any protection and indemnity or war risks association through or with whom such Borrower proposes to renew that obligatory insurance and of the proposed terms of renewal; and
  - (ii) in case of any substantial change in insurance cover, obtain the Agent'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; and
- (c) procure that the 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.

13.6 COPIES OF POLICIES; LETTERS OF UNDERTAKING. Each Borrower shall ensure that all 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 or undertaking in a form required by the Lenders and including undertakings by the 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 13.4;
- (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 7 days before the expiry of the obligatory insurances, in the event of their not having received notice of renewal instructions from such Borrower 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 such Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of the Ship owned by such Borrower 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 the Ship owned by such Borrower forthwith upon being so requested by the Security Trustee.

- 13.7 COPIES OF CERTIFICATES OF ENTRY. Each Borrower shall provide or ensure that any protection and indemnity and/or war risks associations in which the Ship owned by such Borrower is entered provides the Security Trustee with:
- (a) a certified copy of the certificate of entry for such Ship;
  - (b) a letter or letters of undertaking in such form as may be required by the Security Trustee;
  - (c) 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 such Ship;
  - (d) where required to be issued under the terms of insurance/indemnity provided by such Borrower'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 such Borrower in relation to such Ship in accordance with the requirements of such protection and indemnity association; and
  - (e) 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 such Ship.
- 13.8 DEPOSIT OF ORIGINAL POLICIES. Each Borrower shall ensure that all policies relating to obligatory insurances are deposited with the brokers through which the insurances are effected or renewed.
- 13.9 PAYMENT OF PREMIUMS. Each Borrower shall punctually pay all premiums or other sums payable in respect of the obligatory insurances and produce all relevant receipts when so required by the Security Trustee.
- 13.10 GUARANTEES. Each Borrower 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.
- 13.11 RESTRICTIONS ON EMPLOYMENT. Neither Borrower shall employ its Ship nor permit her to be employed, outside the cover provided by any obligatory insurances.
- 13.12 COMPLIANCE WITH TERMS OF INSURANCES. Neither Borrower shall do nor omit to do (nor 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 Borrower shall take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and (without limiting the obligation contained in Clause 13.7(c)) 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) neither Borrower shall make any changes relating to the classification or classification society or manager or operator of the Ship owned by such Borrower approved by the underwriters of the obligatory insurances; and

- (c) neither Borrower 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.
- 13.13 ALTERATION TO TERMS OF INSURANCES. Neither Borrower shall make or agree to any alteration to the terms of any obligatory insurance nor waive any right relating to any obligatory insurance.
- 13.14 SETTLEMENT OF CLAIMS. Neither Borrower 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.
- 13.15 PROVISION OF COPIES OF COMMUNICATIONS. Following the occurrence of an Event of Default, each Borrower shall provide the Security Trustee, at the time of each such communication, copies of all written communications between that Borrower and:
- (a) the approved brokers; and
  - (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) that Borrower's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls; and
  - (ii) any credit arrangements made between that Borrower 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.
- 13.16 PROVISION OF INFORMATION. In addition, each Borrower 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:
- (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 13.16 below or dealing with or considering any matters relating to any such insurances,
- and such Borrower 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) above.
- 13.17 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 Security Trustee may from time to time consider appropriate:
- (a) a mortgagee's interest marine insurance in an amount of 110 per cent of the Loan providing for the indemnification of the Creditor Parties for any losses under or in connection with any Finance Document which directly or indirectly result from loss of or damage to a Ship or a liability of such Ship or of the Borrower 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 such Borrower, of any operator, charterer, manager or sub-manager of the Ship or of any officer, employee or agent of such Borrower 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 such Borrower, any other person referred to in paragraph (i) above, or of any officer, employee or agent of such Borrower or of such a person, including the casting away or damaging of such Ship and/or such Ship being unseaworthy; and/or
  - (iii) any other matter capable of being insured against under a mortgagee's interest marine insurance policy whether or not similar to the foregoing;
- (b) a mortgagee's interest additional perils policy in an amount of not less than 110 per cent. of the Loan 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 such Ship, the imposition of any Security Interest over such 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 the Borrowers 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.

13.18 REVIEW OF INSURANCE REQUIREMENTS. The Security Trustee shall be entitled to review the requirements of this Clause 13 from time to time in order to take account of any changes in circumstances after the date of this Agreement which are in the reasonable opinion of the Security Trustee, significant and capable of affecting the Borrowers or the Ships and their insurance (including, without limitation, changes in the availability or the cost of insurance coverage or the risks to which the Borrowers may be subject), and may appoint at a maximum of once per year insurance consultants in relation to this review at the cost of the Borrowers.

#### 14 SHIP COVENANTS

14.1 GENERAL. Each Borrower also undertakes with each Creditor Party to comply with the following provisions of this Clause 14 at all times during the Security Period (after a Ship has been delivered pursuant to the relevant Shipbuilding Contract) each except as the Agent, with the authorisation of the Majority Lenders, may otherwise permit.

14.2 SHIP'S NAME AND REGISTRATION. Each Borrower shall register the Ship owned by it under an Approved Flag; shall not 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 such Ship.

14.3 REPAIR AND CLASSIFICATION. Each Borrower shall keep its Ship in a good and safe sea and cargo worthy condition and state of repair:

- (a) consistent with first-class ship ownership and management practice;



- (b) so as to maintain such Ship with the highest classification available for vessels of the same age, type and specification as such Ship with an approved classification society which is a member of IACS (except for the Chinese Classification Society of the People's Republic of China and the Russian Maritime Registry of Shipping in Russia) and which is acceptable to the Agent free of all overdue recommendations and conditions; and
  - (c) so as to comply with all laws and regulations applicable to vessels registered at ports in the applicable 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, the ISM Code Documentation, the ISPS Code and the ISPS Code Documentation.
- 14.4 CLASSIFICATION SOCIETY UNDERTAKING. Each Borrower shall instruct the classification society of the Ship owned by it to do all or any of the following after the occurrence of an Event of Default or (and procure that the classification society undertakes with the Security Trustee at such time):
- (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 held by the classification society in relation to the Ship;
  - (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 the Borrower and the 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 that Borrower 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 that Borrower'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 that Borrower 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 that Borrower 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.
- 14.5 MODIFICATION. Each Borrower shall not make any modification or repairs to, or replacement of, the Ship owned by it or equipment installed on her which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.
- 14.6 REMOVAL OF PARTS. Each Borrower shall not remove any material part of the Ship owned by it, 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 the Ship the property of that Borrower and subject to the security constituted by the relevant

Mortgage PROVIDED THAT a Borrower 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.

- 14.7 SURVEYS. Each Borrower 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 all the Lenders provide the Security Trustee, with copies of all survey reports.
- 14.8 INSPECTION. Without prejudice to the Borrower's obligations pursuant to Clause 14.7, each Borrower 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 without interruption to such Ship's normal schedule, or interference with its operation, to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections (including, without limitation, submitting the Ship for a technical physical survey). All fees and expenses incurred in relation to the appointment of the surveyors and the preparation and issuing of all technical reports pursuant to this Clause 14.9 shall be the account of the Borrowers. PROVIDED THAT so long as a Ship is found to be in a satisfactory condition to the Agent and no continuing Event of Default shall be in existence, the Borrowers shall not be obliged to pay the fees and expenses incurred in connection with the inspection of that Ship more than once in any twelve-month period.
- 14.9 PREVENTION OF AND RELEASE FROM ARREST. Each Borrower 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 the Ship, the Earnings or the Insurances; and
  - (c) all other outgoings whatsoever in respect of the Ship owned by it, the Earnings or the Insurances;
- and, forthwith upon receiving notice of the arrest of the Ship owned by it, or of its detention in exercise or purported exercise of any lien or claim, that Borrower shall procure its release by providing bail or otherwise as the circumstances may require.
- 14.10 COMPLIANCE WITH LAWS ETC. Each Borrower shall (and shall procure that the Approved Manager shall):
- (a) comply, or procure compliance with the ISM Code, the ISPS Code, all Environmental Laws and all other laws or regulations relating to its Ship, its ownership, operation and management or to the business of such Borrower (including, but not limited to, the International Management Code for the Safe Operation of Ships and for Pollution Prevention);
  - (b) not employ its Ship 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 it to enter or trade to any zone which is declared a war zone by any government or by that Ship's war risks insurers unless the prior written consent of the all the Lenders has been given and the Borrowers have (at its expense) effected any special, additional or modified insurance cover which the Lenders may require.
- 14.11 PROVISION OF INFORMATION. The Borrowers shall promptly provide the Security Trustee with any information which the Lenders request regarding:

- (a) the Ships, their employment, position and engagements;
  - (b) the Earnings and payments and amounts due to a Ship's master and crew;
  - (c) any expenses incurred, or likely to be incurred, in connection with the operation, maintenance or repair of a Ship and any payments made in respect of a Ship;
  - (d) any towages and salvages;
  - (e) its own, the Approved Manager's or a Ship's compliance with the ISM Code and the ISPS Code,
- and, upon the Security Trustee's request, provide copies of any current charter relating to a Ship, of any current charter guarantee and copies of the ISM Code Documentation and the ISPS Code Documentation.

14.12 NOTIFICATION OF CERTAIN EVENTS. The Borrowers shall immediately notify the Security Trustee by fax, confirmed forthwith, 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 a Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requirement 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 a Ship, any exercise or purported exercise of any lien on either Ship or the Earnings or any requisition of either Ship for hire that is not lifted within 7 days;
- (e) any intended dry docking of a Ship;
- (f) any Environmental Claim made against a Borrower or in connection with a Ship, or any Environmental Incident;
- (g) 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;

and the Borrowers shall keep the Security Trustee advised in writing on a regular basis and in such detail as the Security Trustee shall require of the relevant Borrower's, the Approved Manager's or any other person's response to any of those events or matters.

14.13 RESTRICTIONS ON CHARTERING, APPOINTMENT OF MANAGERS, ETC. Neither Borrower shall in relation to the Ship owned by it:

- (a) let that Ship on demise charter for any period;
- (b) enter into any time or consecutive voyage charter in respect of that Ship for a term which exceeds, or which by virtue of any optional extensions may exceed, 11 months;
- (c) enter into any charter in relation to that Ship under which more than 2 months' hire (or the equivalent) is payable in advance;
- (d) charter that Ship otherwise than on bona fide arm's length terms at the time when the Ship is fixed;

- (e) except with the prior written consent of the Agent, appoint a manager of the Ship other than the Approved Manager or agree to any alteration to the terms of the Approved Manager's appointment;
- (f) de-activate or lay up that Ship; or
- (g) put its Ship into the possession of any person for the purpose of work being done upon her 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 the relevant Ship or her Earnings for the cost of such work or for any other reason.

14.14 NOTICE OF MORTGAGE. Each Borrower shall keep the Mortgage registered against its Ship as a valid first priority mortgage, carry on board its Ship a certified copy of such Mortgage and place and maintain in a conspicuous place in the navigation room and the Master's cabin of the Ship a framed printed notice stating that the Ship is mortgaged by such Borrower to the Security Trustee.

14.15 SHARING OF EARNINGS. Neither Borrower shall:

- (a) enter into any agreement or arrangement for the sharing of any Earnings; 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 Borrower to any Earnings; or
- (c) enter into any agreement or arrangement for the release of, or adverse alteration to, any guarantee or Security Interest relating to any Earnings.

14.16 ISPS CODE. Each Borrower shall comply, and procure that the Approved Manager complies, with the ISPS Code and in particular, without limitation, shall:

- (a) procure that each Ship and the Approved Manager comply with the ISPS Code;
- (b) maintain for each Ship an ISM SMS and an ISSC; and
- (c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or material modification of the ISSC.

## 15 SECURITY COVER

15.1 MINIMUM REQUIRED SECURITY COVER. Clause 15.2 applies if the Agent notifies the Borrower that:

- (a) the aggregate of the Market Values of the Ships; plus
- (b) the net realisable value of any additional security previously provided under this Clause 15

is, at any time during the Security Period below 120 per cent. of an amount equal to the Loan less any cash held in accounts pledged to the Lenders.

15.2 PROVISION OF ADDITIONAL SECURITY; PREPAYMENT. If the Agent serves a notice on the Borrowers under Clause 15.1, the Borrowers shall, within 1 month after the date on which the Agent's notice is served, either:

(a) provide, or ensure that a third party provides, additional security which, in the opinion of all the Lenders, has a net realisable value at least equal to the shortfall and is documented in such terms as the Agent may, with the authorisation of all the Lenders, approve or require; or

(b) prepay such part (at least) of the Loan as will eliminate the shortfall.

In Clause 15.1 and in this Clause 15.2 "SECURITY" means a Security Interest over an asset or assets acceptable to the Lender (whether securing the Borrower's liabilities under the Finance Documents or a guarantee in respect of those liabilities), or a guarantee, letter of credit or other security in respect of the Borrower's liabilities under the Finance Documents.

15.3 VALUATION OF A SHIP. The Market Value of a Ship at any date is that shown by a valuation prepared:

(a) as at a date not more than 14 days previously;

(b) by an Approved Broker;

(c) without physical inspection of that Ship (unless reasonably required by the Agent);

(d) 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, taking into account any existing charter;

PROVIDED THAT if the Agent does not reasonably accept the valuation obtained by the Borrower by advising the Borrower in writing within 3 Business Days of the Borrower advising the Agent of such valuation, the Agent may, at the cost of the Borrowers, obtain a second valuation in accordance with paragraphs (a) to (d) of this Clause 15.3 and the Market Value of the relevant Ship will be the average of such 2 valuations.

15.4 VALUE OF ADDITIONAL VESSEL SECURITY. The net realisable value of any additional security which is provided under Clause 15.2 and which consists of a Security Interest over a vessel shall be that shown by a valuation complying with the requirements of Clause 15.3.

15.5 VALUATIONS BINDING. Any valuation under Clause 15.2, 15.3 or 15.4 shall be binding and conclusive as regards the Borrowers, as shall be any valuation which the Lenders make of any additional security which does not consist of or include a Security Interest.

15.6 PROVISION OF INFORMATION. The Borrowers shall promptly provide the Agent and any Approved Broker or expert acting under Clause 15.3 or 15.4 with any information which the Agent or the shipbroker or expert may request for the purposes of the valuation; and, if the Borrowers fail to provide the information by the date specified in the request, the valuation may be made on any basis and assumptions which the Approved Broker or the Lenders (or the expert appointed by them) consider prudent.

15.7 PAYMENT OF VALUATION EXPENSES. Without prejudice to the generality of the Borrowers' obligations under Clauses 20.2, 20.3 and 21.3, the Borrowers 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.

15.8 FREQUENCY OF VALUATIONS. The Agent shall (at the cost of the Borrowers) obtain a valuation of each Ship which is required to determine its Market Value pursuant to this Clause 15.3 once every calendar year together with the Financial Year end Compliance

Certificate thereafter throughout the Security Period commencing with the valuation to be provided or prior to the Delivery Date for such Ship.

- 15.9 APPLICATION OF PREPAYMENT. Clause 8.11 (b) shall apply in relation to any prepayment pursuant to Clause 15.2(b).
- 15.10 RELEASE OF ADDITIONAL SECURITY. If a Borrower or a third party has provided additional security as specified in Clause 15.1(b) and the Borrowers at a later time provide the Agent with a valuation of each Ship made in accordance with Clause 15.3, each evidencing that the aggregate Market Value of the Ships exceeds 120 per cent. of the Loan, the additional security (or the relevant part thereof) shall be released at the Borrowers' expense to the extent that the minimum security cover specified in Clause 15.1 would be maintained following such release PROVIDED at that time there is no Event of Default nor will an Event of Default occur as a result of such release.
- 16 PAYMENTS AND CALCULATIONS
- 16.1 CURRENCY AND METHOD OF PAYMENTS. All payments to be made by the Lenders or by the Borrowers 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 a Borrower to the Agent or any Lender, to the account of the Agent with a bank in New York: "Pueblo Holdings Ltd. and Surf Maritime Co."), or to such other account with such other bank as the Agent may from time to time notify to the Borrowers and the other Creditor Parties; 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 Borrowers and the other Creditor Parties.
- 16.2 PAYMENT ON NON-BUSINESS DAY. If any payment by a 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
  - (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.
- 16.3 BASIS FOR CALCULATION OF PERIODIC PAYMENTS. All interest 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.
- 16.4 DISTRIBUTION OF PAYMENTS TO CREDITOR PARTIES. Subject to Clauses 16.5, 16.6 and 16.7:
- (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 that 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.
- 16.5 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.
- 16.6 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 Borrowers or any Lender any sum which the Agent is expecting to receive for remittance or distribution to the Borrowers or that Lender until the Agent has satisfied itself that it has received that sum.
- 16.7 REFUND TO AGENT OF MONIES NOT RECEIVED. If and to the extent that the Agent makes available a sum to a Borrower or a Lender, without first having received that sum, the Borrower concerned or (as the case may be) the Lender concerned shall, on demand:
  - (a) refund the sum in full to the Agent; and
  - (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.
- 16.8 AGENT MAY ASSUME RECEIPT. Clause 16.7 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.
- 16.9 CREDITOR PARTY ACCOUNTS. Each Creditor Party shall maintain accounts showing the amounts owing to it by each Borrower and each Security Party under the Finance Documents and all payments in respect of those amounts made by any Borrower and any Security Party.
- 16.10 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 any Borrower and any Security Party.
- 16.11 ACCOUNTS PRIMA FACIE EVIDENCE. If any accounts maintained under Clauses 16.9 and 16.10 show an amount to be owing by a 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.
- 17 APPLICATION OF RECEIPTS
- 17.1 NORMAL ORDER OF APPLICATION. Except as any Finance Document may otherwise provide, any sums which are received or recovered by any Creditor Party under or by virtue of any Finance Document shall be applied:
  - (a) FIRST: in or towards satisfaction of any amounts then due and payable under the Finance Documents in the following order and proportions:

- (i) first, 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 Borrowers under Clauses 20, 21 and 22 of this Agreement or by the Borrowers 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
  - (iii) thirdly, in or towards satisfaction of the Loan;
- (b) SECONDLY: in retention of an amount equal to any amount not then due and payable under any Finance Document but which the Agent, by notice to the Borrowers, the Security Parties and the other Creditor Parties, states in its opinion will or may become due and payable in the future and, upon those amounts becoming due and payable, in or towards satisfaction of them in accordance with the foregoing provisions of this Clause; and
- (c) THIRDLY: any surplus shall be paid to the Borrowers or to any other person appearing to be entitled to it.
- 17.2 VARIATION OF ORDER OF APPLICATION. The Agent may, with the authorisation of all the Lenders, by notice to the Borrowers, the other Security Parties and the other Creditor Parties provide for a different manner of application from that set out in Clause 17.1 either as regards a specified sum or sums or as regards sums in a specified category or categories.
- 17.3 NOTICE OF VARIATION OF ORDER OF APPLICATION. The Agent may give notices under Clause 17.2 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.
- 17.4 APPROPRIATION RIGHTS OVERRIDDEN. This Clause 17 and any notice which the Agent gives under Clause 17.2 shall override any right of appropriation possessed, and any appropriation made, by the Borrowers or any other Security Party.
- 18 APPLICATION OF EARNINGS
- 18.1 PAYMENT OF EARNINGS. Each Borrower undertakes with each Creditor Party to ensure that, throughout the Security Period (and subject only to the provisions of the General Assignments), all the Earnings of the Ship owned by it are paid to the Earnings Account for that Ship.
- 18.2 LOCATION OF ACCOUNTS. Each Borrower shall promptly :
- (a) comply with any requirement of the Agent as to the location or re-location of the Earnings Accounts (or either of them);
  - (b) execute any documents which the Agent specifies to create or maintain in favour of the Security Trustee a Security Interest over (and/or rights of set-off, consolidation or other rights in relation to) the Earnings Accounts.
- 18.3 MINIMUM LIQUIDITY. The Borrowers shall ensure and procure that, at any time and in respect of each Advance, there shall be credited to the Earnings Account(s) amounts at least equal to the aggregate of (i) the next repayment instalment of each such Advance



falling due and (ii) any interest to accrue until the next repayment date of each such Advance.

18.4 DEBITS FOR EXPENSES ETC. The Agent shall be entitled (but not obliged) from time to time to debit any Earnings Account without prior notice in order to discharge any amount due and payable under Clause 20 or 21 to a Creditor Party or payment of which any Creditor Party has become entitled to demand under Clause 20 or 21.

19 EVENTS OF DEFAULT

19.1 EVENTS OF DEFAULT. An Event of Default occurs if:

- (a) either Borrower or any Security Party fails to pay when due or (if so payable) on demand any sum payable under a Finance Document or under any document relating to a Finance Document;
- (b) any breach occurs of Clause 9.2, 11.2, 11.3, 11.18, 11.19, 12.2, 12.3, 12.4, 12.5, 13.2, 13.3, 15.1, 18.1 or 18.3; or
- (c) any breach by either Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a) or (b)) if, in the opinion of all the Lenders, such default is capable of remedy, and such default continues unremedied 15 Business Days after written notice from the Agent requesting action to remedy the same; or
- (d) (subject to any applicable grace period specified in the Finance Document) any breach by either Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a), (b) or (c)); or
- (e) any representation, warranty or statement made by, or by an officer of, a Borrower or a Security Party in a Finance Document or in the Drawdown Notice or any other notice or document relating to a Finance Document is untrue or misleading when it is made; or
- (f) any of the following occurs in relation to any Financial Indebtedness of a Relevant Person:
  - (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; or
  - (iii) any Security Interest securing any Financial Indebtedness of a Relevant Person becomes enforceable; or
- (g) any of the following occurs in relation to any Financial Indebtedness of a Borrower:
  - (i) a lease, hire purchase agreement or charter creating any Financial Indebtedness of a Borrower is terminated by the lessor or owner or becomes capable of being terminated as a consequence of any termination event; or
  - (ii) 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 Borrower 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

- (h) any of the following occurs in relation to a Relevant Person:
- (i) a Relevant Person becomes unable to pay its debts as they fall due;  
or
  - (ii) any asset of a Relevant Person (other than the Corporate Guarantor) is subject to any form of execution, attachment, arrest, sequestration or distress in respect of a sum of, \$500,000 or more or the equivalent in another currency and, in the case of the Corporate Guarantor, is subject to any form of execution, attachment, arrest, sequestration or distress which is likely to have a Material Adverse Effect; or
  - (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 Borrowers or the Corporate Guarantor which is, or is to be, effected for the purposes of an amalgamation or reconstruction previously approved by all the 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 30 days of being made or presented, or (bb) within 30 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
  - (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) any meeting of the members or directors, or of any committee of the board or senior management, of a Relevant Person is held or summoned for the purpose of considering a resolution or proposal to authorise or take any action of a type described in paragraphs (iv) to (ix) or a step preparatory to such action, or (with or without such a meeting) the members, directors or such a committee resolve or agree that such an action or step should be taken or should be taken if certain conditions materialise or fail to materialise; or
- (xi) in a Pertinent Jurisdiction other than England, any event occurs, any proceedings are opened or commenced or any step is taken which, in the opinion of all the Lenders, is similar to any of the foregoing; or
- (i) either Borrower or any Security Party ceases or suspends carrying on its business or a part of its business which, in the opinion of all the Lenders, is material in the context of this Agreement; or
- (j) it becomes unlawful in any Pertinent Jurisdiction or impossible:
  - (i) for either Borrower or any Security Party to discharge any liability under a Finance Document or to comply with any other obligation which all the Lenders consider material under a Finance Document; and
  - (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
- (k) any consent necessary to enable either Borrower to own, operate or charter the Ship owned by it or to enable either Borrower or any Security Party to comply with any provision which all the Lenders consider material of a Finance 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; or
- (l) it reasonably appears to the Lenders that, without their prior consent, a change has occurred or probably has occurred after the date of this Agreement in the beneficial ownership of any of the shares in either Borrower, or in the control of the voting rights attaching to any of those shares which results in the Borrowers not being in compliance with their obligations under Clause 12.4; or
- (m) any provision which the 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 or any other third party claim or interest; or
- (n) the security constituted by a Finance Document is in any way imperilled or in jeopardy; or
- (o) (without limiting the generality of paragraph (m) above), either Credit Default Insurance with respect to the Initial Charters, ceases to exist;

- (p) 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 any Borrower or any other Security Party; or
  - (ii) any accident or other event involving a Ship or another vessel owned, chartered or operated by a Relevant Person; or
  - (iii) commencement of legal or administrative action involving the Borrowers the Ships or any Security Party

which constitutes a Material Adverse Change.

19.2 ACTIONS FOLLOWING AN EVENT OF DEFAULT. On, or at any time after, the occurrence of an Event of Default:

- (a) the Agent may, and if so instructed by the Majority Lenders, the Agent shall:
- (i) serve on the Borrowers a notice stating that the Commitments and all other obligations of each Lender to the Borrowers under this Agreement are terminated; and/or
  - (ii) serve on the Borrowers a notice stating that if the Event of Default is not remedied, in the case of an Event of Default falling within Clause 19.1(a), within 5 days and in any other case, within 30 days, the Loan, 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
  - (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 Lender, 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 (ii), the Security Trustee, the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

19.3 TERMINATION OF COMMITMENTS. On the service of a notice under Clauses 19.2(a) (i), the Commitments and all other obligations of each Lender to the Borrowers under this Agreement shall terminate.

19.4 ACCELERATION OF LOAN. On the service of a notice under Clause 19.2(a) (ii), the Loan, all accrued interest and all other amounts accrued or owing from the Borrowers 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.

19.5 MULTIPLE NOTICES; ACTION WITHOUT NOTICE. The Agent may serve notices under Clauses 19.2 (a) (i) and (ii) simultaneously or on different dates and it and/or the Security Trustee may take any action referred to in Clause 19.2 if no such notice is served or simultaneously with or at any time after the service of both or either of such notices.

19.6 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 Borrowers under Clause 19.2; but the notice shall become effective when it is served on the Borrowers, 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 a Borrower or any Security Party with any form of claim or defence.

19.7 LENDER'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.

19.8 EXCLUSION OF CREDITOR PARTY LIABILITY. No Creditor Party, and no receiver or manager appointed by the Security Trustee, shall have any liability to a 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.

19.9 RELEVANT PERSONS. In this Clause 19 a "RELEVANT PERSON" means the Borrowers, the Corporate Guarantor and any other Security Party.

19.10 INTERPRETATION. In Clause 19.1(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 19.1(g) "PETITION" includes an application.

## 20 FEES AND EXPENSES

20.1 ARRANGEMENT, COMMITMENT AND AGENCY FEES. The Borrowers shall pay to the Agent:

- (a) a commitment fee (for distribution among the Lenders pro rata to their Commitments) at the rate of 0.40 per cent. per annum on the amount of the Total Commitments less the amount of the Loan for the period from (and including) the date of this Agreement up to the earlier of (i) the Final Availability Date of the Ship B Advance, (ii) if earlier, the Drawdown Date of the Ship B Advance and (iii) the date on which the Total Commitments are fully cancelled or terminated, such fee to be paid quarterly in arrears and on the last day of such period;
- (b) an arrangement fee (for distribution among the Lenders at the sole discretion of the Agent), equal to 0.80 per cent of the amount of the Total Commitments payable as follows:
  - (i) 50 per cent. of such arrangement fee has been paid on the date of acceptance of the Summary of Terms; and
  - (ii) the remaining 50 per cent shall be paid in two equal instalments, each equal to 0.40 per cent. of the maximum amount of each Advance each such instalment to be paid on the Drawdown Date of such Advance,

PROVIDED THAT :

- (A) the first instalment of the arrangement fee referred to in paragraph (i) above shall be non-refundable irrespective whether any part of the Total Commitments are drawn down hereunder for any other reason whatsoever; and
- (B) in case the Agent determines that the arrangement fee needs to be increased in order to achieve for a successful syndication of the Total Commitment or any part thereof, the amount of the arrangement fee to be paid and the manner of payment thereof may, at the discretion of the Agent and in cooperation with the Borrowers and the Corporate Guarantor each of whom shall act reasonably, be adjusted and increased up to an amount not exceeding in aggregate 1.20 per cent of the amount of the Total Commitments; and

(c) if at any time there are at least 2 Lenders, an agency fee equal to \$10,000 for each Ship which is subject to a Mortgage payable annually in advance.

20.2 COSTS OF NEGOTIATION, PREPARATION ETC. The Borrowers shall pay to the Agent on its demand the amount of all reasonable expenses incurred by the Agent or the Security Trustee in connection with the negotiation, preparation, execution or registration of any Finance Document or any related document or with any transaction contemplated by a Finance Document or a related document (including, without limitation, any expenses incurred by the Lenders with respect to the legal opinions stipulated in Schedule 4).

20.3 COSTS OF VARIATIONS, AMENDMENTS, ENFORCEMENT ETC. The Borrowers 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 to a Finance Document, or any proposal for such an amendment to be made;
- (b) any consent or waiver by the Lenders or the Creditor Party concerned under or in connection with a Finance Document, or any request for such a consent or waiver;
- (c) the valuation of any security provided or offered under Clause 15 or any other matter relating to such security; or
- (d) where the Agent, in its absolute opinion, considers that there has been a material change to the insurances in respect of a Ship, the review of the insurances of such Ship pursuant to Clause 13.18; and
- (e) any step taken by the Lender concerned with a view to the protection, exercise or enforcement of any right or Security Interest created by a Finance Document or for any similar purpose.

There shall be recoverable under paragraph (d) the full amount of all legal expenses, whether or not such as would be allowed under rules of court or any taxation or other procedure carried out under such rules.

20.4 DOCUMENTARY TAXES. The Borrowers 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.

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 (without necessarily specifying a detailed

breakdown) 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.

21 INDEMNITIES

21.1 INDEMNITIES REGARDING BORROWING AND REPAYMENT OF LOAN. The Borrowers 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, or which that Creditor Party reasonably and with due diligence estimates that it will incur, as a result of or in connection with:

- (a) the Loan not being borrowed on the date specified in the Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
- (b) the receipt or recovery of all or any part of the Loan or an overdue sum otherwise than on the last day of an Interest Period or other relevant period;
- (c) any failure (for whatever reason) by a 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 Borrowers on the amount concerned under Clause 7);
- (d) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause 19;

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.

21.2 BREAKAGE COSTS. Without limiting its generality, Clause 21.1 covers any claim, expense, liability or loss, including a loss of a prospective profit, incurred by a Lender:

- (a) in liquidating or employing deposits from third parties acquired or arranged to fund or maintain all or any part of its Contribution and/or any overdue amount (or an aggregate amount which includes its Contribution or any overdue amount); and
- (b) in terminating, or otherwise in connection with, any interest and/or currency swap or any other transaction entered into (whether with another legal entity or with another office or department of the Lender concerned) to hedge any exposure arising under this Agreement or that part which the Lender concerned determines is fairly attributable to this Agreement of the amount of the liabilities, expenses or losses (including losses of prospective profits) incurred by it in terminating, or otherwise in connection with, a number of transactions of which this Agreement is one.

21.3 MISCELLANEOUS INDEMNITIES. The Borrowers shall fully indemnify each Creditor Party severally on their respective demands in respect of all claims, expenses, liabilities and losses and expenses of every kind ("LIABILITY ITEMS") which may be made or brought against or incurred by a Creditor Party, in any country, as a result of or in connection with:

- (a) any action taken, or omitted or neglected to be 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; and
- (b) any other event, matter or question which occurs or arises at any time during the Security Period and which has any connection with, or any bearing on, any Finance Document, any payment or other transaction relating to a Finance Document or any asset covered (or

previously covered) by a Security Interest created (or intended to be created) by a Finance Document.

other than liability items which are shown to have been caused by the gross negligence or the wilful misconduct of the Agent's or (as the case may be) the Security Trustee's own officers or employees.

21.4 EXTENSION OF INDEMNITIES; ENVIRONMENTAL INDEMNITY. Without prejudice to its generality, Clause 21.3 covers:

- (a) any matter which would be covered by Clause 20.3 if any of the references in that Clause to a Lender were a reference to the Agent or (as the case may be) to the Security Trustee; and
- (b) any liability items which arise, or are asserted, under or in connection with any law or any regulation relating to safety at sea, pollution or the protection of the environment, including but not limited to the ISM Code and the ISPS Code.

21.5 CURRENCY INDEMNITY. If any sum due from a Borrower or any Security Party to a Creditor Party under a Finance Document or under any order or judgment relating to a Finance Document 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 or lodging any claim or proof against any Borrower or any Security Party, whether in its liquidation, any arrangement involving it or otherwise; or
- (b) obtaining an order or judgment from any court or other tribunal; or
- (c) enforcing any such order or judgment;

the Borrowers shall indemnify the Creditor Party concerned against the loss arising when the amount of the payment actually received by that Creditor Party is converted at the available rate of exchange into the Contractual Currency.

In this Clause 21.5, 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 concerned to purchase the Contractual Currency with the Payment Currency.

This Clause 21.5 creates a separate liability of the Borrowers 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.

21.6 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 21 and which indicates (without necessarily specifying a detailed breakdown) 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.

21.7 SUMS DEEMED DUE TO A LENDER. For the purposes of this Clause 21, a sum payable by a Borrower to the Agent or the Security Trustee for distribution to a Lender shall be treated as a sum due to that Lender.



- 22 NO SET-OFF OR TAX DEDUCTION
- 22.1 NO DEDUCTIONS. All amounts due from a Borrower under a Finance Document shall be paid:
- (a) without any form of set-off, cross-claim or condition; and
  - (b) free and clear of any tax deduction except a tax deduction which a Borrower is required by law to make.
- 22.2 GROSSING-UP FOR TAXES. If a Borrower is required by law to make a tax deduction from any payment:
- (a) the Borrowers shall notify the Agent as soon as it becomes aware of the requirement;
  - (b) such Borrower shall pay the tax deducted to the appropriate taxation authority promptly, and in any event before any fine or penalty arises;
  - (c) the amount due in respect of the payment shall be increased by the amount necessary to ensure that each Creditor Party receives and retains (free from any liability relating to the tax deduction) a net amount which, after the tax deduction, is equal to the full amount which it would otherwise have received.
- 22.3 EVIDENCE OF PAYMENT OF TAXES. Within 1 month after making any tax deduction, the Borrowers shall deliver to the Agent documentary evidence satisfactory to the Agent that the tax had been paid to the appropriate taxation authority.
- 22.4 EXCLUSION OF TAX ON OVERALL NET INCOME. In this Clause 22 "TAX DEDUCTION" means any deduction or withholding for or on account of any present or future tax except tax on a Creditor Party's overall net income.
- 23 ILLEGALITY, ETC
- 23.1 ILLEGALITY. This Clause 23 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 maintain or give effect to any of its obligations under this Agreement in the manner contemplated by this Agreement.
- 23.2 NOTIFICATION OF ILLEGALITY. The Agent shall promptly notify the Borrowers, the Security Parties, the Security Trustee and the other Lenders of the notice under Clause 23.1 which the Agent receives from the Notifying Lender.
- 23.3 PREPAYMENT; TERMINATION OF COMMITMENT. On the Agent notifying the Borrowers under Clause 23.1 and 23.2, the Notifying Lender's Commitment shall terminate; and thereupon or, if later, on the date specified in the Notifying Lender's notice under Clause 23.1 as the date on which the notified event would become effective the Borrowers shall prepay the Notifying Lender's Contribution in accordance with Clause 8.

24 INCREASED COSTS

24.1 INCREASED COSTS. This Clause 24 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 a regulation or an alteration after the date of this Agreement in the manner in which a law is interpreted or applied by any competent authority (disregarding any effect which relates to the application to payments under this Agreement of a tax on the Notifying Lender's overall net income); or
- (b) the effect of complying with any regulation having compulsory effect (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", that is to say:

- (i) 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;
- (ii) 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;
- (iii) an additional or increased cost of funding 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
- (iv) 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 21.1 or by Clause 22; or

- (c) the effect of complying with the regulations set out in the "International Convergence of Capital Standards, a Revised Framework" published by the Basle Committee on Banking Supervision in June 2004 as implemented in the EU by the Capital Requirements Directive (2006/48/EC and 2006/49/EC) is that the Notifying Lender (or a parent company of it) has incurred or will incur an increased cost (as defined in sub-paragraphs (i) to (iv) above) when compared to the cost of complying with such regulations as determined by the Notifying Lender (or a parent company of it) on the date of this Agreement.

For the purposes of this Clause 24.1 the Notifying Lender may in good faith allocate or spread costs and/or losses among its assets and liabilities (or any class thereof) on such basis as it considers appropriate.

- 24.2 NOTIFICATION TO BORROWERS OF CLAIM FOR INCREASED COSTS. The Agent shall promptly notify the Borrowers and the Security Parties of the notice which the Agent received from the Notifying Lender under Clause 24.1.
- 24.3 PAYMENT OF INCREASED COSTS. The Borrowers shall pay to the Agent, on the Agent's demand, for the account of the Notifying Lender the amounts which the Agent from time to time notifies the Borrowers that the Notifying Lender has specified to be necessary to compensate the Notifying Lender for the increased cost.
- 24.4 NOTICE OF PREPAYMENT. If the Borrowers are not willing to continue to compensate the Notifying Lender for the increased cost under Clause 24.3, the Borrowers may give the Agent not less than 15 days' notice of its intention to prepay the Notifying Lender's Contribution at the end of an Interest Period.
- 24.5 PREPAYMENT; TERMINATION OF COMMITMENT. A notice under Clause 24.4 shall be irrevocable; the Agent shall promptly notify the Notifying Lender of the Borrowers' notice of intended prepayment; and:
- (a) on the date on which the Agent serves that notice, the Commitment of the Notifying Lender shall be cancelled; and
  - (b) on the date specified in its notice of intended prepayment, the Borrowers shall prepay (without premium or penalty) the Notifying Lender's Contribution, together with accrued interest thereon at the applicable rate plus the Margin.
- 24.6 APPLICATION OF PREPAYMENT. Clause 8 shall apply in relation to the prepayment
- 25 SET-OFF
- 25.1 APPLICATION OF CREDIT BALANCES. Each Creditor Party may without prior notice:
- (a) apply any balance (whether or not then due) which at any time stands to the credit of any account in the name of any Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Borrowers or any of them to that Creditor Party under any of the Finance Documents; and
  - (b) for that purpose:
    - (i) break, or alter the maturity of, all or any part of a deposit of a Borrower;
    - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
    - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.
- 25.2 EXISTING RIGHTS UNAFFECTED. No Creditor Party shall be obliged to exercise any of its rights under Clause 25.1; and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).
- 25.3 SUMS DEEMED DUE TO A LENDER. For the purposes of this Clause 25, a sum payable by the Borrowers or any of them to the Agent or the Security Trustee for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to such Lender.

- 25.4 NO SECURITY INTEREST. This Clause 25 gives each Creditor Party a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Borrowers (or any of them).
- 26 JOINT AND SEVERAL LIABILITY
- 26.1 GENERAL. All liabilities and obligations of the Borrowers under this Agreement shall, whether expressed to be so or not, be several and, if and to the extent consistent with Clause 26.2, joint.
- 26.2 NO IMPAIRMENT OF BORROWERS' OBLIGATIONS. The liabilities and obligations of a Borrower shall not be impaired by:
- (a) this Agreement being or later becoming void, unenforceable or illegal as regards either one or both of the other Borrower;
  - (b) any Lender, the Agent or the Security Trustee entering into any rescheduling, refinancing or other arrangement of any kind with the other Borrower;
  - (c) any Lender, the Agent or the Security Trustee releasing the other Borrower or any Security Interest created by a Finance Document; or
  - (d) any combination of the foregoing.
- 26.3 PRINCIPAL DEBTORS. Each Borrower declares that it is and will, throughout the Security Period, remain a principal debtor for all amounts owing under this Agreement and the Finance Documents and neither the Borrower shall in any circumstances be construed to be a surety for the obligations of the other Borrower under this Agreement.
- 26.4 SUBORDINATION. Subject to Clause 26.5, during the Security Period, neither Borrower shall:
- (a) claim any amount which may be due to it from the other Borrower whether in respect of a payment made, or matter arising out of, this Agreement or any Finance Document, or any matter unconnected with this Agreement or any Finance Document; or
  - (b) take or enforce any form of security from the other Borrower for such an amount, or in any other way seek to have recourse in respect of such an amount against any asset of either one or both of the other Borrowers; or
  - (c) set off such an amount against any sum due from it to the other Borrower; or
  - (d) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving the other Borrower or other Security Party; or
  - (e) exercise or assert any combination of the foregoing.
- 26.5 BORROWERS' REQUIRED ACTION. If during the Security Period, the Agent, by notice to a Borrower, requires it to take any action referred to in paragraphs (a) to (d) of Clause 26.4, in relation to the other Borrower, that Borrower shall take that action as soon as practicable after receiving the Agent's notice.
- 27 TRANSFERS AND CHANGES IN LENDING OFFICES
- 27.1 TRANSFER BY A BORROWER. Neither Borrower may, without the prior written consent of the Agent, given on the instructions of all the Lenders:
- (a) transfer any of its rights, liabilities or obligations under any Finance Documents; and

(b) enter into any merger, de-merger or other reorganisation, or carry out any other act, as a result of which any of its rights or liabilities would vest in, or pass to, another person.

27.2 TRANSFER BY A LENDER. Subject to Clause 27.4 and the other terms and conditions of this Clause 27.2, a Lender (the "TRANSFEROR LENDER") may at any time 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),

to be (in the case of its rights) transferred to, or (in the case of its obligations) assumed by, any third party (a "TRANSFeree LENDER") by delivering to the Agent a completed certificate in the form set out in Schedule 5 with any modifications approved or required by the Agent (a "TRANSFER CERTIFICATE") executed by the Transferor Lender and the Transferee Lender.

A transfer pursuant to this Clause 27.2 shall require the prior consent of the Borrowers, which shall not be unreasonably withheld or delayed PROVIDED THAT the consent of the Borrowers shall not be required in the case of:

- (a) a transfer where the Transferee Lender is an affiliate of the Transferor lender;
- (b) an Event of Default which is continuing; and
- (c) a transfer to the first two Transferee Lenders (in which case only consultation with the Borrowers is required)

PROVIDED FURTHER THAT the aggregate of such right and/or obligation that may be transferred by the Lenders together with all such rights and/or obligations which may have been transferred to lenders other than the present Lenders (present Lenders means the Lenders on the date of execution of this Agreement) shall not exceed 50 per cent. of the total rights and/or obligations of the Total Commitments or, as the case may be, the Total Contributions.

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.

27.3 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 Borrowers, the Security Parties, the Security Trustee and each of the other Lenders;
- (b) on behalf of the Transferee Lender, send to the Borrowers and each Security Party 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.

27.4 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 26.3 on or before that date.

27.5 NO TRANSFER WITHOUT TRANSFER CERTIFICATE. No assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation

to, any Borrower, any Security Party or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

- 27.6 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 Borrowers 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.
- 27.7 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 either 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 Loan 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 either 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 under Clause 5.7 and Clause 20, 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 a 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.

- 27.8 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 26.4) of the Transfer Certificate; and the Agent shall make the register available for inspection by

any Lender, the Security Trustee and either Borrower during normal banking hours, subject to receiving at least 3 Business Days prior notice.

- 27.9 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.
- 27.10 AUTHORISATION OF AGENT TO SIGN TRANSFER CERTIFICATES. Each Borrower, the Security Trustee, each Lender irrevocably authorise the Agent to sign Transfer Certificates on its behalf.
- 27.11 REGISTRATION FEE. In respect of any Transfer Certificate, the Agent shall be entitled to recover a registration fee of \$2,500 (and all costs, fees and expenses incidental to the transfer (including, but not limited to legal fees and expenses)) from the Transferor Lender or (at the Agent's option) the Transferee Lender.
- 27.12 SUB-PARTICIPATION; SUBROGATION ASSIGNMENT. A Lender may sub-participate part of its rights and/or obligations under or in connection with the Finance Documents provided however that the aggregate of such sub-participations at any time does not exceed 50 per cent. of the total rights and/or obligations of the Lenders under or in connection with the Finance Documents, without the consent of, or any notice to, any Borrower, any Security Party, the Agent and the Security Trustee; and the Lenders may assign, in any manner and terms agreed by all the 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.
- 27.13 DISCLOSURE OF INFORMATION. A Lender may disclose to a potential Transferee Lender, or sub-participant as well as any rating agency, trustee, professional adviser or accountant any information which the Lender has received in relation to any Borrower, any Security Party or their affairs under or in connection with any Finance Document which the Agent may consider necessary or appropriate to be disclosed in order to ensure a successful potential syndication, transfer or sub-participation. In such case, the Agent shall be released from its obligation of secrecy and confidentiality PROVIDED however, that if a potential Transferee Lender or sub-participant, as well as any rating agency, trustee, professional adviser or accountant is not already by law subject to any rules of confidentiality, the Agent shall request the execution of a confidentiality agreement by such potential Transferee Lender, sub-participant, rating agency, trustee or accountant.
- 27.14 CHANGE OF LENDING OFFICE. A Lender may change its lending office by giving notice to the Agent and the change shall become effective on the later of:
- (a) the date on which the Agent receives the notice; and
  - (b) the date, if any, specified in the notice as the date on which the change will come into effect.
- 27.15 NOTIFICATION. On receiving such a notice, the Agent shall notify the Borrowers and the Security Trustee; and, until the Agent receives such a notice, it shall be entitled to assume that a Lender is acting through the lending office of which the Agent last had notice.
- 28 VARIATIONS AND WAIVERS
- 28.1 VARIATIONS, WAIVERS ETC. BY LENDERS. A document shall be effective to vary, waive, suspend or limit any provision of a Finance Document, or any Creditor Party's rights or remedies under such a provision or the general law, only if the document is signed, or specifically agreed to by fax, by the Borrowers, by the Agent on behalf of the Majority

Lenders, by the Agent and the Security Trustee in their own rights, and, if the document relates to a Finance Document to which a Security Party is party, by that Security Party.

28.2 EXCLUSION OF OTHER OR IMPLIED VARIATIONS. Except for a document which satisfies the requirements of Clause 28.1, no document, and 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 a Borrower or any other 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.

## 29 NOTICES

29.1 GENERAL. Unless otherwise specifically provided, any notice under or in connection with any Finance Document shall be given by letter, fax or telex; and references in the Finance Documents to written notices, notices in writing and notices signed by particular persons shall be construed accordingly.

29.2 ADDRESSES FOR COMMUNICATIONS. A notice shall be sent:

- (a) to each Borrower: 85 Akti Miaouli,  
Piraeus 185 38,  
Greece  
  
Fax No: +30 210 4531984
- (b) to a Lender: At the address below its name in Schedule 1  
(or as the case may require) in the relevant  
Transfer Certificate.
- (c) to the Agent, Security Trustee, Bookrunner  
and Arranger: DekaBank Deutsche Girozentrale  
Mainzer Landstra(eta)e 16  
60329 Frankfurt am Main  
Germany  
  
Fax No: +49 151 527 18146

or to such other address as the relevant party may notify the Agent or, if the relevant party is the Agent or the Security Trustee, the Borrowers, the Lenders and the Security Parties.

29.3 EFFECTIVE DATE OF NOTICES. Subject to Clauses 29.4 and 29.5:

- (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;



- (b) a notice which is sent by telex or fax shall be deemed to be served, and shall take effect, 2 hours after its transmission is completed.
- 29.4 SERVICE OUTSIDE BUSINESS HOURS. However, if under Clause 29.3 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 29.5) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.
- 29.5 ILLEGIBLE NOTICES. Clauses 29.3 and 29.4 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.
- 29.6 VALID NOTICES. A notice under or in connection with a Finance Document shall not be invalid by reason that its contents or the manner of serving it do not comply with the requirements of this Agreement or, where appropriate, any other Finance Document under which it is served if:
- (a) the failure to serve it in accordance with the requirements of this Agreement or other Finance Document, as the case may be, has not caused any party to suffer any significant loss or prejudice; or
- (b) in the case of incorrect and/or incomplete contents, it should have been reasonably clear to the party on which the notice was served what the correct or missing particulars should have been.
- 29.7 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 Lender:
- (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 Lender to the Agent, only if it is addressed in such a manner as the Agent shall specify for this purpose.
- 29.8 ENGLISH LANGUAGE. Any notice under or in connection with a Finance Document shall be in English.
- 29.9 MEANING OF "NOTICE". In this Clause 28, "NOTICE" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

30 SUPPLEMENTAL

- 30.1 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.
- 30.2 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.
- 30.3 COUNTERPARTS. A Finance Document may be executed in any number of counterparts.
- 30.4 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.

31 LAW AND JURISDICTION

- 31.1 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.
- 31.2 EXCLUSIVE ENGLISH JURISDICTION. Subject to Clause 31.3, the courts of England shall have exclusive jurisdiction to settle any Disputes.
- 31.3 CHOICE OF FORUM FOR THE EXCLUSIVE BENEFIT OF CREDITOR PARTIES. Clause 31.2 is for the exclusive benefit of the Creditor Parties, each of which reserves the rights:
- (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.
- Neither Borrower shall commence any proceedings in any country other than England in relation to a Dispute.
- 31.4 PROCESS AGENT. Each Borrower irrevocably appoints Messrs HFW Nominees Limited at their office for the time being, presently at Friary Court, 65 Crutched Friars, London EC3N 3AE, 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 this Agreement or any other Finance Document.
- 31.5 CREDITOR PARTY RIGHTS UNAFFECTED. Nothing in this Clause 31 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.
- 31.6 MEANING OF "PROCEEDINGS". In this Clause 31, "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 PAGES

BORROWERS

SIGNED by Todd Johnson )  
)  
for and on behalf of ) /s/ Todd Johnson  
PUEBLO HOLDINGS LTD. )  
in the presence of: Efstratios )  
Paschalidis )

SIGNED by Todd Johnson )  
)  
for and on behalf of ) /s/ Todd Johnson  
SURF MARITIME CO. )  
in the presence of: Efstratios )  
Paschalidis )

LENDERS

SIGNED by )  
)  
for and on behalf of ) /s/ Klaus Stoltenberg  
DEKABANK DEUTSCHE ) /s/ Stefan Schuett  
GIROZENTRALE )  
in the presence of: Tobias Zehnter )

AGENT

SIGNED by )  
)  
for and on behalf of ) /s/ Klaus Stoltenberg  
DEKABANK DEUTSCHE ) /s/ Stefan Schuett  
GIROZENTRALE )  
in the presence of: Tobias Zehnter )

SECURITY TRUSTEE

SIGNED by )  
)  
for and on behalf of ) /s/ Klaus Stoltenberg  
DEKABANK DEUTSCHE ) /s/ Stefan Schuett  
GIROZENTRALE )  
in the presence of: Tobias Zehnter )

BOOKRUNNER

SIGNED by )  
 )  
for and on behalf of ) /s/ Klaus Stoltenberg  
DEKABANK DEUTSCHE ) /s/ Stefan Schuett  
GIROZENTRALE )  
in the presence of: Tobias Zehnter )

ARRANGER

SIGNED by )  
 )  
for and on behalf of ) /s/ Klaus Stoltenberg  
DEKABANK DEUTSCHE ) /s/ Stefan Schuett  
GIROZENTRALE )  
in the presence of: Tobias Zehnter )

THIS NOTE AND THE SHARES OF COMMON STOCK ISSUED UPON ANY CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND HAVE BEEN ISSUED IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY REGULATION S PROMULGATED UNDER THE SECURITIES ACT. SUCH SECURITIES MAY NOT BE REOFFERED FOR SALE OR RESOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF REGULATION S, PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT, OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT. HEDGING TRANSACTIONS INVOLVING THE SECURITIES MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT.

NAVIOS MARITIME HOLDINGS INC.  
2% CONVERTIBLE SENIOR PROMISSORY NOTE

U.S.\$33,500,000

February 18, 2009

FOR VALUE RECEIVED, Navios Maritime Holdings Inc., a company incorporated under the laws of the Marshall Islands (the "**Company**"), hereby promises to pay to the order of J.B. Uglund Shipping Singapore Pte Ltd. or its successors and assigns (the "**Holder**"), the principal sum of U.S.\$33,500,000 (the "**Principal**"), together with interest thereon from the date of this Note. Interest shall accrue on any unpaid Principal at a rate of 2% per annum on a daily basis from the date hereof ("**Interest**") until paid in full or converted as provided in this 2% Convertible Senior Promissory Note (the "**Note**"). Interest shall be calculated on the basis of a 365-day year.

This Note is referenced in, and has been issued pursuant to, that certain Subscription Agreement, dated as of February 18, 2009 (the "**Subscription Agreement**"), by and between the Company and the Holder. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Subscription Agreement.

**1**     **Payment.**

(a) Unless previously converted as provided herein from time to time, all outstanding Principal and Interest, if not required to be paid sooner pursuant to the terms hereof, shall be due and payable on February 18, 2012 (the "**Maturity Date**"). Interest only shall be payable semiannually in arrears on August 18 and February 18 of each year, with the first payment of Interest due and payable on August 18, 2009.

(b) Payment of Principal and Interest on this Note shall be made by wire transfer of immediately available funds to an account designated by the Holder or by check sent to the Holder as the Holder may designate for such purpose from time to time by written notice to the Company. If any payment date falls on a day that is not a Business Day (as defined below), the payment then due will be made on the next succeeding Business Day with the same force and effect as if made on such payment date. "**Business Day**" means any day that is not a Saturday or Sunday and is not a day on which banking instructions are generally authorized or obligated to close in the city of New York, New York.

---

2 **Events of Default.**

- (a) The occurrence of any one or more of the following events (whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or otherwise) shall constitute an “**Event of Default:**”
- (i) the Company fails to make, on or before the due date (at maturity, by acceleration or otherwise), in the manner required, any payment of Principal, Interest or any other sums due under this Note; provided that with respect to Interest payable under this Note, the Company shall have not remedied such failure within fifteen days;
  - (ii) a court or other applicable governmental body of competent jurisdiction enters a judgment, decree or other order for relief with respect to the Company or any subsidiary of the Company (other than a subsidiary the securities of which are listed for trading on any stock exchange or interdealer quotation system) whose indebtedness the Company guarantees or which guarantees the indebtedness of the Company (a “**Significant Subsidiary**”) in an involuntary case under Title 11 of the United States Code or any similar or successor Federal, state or foreign law now or hereafter in effect relating to bankruptcy, insolvency, receivership, winding up, composition or arrangement proceedings, liquidation, reorganization or relief of debtors (the “**Bankruptcy Law**”), or the continuance of any of the following events for 30 days unless dismissed, bonded or discharged: (A) an involuntary case is commenced against the Company or any Significant Subsidiary, under any applicable Bankruptcy Law, (B) a decree or order of a court or other applicable governmental body of competent jurisdiction for the appointment of a receiver, liquidator, sequestrator, trustee, custodian, or other officer having similar powers over the Company or any Significant Subsidiary, or over all or a substantial part of the Company’s property, is entered, or (C) an interim receiver, trustee or other custodian is appointed without the consent of the Company, for all or a substantial part of the property of the Company or any Significant Subsidiary;
  - (iii) the Company or a Significant Subsidiary commences a voluntary case under the Bankruptcy Law, or consents to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law or consents to or applies for the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property or shall make a general assignment for the benefit of creditors;
  - (iv) there shall be a default or an event of default under any bond, debenture, note or other evidence of indebtedness for money borrowed by the Company or any subsidiary or under any mortgages, indentures or instruments under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company or any of its subsidiaries, whether such indebtedness now exists or shall be created, which indebtedness, individually or in the aggregate is in excess of U.S.\$20,000,000 principal amount, which default shall constitute a failure to pay any portion of the principal of such indebtedness when due and payable after the expiration of any applicable grace or cure period with respect thereto or shall have resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable; or

(v) a judgment or decree shall be entered against the Company involving a liability of U.S.\$20,000,000 or more and such judgment or decree shall not have been vacated, discharged, satisfied or stayed pending appeal within 60 days from the entry thereof.

(b) If an Event of Default occurs, the aggregate Principal amount of this Note then outstanding, together with all Interest accrued thereon pursuant to the terms of this Note and unpaid as of the date of such Event of Default, shall automatically become immediately due and payable without presentment, demand, protest, or further notice, all of which are hereby waived. If an Event of Default occurs and is continuing, in addition to acceleration as provided above, the Holder may exercise all rights and pursue all available remedies by proceeding at law or in equity to collect the payment of Principal or Interest or to enforce the performance of any provision of this Note, such remedies being cumulative, non-exclusive, and enforceable alternatively, successively or concurrently. Any delay or omission by the Holder in exercising any right or remedy accruing upon an Event of Default shall not impair such right or remedy or constitute a waiver of or acquiescence in such Event of Default.

### 3 Conversion

(a) Right of Holder to Convert into Common Stock.

(i) From time to time, subject to the provisions hereof, the Holder shall have the right, at its option, at any time on or before 5:00 p.m., Eastern Standard Time, on the Maturity Date, to convert all, or a portion, in multiples of \$1,000, of the then outstanding Principal of, and accrued Interest on, this Note, into that number of fully paid and non-assessable shares of the Company's Common Stock, par value \$0.0001 per share (the "Common Stock"), as said shares shall be constituted on the date of conversion, obtained by dividing the portion of the then outstanding Principal and Interest to be converted under this Note by the conversion price of \$11.00 per share of Common Stock, as adjusted pursuant to Sections 3(c) and 3(d) below (the "Conversion Price"). Notwithstanding the foregoing, the minimum principal amount of this Note that may be converted at any time is the lesser of (i) \$5,000,000 and (ii) any then remaining unconverted outstanding principal amount of this Note.

(ii) The Holder may exercise its conversion rights by the surrender of this Note at the Company's principal office, accompanied by a completed Notice of Exercise of Conversion Rights in the form attached hereto as Exhibit A (a "Notice of Exercise"). Upon receipt of this Note and a Notice of Exercise, the Company (i) shall show the Holder or its designee as the record owner of such shares as of the close of business on the date on which the Notice of Exercise, together with this Note, are received by the Company, (ii) shall issue or cause the transfer agent to issue to Holder or its designee the shares so acquired or, at the request of the Holder, cause to be issued to the Holder stock certificates for such shares promptly after such conversion rights shall have been so exercised, and (iii) shall promptly deliver to the Holder a new Note equal in principal amount to any remaining outstanding Principal under this Note.

(b) Fractional Shares. The conversion rights pursuant to this Section shall be exercisable only as to whole shares, and in no event shall the Company be required to issue fractional shares. If the calculation of the number of shares of the Common Stock to be received by way of conversion would result in the issuance of fractional shares, then the number of shares of the Common Stock that would otherwise be issuable upon conversion shall be rounded down to



the nearest whole number of shares and the Company shall pay to the Holder in cash the amount attributable to such fractional share.

- (c) Adjustment for Stock Splits, Dividends and Combinations. The number of shares of Common Stock the Holder may receive upon a conversion of this Note as well as the Conversion Price shall be subject to adjustment from time to time upon the happening of any of the following. In case the Company shall (i) pay a dividend in shares of Common Stock or make a distribution in shares of Common Stock to holders of its outstanding Common Stock, (ii) subdivide its outstanding shares of Common Stock into a greater number of shares, (iii) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, or (iv) issue any shares of its capital stock in a reclassification of the Common Stock (the occurrence of any of the events listed in subclauses (i) through (iv) of this Section 3(c), an “**Adjustment Event**”), then the number of shares of Common Stock the Holder shall be entitled to receive upon conversion of this Note immediately prior to an Adjustment Event shall be adjusted so that the Holder shall be entitled to receive the kind and number of Common Stock of the Company which it would have owned or have been entitled to receive had this Note been converted in advance of an Adjustment Event. Upon each such Adjustment Event, the Holder shall thereafter be entitled to receive the number of Common Stock resulting from such adjustment at a Conversion Price per share obtained by multiplying the Conversion Price per share in effect immediately prior to such Adjustment Event by the number of shares of Common Stock able to be received pursuant thereto immediately prior to such Adjustment Event and dividing by the number of shares of Common Stock that the Holder would receive as a result of such Adjustment Event. An adjustment made pursuant to this Section 3(c) shall become effectively immediately after the effective date of such Adjustment Event.
- (d) Replacement of Securities upon Reorganization, etc. In case of any reclassification or reorganization of the outstanding Common Stock (other than a change covered by an Adjustment Event above), or in the case of any merger or consolidation of the Company with or into another corporation (other than a consolidation or merger in which the Company is the continuing corporation and that does not result in any reclassification or reorganization of the outstanding shares of Common Stock), or in the case of any sale or conveyance to another corporation or entity in connection with which the Company is dissolved, the Holder shall thereafter have the right to receive in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of this Note, the kind and amount of shares of stock and other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation following any such sale or transfer, that the Holder would have received if the Holder had converted the Note immediately prior to such event; and if any reclassification also results in a change in the shares of Common Stock covered by an Adjustment Event, then such adjustment shall be made pursuant to Section 3(c) and this Section 3(d). The provisions of this Section 3(d) shall similarly apply to successive reclassifications, reorganizations, mergers or consolidations, sales or transfers.
- (e) No Rights as Shareholder. Nothing contained in this Note shall be construed as conferring upon the Holder or its transferees the right to vote or to receive dividends or to consent or to receive notice as a shareholder in respect of any meeting of shareholders for the election of directors of the Company or of any other matter, or any rights whatsoever as a shareholder of the Company, unless and to the extent converted.

- (f) **Notices of Adjustments.** Upon every adjustment of the Conversion Price or the number of underlying Common Stock the Holder may receive upon a conversion of this Note, the Company shall give written notice thereof to the Holder, which notice shall state the Conversion Price resulting from such adjustment and the increase or decrease if any, in the number of shares of Common Stock able to be received at such price upon a conversion of this Note, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Upon the occurrence of any Adjustment Event or other event specified in Section 3(d), then, in any such event, the Company shall give written notice to the Holder of the record date or the effective date of the event.
- (g) **Reservations of Shares; Transfer Taxes.**
- (i) The Company shall at all times reserve and keep available out of its authorized and unissued stock, solely for the purpose of effecting any conversions under this Note, such number of shares of Common Stock free of preemptive rights as shall be sufficient to effect the conversion of all the outstanding Principal and Interest from time to time outstanding or accrued. The Company shall use its best efforts to increase the authorized number of shares of Common Stock if at any time the number of shares of authorized and unissued Common Stock shall not be sufficient to permit the conversion of all the then outstanding or accrued Principal and Interest.
- (ii) The Company shall pay any and all issue and other taxes (except income taxes) that may be payable in respect of any issue or delivery of the shares of Common Stock upon a conversion of this Note.
- 4 **Optional Company Redemption.** From time to time after the date hereof, the Company may redeem all or a portion, in multiples of \$1,000, of the Principal of this Note (a "**Company Redemption**"), at a redemption price equal to, if the Company Redemption is to occur at any time before the first anniversary of the date of this Note, 105% of the Principal amount to be redeemed or, if the Company Redemption is to occur at any time thereafter, 100% of the Principal amount to be redeemed plus in either case accrued and unpaid Interest thereon, to, but not including, the date of redemption (the "**Redemption Price**"). The Company shall deliver a written notice to the Holder five (5) days prior to the proposed date for a Company Redemption, which notice shall state (i) that the Company has elected to exercise a Company Redemption, (ii) the proposed date of the redemption, and (iii) the amount of this Note to be redeemed and the Redemption Price. On the date of redemption, the Holder will surrender this Note and the Company shall pay the Redemption Price in cash. If this Note is being redeemed in part, the Company shall deliver on the date of redemption to the Holder a new Note equal in principal amount to any remaining outstanding Principal under this Note.
- 5 **Seniority.** The Company covenants and agrees that the indebtedness and the Company's other obligations under this Note shall rank senior in right of payment to all other unsecured indebtedness incurred by the Company, except that the obligations under this Note will rank pari passu with any unsecured indebtedness incurred by the Company that is designated by the Company, at the time of such incurrence, as senior indebtedness or that is not designated subordinated indebtedness. Nothing contained in this Note shall be construed as preventing or encumbering the Company or any of its subsidiaries from creating, assuming, guaranteeing or permitting to exist any indebtedness (including but not limited to senior indebtedness) that ranks senior in priority to, pari passu with, or subordinate to, the indebtedness and other obligations of the Company under this Note.

- 6 **Amendments and Waivers.** This Note may not be modified, amended, waived, extended, changed, discharged, or terminated orally or by any act or failure to act, but only by an instrument in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge, or termination is sought.
- 7 **Successors and Assigns.** This Note applies to, inures to the benefit of, and binds the successors of the parties hereto. This Note may be assigned or otherwise transferred by the Holder from time to time in compliance with applicable securities laws without the consent of the Company to any commercial bank which is acting as a lender to the Holder or an affiliate of the Holder for the sole purpose of securing the loan made by such lender to the Holder or an affiliate of the Holder (including without limitation by way of pledge or hypothecation to Standard Chartered Bank (Hong Kong) Limited or any other commercial bank which is acting as a lender to the Holder or an affiliate of the Holder), and in the event of any such assignment or transfer, the obligations of the Company hereunder shall inure to the benefit of all such assigns and successors. In the event Holder assigns or otherwise transfers all or any part of this Note, the Company shall, upon the request of the Holder issue new Notes to effectuate such assignment or transfer. Except as provided herein, neither the Holder nor the Company may assign or delegate its obligations hereunder without the prior written consent of the other party, and any purported assignment without such consent shall be void and of no effect.
- 8 **Governing Law; Consent to Jurisdiction.** The Note shall be governed by and interpreted and enforced in accordance with the laws of the State of New York, without giving effect to any choice of law or conflict of laws rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. THE COMPANY HEREBY IRREVOCABLY CONSENTS TO THE JURISDICTION, VENUE AND FORUM OF ANY STATE OR FEDERAL COURT IN THE CITY OF NEW YORK, STATE OF NEW YORK WITH RESPECT TO ANY ACTION, WHETHER COMMENCED BY THE HOLDER OF THIS NOTE OR ANY OTHER PERSON, TO THE EXTENT THE SAME ARISES UNDER OR RELATES TO THIS NOTE.
- 9 **Severability.** Each provision of this Note is intended to be severable from every other provision, and the invalidity or illegality of any portion hereof shall not affect the validity or legality of the remainder hereof.
- 10 **Notice.** Any consent, request, waiver, notice or other communication or document required or permitted to be given pursuant to any provision of this Note shall be deemed duly given only when in writing and sufficient if delivered personally or sent by nationally-recognized overnight courier or by registered or certified mail, postage prepaid, return receipt requested, or by electronic mail, or by telecopier, if to the Company, at the address of the Company as shown below, or, if to the Holder, at the address of the Holder as shown below. All such consents, requests, waivers, notices or other communications or documents shall be deemed to be received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of nationally-recognized overnight courier, on the next business day after the date when sent, (c) in the case of facsimile transmission or telecopier or electronic mail, upon confirmed receipt, and (d) in the case of mailing, on the third (3<sup>rd</sup>) business day following the date on which the piece of mail containing such communication was posted by registered or certified mail, postage prepaid, return receipt requested.

If to the Company, to:

Navios Maritime Holdings Inc.  
85 Akti Miaouli Street

Piraeus  
Greece 185 38  
Attention: Vasiliki Papaefthymiou  
Facsimile: +30 210 45 31 984

With a required copy to (which shall not constitute notice):

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
666 Third Avenue  
New York, NY 10017  
Attn: Kenneth R. Koch, Esq.  
Facsimile: (212) 983-3115

If to the Holder, to:

J.B. Ugland Shipping Singapore Pte Ltd.  
9 Temasek Boulevard, Suntec Tower Two #42-01A  
Singapore 038989  
Attn: John C. Fawcett-Ellis  
Facsimile: + (65) 6835 9558

With a required copy to (which shall not constitute notice):

Watson, Farley & Williams (New York) LLP  
100 Park Avenue  
New York, NY  
Attn: Leo Chang, Esq.  
Antonios C. Backos, Esq.  
Facsimile: (212) 922-1512

- 11 **Headings and Captions.** The headings and captions for the various sections of this Note are for convenience of reference only and shall in no way modify or affect the meaning or construction of any of the terms or provisions hereof.
- 12 **Interpretation; Time.** The Company and the Holder agree that, in interpreting this Note, there shall be no inferences drawn against the drafting party. Time is of the essence with respect to each and every provision of this Note.
- 13 **No Impairment.** The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will, at all times, in good faith, assist in carrying out of all the provisions of this Note and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder against impairment.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, THE COMPANY HAS CAUSED THIS NOTE TO BE EXECUTED AND DATED THE DAY AND YEAR FIRST WRITTEN ABOVE.

NAVIOS MARITIME HOLDINGS INC.

By: /s/ George Achniotis

Name: George Achniotis

Title: Chief Financial Officer

**EXHIBIT A**

**NOTICE OF EXERCISE OF CONVERSION RIGHTS**

To be Executed Upon Exercise of Conversion Rights

The undersigned hereby exercises, according to the terms and conditions of that certain 2% Convertible Senior Promissory Note, the right to convert \$\_\_\_\_\_ of the outstanding principal and accrued interest on, said Note into shares of common stock of Navios Maritime Holdings Inc.

Date of Conversion: \_\_\_\_\_

Conversion Price: \_\_\_\_\_

Number of shares of common stock to be issued: \_\_\_\_\_

Dated:

By:

Name:

Title:

Address: \_\_\_\_\_