



**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: October 8, 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

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On July 16, 2009, the parties to the previously announced and executed \$120.0 million term loan facility, as originally executed on February 16, 2009, as amended and restated on May 25, 2009 (to release and replace one of the original borrowers, Pueblo Holdings Ltd., with another borrower, Portorosa Marine Corp.), entered into a Supplemental Agreement providing for an amendment to such facility. In addition to other provisions, the Supplemental Agreement provides for the transfer of ownership of one of the vessels that such term loan facility is available to partially finance.

Copies of the Supplemental Agreement and the Amended and Restated Loan Agreement dated May 25, 2009 are furnished as Exhibits 99.1 and 99.2, respectively, to this Report and are incorporated herein by reference.

On August 28, 2009, the parties to the previously announced and executed Facility Agreement, dated December 11, 2007, as amended on July 10, 2009, for a loan amount of up to \$130.0 million, entered into a Second Supplemental Agreement providing for the further amendment of such Facility Agreement. In addition to other provisions, the Second Supplemental Agreement removes certain definitions and amends certain provisions relating to the security of the borrowers under the Facility Agreement.

A copy of the Second Supplemental Agreement is furnished as Exhibit 99.3 to this Report and is incorporated herein by reference.

In June 2008, Navios Maritime Holdings Inc. (“Navios”) entered into a facility agreement with DNB NOR BANK ASA of up to \$133.0 million in order to partially finance the construction of two Capesize bulk carriers. In June 2009, following an amendment of the above-mentioned agreement (the “Loan Facility”), one of the two tranches amounting to \$66.5 million has been cancelled following the cancellation of one of the two Capesize bulk carriers. The principal amount is available for partial drawdown according to terms of the payment of the shipbuilding contract. As of June 30, 2009, the amount drawn was \$36.0 million. The Loan Facility is repayable six months following the delivery of the Capesize vessel in 11 semi-annual installments of \$2.9 million, with a final payment of \$34.6 million on the last payment date. The interest rate is based on a margin of 225 bps as defined in the Loan Facility.

A copy of the Loan Facility is furnished as Exhibit 99.4 to this Report and is incorporated herein by reference.

In addition, on August 28, 2009, Kohylia Shipmanagement S.A. (“Kohylia”) and Ducale Marine Inc. (“Ducale”), each a subsidiary of Navios, entered into a \$75.0 million facility agreement with the bank identified therein (the “Facility Agreement”). The Facility Agreement is available (in two tranches of up to \$37.5 million) to partially finance the purchase and construction of two capesize newbuilding bulk carriers. Amounts under the Loan Facility are payable in 20 equal installments (reduced proportionately if the full amount is not drawn) and a balloon payment to be paid on the final repayment date. Navios is a guarantor of the Facility Agreement. To date, \$61.7 million has been drawn under the Facility Agreement. The interest rate of the Loan Facility is 1.75% plus LIBOR per annum, as described in the Facility Agreement.

The Facility Agreement restricts the borrowers from, certain corporate activities, including incurring any further indebtedness without the consent of the bank. In addition, the Facility Agreement requires compliance with various covenants, including those covenants contained in the senior notes indenture of Navios, as well as compliance with certain levels of security value and specified financial covenants. The Facility Agreement identifies certain events that will constitute an event of default, including, (i) the non-compliance with certain covenants, (ii) if there is a default, in certain circumstances, under the Navios Indenture and (iii) if Angeliki Frangou, Navios’ Chairman and Chief Executive Officer, beneficially owns less than 20% of the issued stock of Navios.

A copy of the Facility Agreement is furnished as Exhibit 99.5 to this Report and is incorporated herein by reference.

Dated as of September 8, 2009, Navios entered into a Twenty-Fifth Supplemental Indenture in order to add Ducale, Kohylia, and Highbird Management Inc., each a Marshall Islands corporation, and each an indirect subsidiary of Navios, as guarantors to its Indenture.

A copy of the Twenty-Fifth Supplemental Indenture is furnished as Exhibit 99.6 to this Report and is incorporated herein by reference.

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

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**SIGNATURES**

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

NAVIOS MARITIME HOLDINGS INC.

By: /s/ Angeliki Frangou

Angeliki Frangou  
Chief Executive Officer  
Date: October 8, 2009

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**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Exhibit</u>
99.1	Supplemental Agreement dated July 16, 2009.
99.2	Amended and Restated Loan Agreement dated May 25, 2009.
99.3	Second Supplemental Agreement dated July 28, 2009.
99.4	Facility Agreement for \$66.5 million dated August 28, 2009.
99.5	Facility Agreement for \$75.0 million dated August 28, 2009.
99.6	Twenty-Fifth Supplemental Indenture dated September 8, 2009.

Dated 16 July 2009

**PORTOROSA MARINE CORP.**

**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

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**SUPPLEMENTAL AGREEMENT**

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in relation to an Amended and Restated Loan Agreement  
dated 25 May 2009 in respect of a loan facility of  
up to US\$120,000,000

**WATSON, FARLEY & WILLIAMS**

**Piraeus**

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THIS SUPPLEMENTAL AGREEMENT is dated 16 July 2009 and made

**BETWEEN:**

- (1) **PORTOROSA MARINE CORP. and SURF MARITIME CO.**, each a corporation incorporated under the laws of the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, The Marshall Islands MH96960 (the "**Borrowers**");
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**;
- (3) **DEKABANK DEUTSCHE GIROZENTRALE**, a company incorporated in the Federal Republic of Germany and acting through its office at Mainzer Landstraße 16, 60329 Frankfurt am Main, Germany as **Bookrunner**;
- (4) **DEKABANK DEUTSCHE GIROZENTRALE** a company incorporated in the Federal Republic of Germany and acting through its office at Mainzer Landstraße 16, 60329 Frankfurt am Main, Germany as **Arranger**;
- (5) **DEKABANK DEUTSCHE GIROZENTRALE** a company incorporated in the Federal Republic of Germany and acting through its office at Mainzer Landstraße 16, 60329 Frankfurt am Main, Germany as **Agent**; and
- (6) **DEKABANK DEUTSCHE GIROZENTRALE** a company incorporated in the Federal Republic of Germany and acting through its office at Mainzer Landstraße 16, 60329 Frankfurt am Main, Germany as **Security Trustee**.

**BACKGROUND**

- (A) By a loan agreement (the "**Original Loan Agreement**") dated 16 February 2009 and made between (i) Pueblo Holdings Ltd. ("**Pueblo**") and Surf Maritime Co. ("**Surf**" and together with Pueblo, the "**Original Borrowers**") as joint and several borrowers, (ii) the Lenders, (iii) the Bookrunner, (iv) the Arranger, (v) the Agent and (vi) the Security Trustee, it was agreed that the Lenders would make available to the Original Borrowers a facility of up to US\$120,000,000.
  - (B) By a deed of accession, amendment, restatement and release dated 25 May 2009 and made between (i) the Original Borrowers and Portorosa Marine Corp. ("**Portorosa**") as borrowers, (ii) the Lenders, (iii) the Bookrunner, (iv) the Arranger, (v) the Agent and (vi) the Security Trustee, it was (inter alia) agreed that Portorosa will become a party to the Original Loan Agreement as joint and several borrower with Surf and Pueblo will be released from all its obligations and liabilities under the Original Loan Agreement.
  - (C) By an amended and restated loan agreement (the "**Loan Agreement**") dated 25 May 2009 and made between (i) the Borrowers as joint and several borrowers, (ii) the Lenders, (iii) the Bookrunner, (iv) the Arranger, (v) the Agent and (vi) the Security Trustee, it was agreed that the Lenders would make available to the Borrowers a facility of up to US\$120,000,000.
  - (D) The Borrowers have requested that the Lenders give their consent to the transfer of ownership of Ship A (being Daewoo Hull No. 1173) by Portorosa to Kleimar Naamloze Vennootschap (Kleimar N.V.) (the "**New Owner**") and the subsequent registration of the Ship on Maltese flag in the ownership of the New Owner with the name "NAVIOS HAPPINESS" (the "**Ship**") on terms that the New Owner executes:
    - (a) a guarantee of the obligations of the Borrowers under the Loan Agreement;
    - (b) a first priority statutory Maltese mortgage over the Ship;
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- (c) a first priority deed of covenant collateral to the Maltese mortgage over the Ship;
- (d) a first priority assignment of the earnings, insurances and requisition compensation of the Ship;
- (e) a first priority assignment of the Approved Charter relating to the Ship; and
- (f) a pledge in respect of the Earnings Account in relation to the Ship opened or to be opened in the name of the New Owner with the Account Bank.

(E) This Agreement sets out the terms and conditions on which the Creditor Parties agree, with effect on and from the date of this Supplemental Agreement, to amend the Loan Agreement.

## **NOW THEREFORE IT IS HEREBY AGREED**

### **1 DEFINITIONS**

**1.1 Defined expressions.** Words and expressions defined in the Loan Agreement (as hereby amended) and the recitals hereto and not otherwise defined herein shall have the same meanings when used in this Supplemental Agreement.

**1.2 Definitions.** In this Supplemental Agreement the words and expressions specified below shall have the meanings attributed to them below:

“**New Guarantee**” means the guarantee of the obligations of the Borrowers under the Loan Agreement executed or to be executed by the New Owner in favour of the Lender in such form as the Lender may approve or require;

“**New Owner**” means Kleimar Naamloze Vennootschap (Kleimar N.V.) organised and existing under the laws of Belgium and having its registered office at 5 Suikerrui, Antwerp, 2000 Belgium; and

“**New Ship A MOA**” means the memorandum of agreement in respect of Ship A entered or to be entered into between Borrower A as seller and the New Owner as buyer.

**1.3 General Interpretation.** Where the context so admits words importing the singular number only shall include the plural and vice versa and words importing persons shall include firms and corporations. Clause headings are inserted for convenience of reference only and shall be ignored in construing this Supplemental Agreement. References to Clauses are to clauses of this Supplemental Agreement save as may be otherwise expressly provided in this Supplemental Agreement.

### **2 REPRESENTATIONS AND WARRANTIES**

**2.1 Repetition of Loan Agreement representations and warranties.** Each Borrower hereby represents and warrants to each Creditor Party, as at the date of this Supplemental Agreement, that the representations and warranties set forth in clause 10 of the Loan Agreement (updated mutatis mutandis to the date of this Supplemental Agreement) are true and correct as if all references therein to “this Agreement” were references to the Loan Agreement as further amended by this Supplemental Agreement.

**2.2 General.** Each Borrower hereby further represents and warrants to each Creditor Party that as at the date of this Supplemental Agreement:

- (a) it is duly incorporated and validly existing and in good standing under the laws of the Republic of the Marshall Islands and has full power to enter into and perform its obligations under this Supplemental Agreement and has complied with all statutory and

other requirements relative to its business, and does not have an established place of business in any part of the United Kingdom or the United States of America;

- (b) all necessary governmental or other official consents, authorisations, approvals, licences, consents or waivers for the execution, delivery, performance, validity and/or enforceability of this Supplemental Agreement and all other documents to be executed in connection with the amendments to the Loan Agreement as contemplated hereby have been obtained and will be maintained in full force and effect, from the date of this Supplemental Agreement and so long as any moneys are owing under any of the Finance Documents and while all or any part of the Loan remains outstanding;
- (c) it has taken all necessary corporate and other action to authorise the execution, delivery and performance of its obligations under this Supplemental Agreement and such other documents to which it is a party and such documents do or will upon execution thereof constitute the valid and binding obligations of the Borrowers enforceable in accordance with their respective terms;
- (d) the execution, delivery and performance of this Supplemental Agreement and all such other documents as contemplated hereby does not and will not, from the date of this Supplemental Agreement and so long as any moneys are owing under any of the Finance Documents and while all or any part of the Loan remains outstanding, constitute a breach of any contractual restriction or any existing applicable law, regulation, consent or authorisation binding on a Borrower or on any of its property or assets and will not result in the creation or imposition of any security interest, lien, charge or encumbrance (other than under the Finance Documents) on any of such property or assets; and
- (e) it has fully disclosed in writing to each Creditor Party all facts which it knows or which it should reasonably know and which are material for disclosure to each Creditor Party in the context of this Supplemental Agreement and all information furnished by a Borrower or on its behalf relating to its business and affairs in connection with this Supplemental Agreement was and remains true, correct and complete in all material respects and there are no other material facts or considerations the omission of which would render any such information misleading.

### **3 AGREEMENT OF THE CREDITOR PARTIES AND THE BORROWERS**

**3.1 Agreement of the Creditor Parties.** Each Creditor Party, relying upon each of the representations and warranties set out in Clauses 2.1 and 2.2 of this Supplemental Agreement and subject to and upon the terms and conditions of this Supplemental Agreement (including, but not limited to, satisfaction of the terms of Clause 4), hereby agrees to enter into this Supplemental Agreement with the Borrowers.

**3.2 Agreement of the Borrowers.** Each Borrower agrees and confirms that the Loan Agreement and the Finance Documents shall remain in full force and effect and it shall remain liable under the Loan Agreement and the Finance Documents to which it is a party for all obligations and liabilities assumed by the Borrowers thereunder.

### **4 CONDITIONS PRECEDENT**

**4.1 Conditions Precedent.** The agreement of the Creditor Parties contained in Clause 3.1 of this Supplemental Agreement shall be expressly subject to the condition that the Agent shall have received in form and substance satisfactory to the Agent and its legal advisers on or before the date of this Supplemental:

- (a) evidence that the persons executing this Supplemental Agreement on behalf of the Borrowers are duly authorised to execute the same on their behalf;

- (b) a certificate of an officer of the New Owner confirming the names of all the Directors and Shareholders of the New Owner and having attached thereto true and complete copies of its incorporation and constitutional documents;
- (c) true and complete copies of the resolutions passed at separate meetings of the Directors and Shareholders of the New Owner authorising and approving the execution of the New Guarantee and the other Finance Documents to which the New Owner is a party and any other document or action to which it is or is to be a party and authorising its directors or other representatives to execute the same on its behalf;
- (d) the original of any power of attorney issued by the New Owner pursuant to such resolutions aforesaid;
- (e) a certified true copy of the New Ship A MOA;
- (f) the New Guarantee fully executed by the New Owner;
- (g) evidence that the Ship A Charter has been novated by Portorosa to the New Owner as owner;
- (h) certified copies of all documents (with a certified translation if an original is not in English) evidencing any other necessary action, approvals or consents with respect to this Supplemental Agreement and the Finance Documents (including without limitation) all necessary governmental and other official approvals and consents in such pertinent jurisdictions as the Agent deems appropriate;
- (i) such legal opinions as the Agent may require in respect of the matters contained in this Supplemental Agreement and the Finance Documents to which the New Owner is a party;
- (j) evidence that the agent referred to in Clause 9.4 has accepted its appointment as agent for service of process under this Supplemental Agreement and the Finance Documents to which the New Owner is a party; and
- (k) such other documents or evidence as the Agent may require.

## 5 VARIATIONS TO LOAN AGREEMENT AND FINANCE DOCUMENTS

**5.1 Specific amendments to Loan Agreement.** In consideration of the agreement of the Creditor Parties contained in Clause 3.1 of this Supplemental Agreement each Borrower hereby agrees with each Creditor Party that on the date of this Supplemental Agreement, the provisions of the Loan Agreement shall be varied and/or amended and/or supplemented as follows:

- (a) by adding in Clause 1.1 thereof the definitions set out in clause 1.1 of this Supplemental Agreement;
- (b) by deleting the words “the relevant Borrower” and replacing them with the words “Borrower B or, as the case may be, the New Owner” in:
  - (i) the second line of the definition of “Accounts Pledge” in clause 1.1 thereof;
  - (ii) the second line of the definition of “Charter Assignment” in clause 1.1 thereof;
  - (iii) the third line of the definition of “Earnings Account” in clause 1.1. thereof;
  - (iv) the second line of the definition of “Management Agreement” in clause 1.1 thereof;

- (v) the fourth line of the definition of “Mortgage” in clause 1.1 thereof; and
- (vi) the seventh line of paragraph (b) and the second line of paragraph (c) of the definition of “Total Loss” in clause 1.1 thereof;
- (c) by deleting the words “the Borrower owning that Ship” and replacing them with the words “Borrower B or, as the case may be, the New Owner” in:
  - (i) the fourth line of the definition of “Charter” in clause 1.1 thereof;
  - (ii) the third line of the definition of “Charter Assignment” in clause 1.1 thereof;
  - (iii) the second line and the first line of paragraph (a) of the definition of “Earnings” in clause 1.1 thereof; and
  - (iv) the second line of the definition of “Earnings Account” in clause 1.1 thereof;
- (d) by deleting the words “the Borrower which is the owner of such Ship” and replacing them with the words “Borrower B or, as the case may be, the New Owner” in:
  - (i) the third line of the definition of “General Assignment” in clause 1.1 thereof; and
  - (ii) the fifth line of the definition of “Manager’s Undertaking” in clause 1.1 thereof;
- (e) by deleting the words “the Borrower who is the owner thereof” and replacing them with the words “Borrower B or, as the case may be, the New Owner” in:
  - (i) the second line of sub-paragraph (b)(ii) of the definition of “Total Loss Date” in clause 1.1 thereof; and
  - (ii) the second line of the definition of “obligatory insurances” in clause 1.2 thereof;
- (f) by deleting the words “each Borrower” in the first line of the definition of “ISM Code” in clause 1.1 thereof and replacing them with the words “Borrower B or the New Owner”;
- (g) by deleting the words “the Borrowers” in the second line of paragraph (c) of the definition of “ISM Code Documentation” in clause 1.1 thereof and replacing them with the words “Borrower B and the New Owner”;
- (h) by deleting the words “the Borrowers” in the second line of the definition of “ISM SMS” in clause 1.1 thereof and replacing them with the words “Borrower B or, as the case may be, the New Owner”;
- (i) by deleting the words “the Borrower owning such Ship” in the fifth line of paragraph (e) of the definition of “Permitted Security Interests” in clause 1.1 thereof and replacing them with the words “Borrower B or, as the case may be, the New Owner”;
- (j) by adding the following paragraph (k) in the definition of “Finance Documents” in clause 1.1 thereof:

“(k) the New Guarantee; and”;
- (k) by redesignating the existing paragraph (k) of the definition of “Finance Documents” in clause 1.1 thereof as a new paragraph (l);
- (l) by adding the word “, the New Owner” after the word “Borrower” in:
  - (i) the second line of the definition of “Group” in clause 1.1 thereof; and

- (ii) the second line of clause 10.18 thereof;
- (m) by adding the words “, the New Owner” after the word “Guarantor” in:
  - (i) the first line of the definition of “Security Party” in clause 1.1 thereof; and
  - (ii) the second line of paragraph (c) of clause 11.6 thereof;
- (n) by adding the words “or the New Owner” after the word “Guarantor” in:
  - (i) the second line of sub-paragraph (d)(iv) of clause 9.1 thereof; and
  - (ii) the seventh line of clause 10.12 thereof;
- (o) by adding the words “and the New Owner” after the word “Borrowers” in:
  - (i) the second and fifth line of clause 11.21 thereof; and
  - (ii) the first line of paragraph 7 of PART A of Schedule 4 thereof;
- (p) by adding the words “or the New Owner” after the word “Borrower” in the first line of paragraph (k) of clause 19.1 thereof;
- (q) by adding a new paragraph (p) in clause 19.1 thereof as follows:
  - “(p) it reasonably appears to the Lenders that without their prior written 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 the New Owner or in the control of the voting rights attaching to any of those shares which does not result in the shares being beneficially owned by a member of the Group;”;
- (r) by redesignating the existing paragraph (p) of clause 19.1 thereof as paragraph (q);
- (s) by deleting the definition of “Relevant Borrower” in its entirety in Schedule 4 thereof and replacing it with the following definition:
  - “**Relevant Owner**” means, in the case of Ship A, the New Owner and, in the case of Ship B, Borrower B;”;
- (t) by construing all references in Schedule 4 to “the Relevant Borrower” as references to “the Relevant Owner”;
- (u) by deleting the words “the Borrowers” from the second line of paragraph 6 of PART A of Schedule 4 thereof and replacing them with the words “Borrower B and the New Owner”;
- (v) by adding the words “or, in the case of Ship A, the New Ship A MOA” after the words “Contract” in the second line of sub-paragraph 3(a) of PART B of Schedule 4 thereof;
- (w) by adding the words “and to the New Owner under the New Ship A MOA” after the word “MOA” in the fifth line of paragraph 5 of PART B of Schedule 4 thereof;
- (x) by construing all references therein to “this Agreement” where the context admits as being references to “this Agreement as the same is amended and supplemented by this Supplemental Agreement and as the same may from time to time be further supplemented and/or amended”; and
- (y) by construing references to each of the Finance Documents as being references to each such document as it is from time to time supplemented and/or amended.
- (z) by adding the words “and New Owner” after the word “Guarantor” in the first and fourth line of 19.1(h)(ii).

- 5.2 Amendments to Finance Documents.** With effect on and from the date of this Supplemental Agreement each of the Finance Documents other than the Loan Agreement shall be, and shall be deemed by this Agreement to have been, amended as follows:
- (a) the definition of, and references throughout each of the Finance Documents to, the Loan Agreement and any of the other Finance Documents shall be construed as if the same referred to the Loan Agreement and those Finance Documents as amended and supplemented by this Supplemental Agreement; and
  - (b) by construing references throughout each of the Finance Documents to “this Agreement”, “this Deed”, “hereunder and other like expressions as if the same referred to such Finance Documents as amended and supplemented by this Supplemental Agreement.
- 5.3 Finance Documents to remain in full force and effect.** The Finance Documents shall remain in full force and effect as amended and supplemented by:
- (a) the amendments to the Finance Documents contained or referred to in Clauses 5.1 and 5.2; and
  - (b) such further or consequential modifications as may be necessary to make the same consistent with, and to give full effect to, the terms of this Supplemental Agreement.
- 6 CONTINUANCE OF LOAN AGREEMENT AND FINANCE DOCUMENTS**
- 6.1 Each Borrower’s and each Security Party’s obligation to execute further documents etc.** Each Borrower and each Security Party shall:
- (a) execute and deliver to the Agent (or as it may direct) any assignment, mortgage, power of attorney, proxy or other document, governed by the law of England or such other country as the Agent may, in any particular case, specify;
  - (b) effect any registration or notarisation, give any notice or take any other step,
- which the Agent may, by notice to the Borrowers, specify for any of the purposes described in Clause 6.2 or for any similar or related purpose.
- 6.2 Purposes of further assurances.** Those purposes are:
- (a) validly and effectively to create any Security Interest or right of any kind which the Agent intended should be created by or pursuant to the Loan Agreement or any other Finance Document, each as amended and supplemented by this Supplemental Agreement, and
  - (b) implementing the terms and provisions of this Supplemental Agreement.
- 6.3 Terms of further assurances.** The Agent may specify the terms of any document to be executed by a Borrower or any Security Party under Clause 6.1, and those terms may include any covenants, powers and provisions which the Agent considers appropriate to protect its interests.
- 6.4 Obligation to comply with notice.** Each Borrower or any Security Party shall comply with a notice under Clause 6.1 by the date specified in the notice.
- 7 EXPENSES**
- 7.1 General.** Each Borrower agrees to pay to the Lender upon demand and from time to time all costs, charges and expenses (including legal fees) incurred by the Lender in connection with the preparation, negotiation, execution and (if required) registration or preservation of rights under the enforcement or attempted enforcement of the Loan Agreement, this

Supplemental Agreement and the Finance Documents or otherwise in connection with the Loan or any part thereof.

## 8 NOTICES

8.1 **General.** The provisions of Clause 29 (Notices) of the Loan Agreement shall apply to this Supplemental Agreement as if the same were set out herein in full.

## 9 LAW AND JURISDICTION

9.1 **English Law.** This Supplemental 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.

9.2 **Exclusive English jurisdiction.** Subject to Clause 9.3, the courts of England shall have exclusive jurisdiction to settle any Dispute.

9.3 **Choice of forum for the exclusive benefit of Creditor Parties.** Clause 9.2 is for the exclusive benefit of the Creditor Parties, each of which reserves the right:

- (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.

9.4 **Process Agent.** Each Borrower irrevocably appoints HFW Nominees Limited at its registered office for the time being, presently at Friary Court, 65 Crutched Friars, London EC3N 3AE, England for the time being to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with a Dispute.

9.5 **Creditor Party Rights unaffected.** Nothing in this Clause 9 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.

9.6 **Meaning of proceedings.** In this Clause 9, “**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 Supplemental Agreement (including a dispute relating to the existence, validity or termination of this Supplemental Agreement) or any non-contractual obligation arising out of or in connection with this Supplemental Agreement.

**THIS SUPPLEMENTAL AGREEMENT** has been entered into on the date stated at the beginning of this Supplemental Agreement.

## THE BORROWERS



**SIGNED** by Alexandros Laios )  
)  
for and on behalf of Alexandros ) /s/ Alexandros Laios  
Laios )  
**PORTOROSA MARINE CORP.** )

**SIGNED** by Alexandros Laios ) /s/ Alexandros Laios  
)  
for and on behalf of )  
**SURF MARITIME CO.** )

**THE LENDERS**

**SIGNED** by Christian Walter and )  
Stefan Schütt )  
)  
for and on behalf of )  
**DEKABANK DEUTSCHE** ) /s/ Christian Walter  
**GIROZENTRALE** ) /s/ Stefan Schütt

**THE BOOKRUNNER**

**SIGNED** by Christian Walter and )  
Stefan Schütt )  
)  
for and on behalf of )  
**DEKABANK DEUTSCHE** ) /s/ Christian Walter  
**GIROZENTRALE** ) /s/ Stefan Schütt

**THE ARRANGER**

**SIGNED** by Christian Walter and )  
Stefan Schütt )  
)  
for and on behalf of ) /s/ Christian Walter  
**DEKABANK DEUTSCHE** ) /s/ Stefan Schütt  
**GIROZENTRALE** )

**THE AGENT**

**SIGNED** by Christian Walter and )  
Stefan Schütt )  
)  
for and on behalf of ) /s/ Christian Walter  
**DEKABANK DEUTSCHE** ) /s/ Stefan Schütt  
**GIROZENTRALE** )

**THE SECURITY TRUSTEE**

**SIGNED** by Christian Walter )  
and Stefan Schütt )

) /s/ Christian Walter

for and on behalf of )

**DEKABANK DEUTSCHE** ) /s/ Stefan Schütt

**GIROZENTRALE** )

Witness to all )

the above signatures ) /s/ Alexia Hatzimichalis

Name: Alexia Hatzimichalis  
Address: Walson, Farly & Williams  
89 Akti Miaouli  
Piraeus 18538 Greece

**COUNTERSIGNED** this July 2009 for and on behalf of the following company which by its execution hereof confirms and acknowledges that it has read and understood the terms and conditions of the above Supplemental Agreement, that it agrees in all respects to the same and that the Finance Documents to which it is a party shall remain in full force and effect and shall continue to stand as security for the obligations of the Borrowers under the Loan Agreement.

/s/ Alexandros Laios

\_\_\_\_\_

for and on behalf of

**NAVIOS MARITIME HOLDINGS INC.**

Date 25 May 2009

**PORTOROSA MARINE CORP. 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

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**AMENDED AND RESTATED  
LOAN AGREEMENT**

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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**

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**THIS AGREEMENT** is made on 25 May 2009 as amended and restated by a deed of Accession, Amendment, Restatement and Release (as defined below)

**BETWEEN:**

- (1) **PORTOROSA MARINE CORP.** 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 Landstraße 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

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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 Landstraße 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 Landstraße 16, 60329 Frankfurt am Main, Germany;

“**Borrower A**” means Portorosa Marine Corp., 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;

**"Deed of Accession, Amendment, Restatement and Release"** means the deed of accession, amendment, restatement and release dated May 2009 and made between, inter alios, (i) the Borrowers, (ii) the Lenders, (iii) the Bookrunner, (iv) the Arranger, (v) the Agent and (vi) the Security Trustee setting out the terms and conditions upon which this Agreement has been amended and restated;

**"Delivery Date"** means, in respect of a Ship, the date on which title to and possession of such Ship is transferred from the Seller A or the Builder, as the case may be, to the relevant Borrower pursuant to the Ship A MOA or 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 injuncted 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;

**“First Ship A MOA”** means the relevant memorandum of agreement 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;

**“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 9½% 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 Seller A or the Builder, as the case may be, to the relevant Borrower pursuant to the Ship A MOA or the relevant Shipbuilding Contract applicable to that Ship, as the case may be, 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 \$120,000,000 payable to the Seller A pursuant to the Ship A MOA; and
- (b) in respect of Ship B the total amount of \$108,500,000 payable to the relevant 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 Landstraße 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 MOA”** means the relevant memorandum of agreement 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 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, notarisation 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 (b) 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 Ship A MOA or 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 Seller A or the relevant 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 \$4,000,000 each;
- (b) in the case of the fifth to the seventh instalments (inclusive) in the amount of \$4,250,000 each;
- (c) in the case of the eighth to the tenth instalments (inclusive) in the amount of \$4,500,000 each; and
- (d) in the case of the eleventh to the twentieth instalments (inclusive) in the amount of \$1,775,000 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 Ship A MOA or the relevant Ship Shipbuilding Contract, as the case may be, to purchase and pay for its Ship under the Ship A MOA or relevant Shipbuilding Contract ,as the case may be, 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, the First Ship A MOA, Ship A MOA and Shipbuilding Contracts.**
- (a) The copies of each Initial Charter, the First Ship A MOA, the Ship A MOA and each Shipbuilding Contract delivered to the Agent before the date of this Agreement are true and complete copies;
  - (b) each Initial Charter, the First Ship A MOA, the Ship A MOA and each Shipbuilding Contract constitutes valid, binding and enforceable obligations of the Builder and the relevant Approved Charterer, the seller under the First Ship A MOA, the Seller A and the Borrower which is party to it respectively in accordance with its terms;
  - (c) none of the Builders, the relevant Approved Charterer under each Initial Charter, the seller under the First Ship A MOA, the Seller A nor either of the Borrowers is in breach of its respective obligations under the terms of each Initial Charter, the Ship A MOA, the First Ship A MOA 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 the Ship A MOA or the First Ship A MOA or either Shipbuilding Contracts have been agreed nor have the Borrowers, the relevant Approved Charterer, the seller under the First Ship A MOA, the Seller A and the Builder (or any of them) waived any of their respective rights under either Initial Charter or the Ship A MOA or the First Ship A MOA 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, the seller under the First Ship A MOA, the Seller A 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 (Geldwäschegesetz)*), 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, the Ship A MOA and the relevant 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 Ship A MOA or the relevant Shipbuilding Contract.** Each Borrower agrees not to enter into any amendment or supplement to, or waive or fail to enforce, the Ship A MOA or the relevant 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: "Portorosa Marine Corp. 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
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- (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 administration 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 Partywhich 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) May 2009 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 Landstraße 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.

**SCHEDULE 1**  
**LENDERS AND COMMITMENTS**

<b>Lender</b>	<b>Lending Office</b>	<b>Commitment (US Dollars)</b>
DekaBank Deutsche Girozentrale	Mainzer Landstraße 16 60329 Frankfurt am Main Germany  Fax No: +49 151 527 18146	120,000,000

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**SCHEDULE 2**

**THE SHIPS, THE SHIPBUILDING CONTRACTS, THE APPROVED CHARTERS**

**PART A**

<u>SHIP</u>	<u>DESCRIPTION OF THE SHIPS</u>
SHIP A	the bulk carrier vessel of approximately 180,000 metric tons deadweight which is to be constructed by the Daewoo Shipbuilding & Marine Engineering Co .Ltd. with Hull No. 1173
SHIP B	the bulk carrier vessel of approximately 181,000 metric tons deadweight which is to be constructed by the Builder with Hull No. S-3017 for, and purchased by, Borrower B under the Ship B Shipbuilding Contract

**PART B**

**DESCRIPTION OF THE SHIPBUILDING CONTRACTS AND MEMORANDA OF AGREEMENT SHIPBUILDING RELATED TO SHIP A**

<u>SHIP</u>	<u>TYPE OF CONTRACT</u>	<u>BUILDER/SELLER</u>	<u>SELLERS</u>	<u>DATE OF CONTRACT</u>	<u>AMENDMENTS/NOVATIONS</u>
SHIP A	Shipbuilding Contract	Daewoo Shipbuilding & Marine Engineering Co .Ltd of .Korea	Callum Navigation Co. of Liberia (the " <b>First MOA Seller</b> ")	20 April 2007	
	Memorandum of Agreement (the " <b>First Ship A MOA</b> ")	The First MOA Seller	Bretta Navigation Corporation of Panama (" <b>Bretta</b> ")	4 May 2007	addendum nr. 1 thereto dated 4 May 2007 whereby Bretta has nominated to the First MOA Seller Dry Bulk Universe Inc. of Panama (the " <b>Seller A</b> ")
	Memorandum of Agreement (the " <b>Ship A MOA</b> ")	The Seller A	Borrower A	19 July 2007	
SHIP B		STX Shipbuilding Co., Ltd. of 100 Woopo-dong Jinhae, Gyeongsangnam-do, Korea	Bradbury Shipping S.A. of Trust Company Complex Ajeltake Road Ajeltake Island, Majuro, The Marshall Islands MH96960	11 October 2007	(i) Novation Agreement dated 1/9/2008 made between the Seller B, the Borrower B and the Builder  (ii) Addendum dated 12/11/2008 made between the Borrower B and the Builder  (iii) Addendum dated.

**PART C**  
**THE APPROVED CHARTERS**

<u>SHIP</u>	<u>CHARTERER</u>	<u>DATE OF CHARTER</u>	<u>DURATION</u>	<u>DURATION</u>	<u>CHARTER RATE</u>
SHIP A	Korea Line Corporation of Seoul, Korea	18 October 2007		minimum 58 months maximum 62 months	\$58,000 per day
SHIP B	STX Pan Ocean Co., of Seoul Korea	9 April 2008	Novation Agreement dated 4 September 2008 made between the Seller B, the Borrower B and the relevant Charterer	10 years	\$42,250 per day

**PART D**  
**CREDIT DEFAULT INSURANCE**

<u>INSURER</u>	<u>INSURED</u>	<u>DATE OF CONTRACT</u>
Office National Du Ducroire National Declerederendienst of Belgium	the Corporate Guarantor	10 October 2007

**SCHEDULE 3**  
**DRAWDOWN NOTICE**

To: DekaBank Deutsche Girozentrale  
Mainzer Landstraße 16  
60329 Frankfurt am Main  
Germany

Attention: Loan Administration

2009

- 1** We refer to the loan agreement (the “**Loan Agreement**”) dated [1] 2009 and made between ourselves, as Borrowers, the Lenders referred to therein and yourselves as Arranger, Bookrunner, Agent and as Security Trustee in connection with a facility of up to US\$120,000,000. Terms defined in the Loan Agreement have their defined meanings when used in this Drawdown Notice.
- 2** We request to borrow an Advance as follows:
- (a) Amount: US\$[1], being the Ship [1] Advance;
  - (b) Drawdown Date: [1];
  - (c) Duration of the first Interest Period shall be [1] months;
  - (d) Payment instructions :
    - (i) an amount of US\$: [1] to the account of [1], held with [1] and numbered [1] and
    - (ii) an amount of US\$: [1] account in our name and numbered [1] with [1] of [1].
- 3** We represent and warrant that:
- (a) the representations and warranties in Clause 10 of the Loan Agreement would remain true and not misleading if repeated on the date of this notice with reference to the circumstances now existing;
  - (b) no Event of Default has occurred or will result from the borrowing of the Loan;
  - (c) none of the circumstances contemplated by Clause 5.7 of the Loan Agreement has occurred and is continuing; and
  - (d) 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 the Loan Agreement
- 4** This notice cannot be revoked without the prior consent of the Lenders.

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[1]  
for and on behalf of  
**PORTOROSA MARINE CORP.**  
**SURF MARITIME CO.**

**SCHEDULE 4**  
**CONDITION PRECEDENT DOCUMENTS**

In this Schedule 4, the following expressions shall have the following meanings:

**“Relevant Advance”** means, in relation to each Ship, the Advance which shall be used to part-finance the acquisition of such Ship payable pursuant to the applicable Shipbuilding Contract;

**“Relevant Borrower”** means the Borrower which is the buyer of the Relevant Ship; and

**“Relevant Ship”** means, in relation to each Relevant Advance, the Ship which is to be part-financed by such Advance.

**PART A**

The following are the documents referred to in Clause 9.1(a).

- 1** A duly executed original of each Finance Document (and of each document required to be delivered by each Finance Document) other than those referred to in Part B.
- 2** Copies of the certificate of incorporation and constitutional documents of each Borrower, the Approved Manager and the Corporate Guarantor.
- 3** Copies of resolutions of the shareholders and directors of each Borrower and of the directors of the Corporate Guarantor authorising the execution of each of the Finance Documents to which that Borrower or the Corporate Guarantor is a party and, in the case of a Borrower, authorising named officers to give each Drawdown Notice and any other notices under this Agreement.
- 4** The original of any power of attorney under which any Finance Document is executed on behalf of a Borrower and the Corporate Guarantor.
- 5** Copies of all consents which either Borrower or any Security Party requires to enter into, or make any payment under, any Finance Document or the Ship A MOA or the Shipbuilding Contract to which it is a party.
- 6** Evidence that the Earnings Accounts have been duly opened with the Account Bank by the Borrowers.
- 7** Evidence satisfactory to the Agent that each of the Borrowers is a direct or indirect subsidiary of the Corporate Guarantor, together with such other documents or evidence as the Agent or any Lender may reasonably require with respect to relevant money laundering requirements.
- 8** Copies of each Shipbuilding Contract, the First Ship A MOA, the Ship A MOA included within the definition and of all documents signed or issued by the parties thereto.
- 9** Copies of the Initial Charters included within the definition and of all documents signed or issued by each Borrower and each Approved Charterer (or any of them) under the Initial Charters.
- 10** copies of the Credit Default Insurances in respect of the Initial Charters and of all other documents signed or issued by the parties thereto.

- 11 All documentation required by each Creditor Party in relation to the Borrowers and any Security Party pursuant to that Creditor Party's "know your customer" requirements.
- 12 Documentary evidence that the agent for service of process named in Clause 30 has accepted its appointment.
- 13 If the Agent so requires, in respect of any of the documents referred to above, a certified English translation prepared by a translator approved by the Agent.

## **PART B**

The following are the documents referred to in Clause 9.1(b).

Evidence, satisfactory to the Agent, that arrangements have been made with the Seller (and the Seller's Bank) in respect of Ship A and the relevant Builder (and the Builder's bank) in respect of Ship B to protect the Agent's right to repayment of the relevant Advance or any part thereof between the Drawdown Date for that Advance and the Delivery Date of the Relevant Ship under the relevant Shipbuilding Contract with the Advance, or the relevant part thereof, only being released to the Builder by an attorney-in-fact appoint by the Agent.<sup>1</sup>

- 1 A duly issued commercial invoice issued by the Seller A or invoice from the relevant Builder or any other evidence satisfactory to the Agent showing all sums due and payable to the Seller A or the relevant Builder pursuant to the Ship A MOA or the relevant Shipbuilding Contract for the Relevant Ship together with evidence that all amounts payable thereunder (in addition to the part to be paid by the relevant Advance) have been duly paid.
- 2 A duly executed original of the Mortgage, the General Assignment, the Charter Assignment and the Assignment of Warranty Claims (and of each document to be delivered by each of them) in respect of the Relevant Ship (and, in the case of the Charter Assignment, the Initial Charter applicable to the Relevant Ship).
- 3 Documentary evidence that:
  - (a) the Relevant Ship has been unconditionally delivered to, and accepted by, the Relevant Borrower pursuant to the applicable Shipbuilding Contract;
  - (b) the Relevant Ship has been unconditionally delivered to, and accepted by, the relevant Approved Charterer pursuant to the relevant Initial Charter;
  - (c) the Relevant Ship is preliminarily registered (and subsequently, within a period of 3 months, permanently registered) in the name of the Relevant Borrower under an Approved Flag;
  - (d) the Relevant Ship is in the absolute and unencumbered ownership of the Relevant Borrower who is the owner thereof save as contemplated by the Finance Documents;
  - (e) the Relevant Ship maintains the highest classification for vessels of the same age, type and specification as that Ship with an approved classification society which is a member of IACS, free of all overdue recommendations and requirements of such classification society;
  - (f) the Mortgage has been duly registered against the Relevant Ship as a valid first preferred or priority mortgage in accordance with the laws of the Approved Flag State; and

- (g) the Relevant Ship is insured in accordance with the provisions of this Agreement and all requirements therein in respect of insurances have been complied with.
- 4** Documents establishing that the Relevant Ship is or will, as from the applicable Drawdown Date, be managed by the Approved Manager on terms acceptable to the Lenders, together with:
- (a) a copy of the Management Agreement relating to such Ship and a duly executed original of the Manager's Undertaking relating to such Ship;
- (b) upon delivery provide copies of the document of compliance (DOC), safety management certificate (SMC) and International Ship Security Certificate (ISSC) in respect of such Ship, each certified as true and in effect by the Relevant Borrower; and
- (c) copies of such other ISM Code Documentation and ISPS Code Documentation as the Agent may by written notice to the Borrowers have requested upon delivery certified as true and complete in all material respects by the Borrowers and the Approved Manager.
- 5** Copies of the delivery documents issued by the Seller A and/or the relevant Builder and/or relevant Seller under the Ship A MOA or the relevant Shipbuilding Contract relating to the Relevant Ship (including without limitation the bill of sale, the commercial invoice and the protocol of delivery and acceptance and any other documents to be delivered to Borrower A under the Ship A MOA or to Borrower B under the relevant Shipbuilding Contract ).
- 6** A valuation of the Relevant Ship in accordance with Clause 15.3, addressed to the Agent, stated to be for the purposes of this Agreement and dated not earlier than 14 days before the relevant Drawdown Date, from an Approved Broker selected by the Agent demonstrating a valuation for such Ship satisfactory to the Agent in its sole discretion.
- 7** Documentary evidence as the Agent and its legal advisors require in relation to the due authorisation and execution by the Seller A, the seller under the First Ship A MOA, the relevant Builder and the Relevant Borrower, as the case may be, of the documents referred to at 5 above.
- 8** Favourable legal opinions from lawyers appointed by the Agent on such matters concerning the laws of the Marshall Islands, the Approved Flag State on which the Relevant Ship is registered and such other relevant jurisdictions as the Agent may require.
- 9** A favourable opinion from an independent insurance consultant acceptable to the Agent on such matters relating to the insurances for the Relevant Ship as the Agent may require.
- 10** If the Agent so requires, in respect of any of the documents referred to above, a certified English translation prepared by a translator approved by the Agent.

Every copy document delivered under this Schedule shall be certified as a true and up to date copy by a director or the secretary (or equivalent officer) of the Borrowers.

**SCHEDULE 5**  
**TRANSFER CERTIFICATE**

**The Transferor and the Transferee accept exclusive responsibility for ensuring that this Certificate and the transaction to which it relates comply with all legal and regulatory requirements applicable to them respectively.**

To: **DEKABANK DEUTSCHE GIROZENTRALE** for itself and for and on behalf of the Borrowers, each Security Party, the Security Trustee and each Lender, as defined in the Loan Agreement referred to below.

[ ] 200[ ]

**1** This Certificate relates to a Loan Agreement (the "**Loan Agreement**") dated 2009 and made between (1) Portorosa Marine Corp. and Surf Maritime Co. (together the "**Borrowers**"), (2) the banks and financial institutions named therein as lenders, (2) DekaBank Deutsche Girozentrale as Bookrunner and Arranger and (3) DekaBank Deutsche Girozentrale as Agent and Security Trustee for a loan facility of up to US\$120,000,000.

**2** In this Certificate:

"**the Relevant Parties**" means the Agent, the Borrowers, [each Security Party], the Security Trustee, and each Lender;

"**the Transferor**" means [full name] of [lending office];

"**the Transferee**" means [full name] of [lending office].

Terms defined in the Loan Agreement shall, unless the contrary intention appears, have the same meanings when used in this Certificate.

**3** The effective date of this Certificate is .....200[ ] **Provided that** this Certificate shall not come into effect unless it is signed by the Agent on or before that date.

**4** The Transferor assigns to the Transferee absolutely all rights and interests (present, future or contingent) which the Transferor has as Lender under or by virtue of the Loan Agreement and every other Finance Document in relation to [ ] per cent. of the Contribution outstanding to the Transferor (or its predecessors in title) which is set out below:

<b>Contribution</b>	<b>Amount transferred</b>
---------------------	---------------------------

**5** By virtue of this Transfer Certificate and Clause 27 of the Loan Agreement, the Transferor is discharged [entirely from its Commitment which amounts to \$[ ]] [from [ ] per cent. of its Commitment, which percentage represents \$[ ]] and the Transferee acquires a Commitment of \$[ ].

**6** The Transferee undertakes with the Transferor and each of the Relevant Parties that the Transferee will observe and perform all the obligations under the Finance Documents which Clause 27 of the Loan Agreement provides will become binding on it upon this Certificate taking effect.

- 7** The Agent, at the request of the Transferee (which request is hereby made) accepts, for the Agent itself and for and on behalf of every other Relevant Party, this Certificate as a Transfer Certificate taking effect in accordance with Clause 27 of the Loan Agreement.
- 8** The Transferor:
- (a) warrants to the Transferee and each Relevant Party:
    - (i) that the Transferor has full capacity to enter into this transaction and has taken all corporate action and obtained all consents which are in connection with this transaction; and
    - (ii) that this Certificate is valid and binding as regards the Transferor;
  - (b) warrants to the Transferee that the Transferor is absolutely entitled, free of encumbrances, to all the rights and interests covered by the assignment in paragraph 4 above;
  - (c) undertakes with the Transferee that the Transferor will, at its own expense, execute any documents which the Transferee reasonably requests for perfecting in any relevant jurisdiction the Transferee's title under this Certificate or for a similar purpose.
- 9** The Transferee:
- (a) confirms that it has received a copy of the Loan Agreement and each other Finance Document;
  - (b) agrees that it will have no rights of recourse on any ground against either the Transferor, the Agent, the Security Trustee, any Lender in the event that:
    - (i) the Finance Documents prove to be invalid or ineffective,
    - (ii) any Borrower or any Security Party fails to observe or perform its obligations, or to discharge its liabilities, under the Finance Documents;
    - (iii) it proves impossible to realise any asset covered by a Security Interest created by a Finance Document, or the proceeds of such assets are insufficient to discharge the liabilities of the Borrower or Security Party under the Finance Documents;
  - (c) agrees that it will have no rights of recourse on any ground against the Agent, the Security Trustee, Agent or any Lender in the event that this Certificate proves to be invalid or ineffective;
  - (d) warrants to the Transferor and each Relevant Party (i) that it has full capacity to enter into this transaction and has taken all corporate action and obtained all official consents which it needs to take or obtain in connection with this transaction; and (ii) that this Certificate is valid and binding as regards the Transferee; and
  - (e) confirms the accuracy of the administrative details set out below regarding the Transferee.
- 10** The Transferor and the Transferee each undertake with the Agent, the Paying Agent and the Security Trustee severally, on demand, fully to indemnify the Agent and/or the Security Trustee in respect of any claim, proceeding, liability or expense (including all legal expenses) which they or either of them may incur in connection with this Certificate or any matter arising out of it, except such as are shown to have been mainly and directly caused by the gross and culpable negligence or dishonesty of the Agent's or the Security Trustee's own officers or employees.



**11** The Transferee shall repay to the Transferor on demand so much of any sum paid by the Transferor under paragraph 10 above as exceeds one-half of the amount demanded by the Agent or the Security Trustee in respect of a claim, proceeding, liability or expense which was not reasonably foreseeable at the date of this Certificate; but nothing in this paragraph shall affect the liability of each of the Transferor and the Transferee to the Agent or the Security Trustee for the full amount demanded by it.

[Name of Transferor]

[Name of Transferee]

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**Agent**

Signed for itself and for and on behalf of itself  
as Agent and for every other Relevant Party

DekaBank Deutsche Girozentrale

By: \_\_\_\_\_

Date: \_\_\_\_\_

### Administrative Details of Transferee

Name of Transferee:

Lending Office:

Contact Person  
(Loan Administration Department):

Telephone:

Telex:

Fax:

Contact Person  
(Credit Administration Department):

Telephone:

Telex:

Fax:

Account for payments:

**Note:** This Transfer Certificate alone may not be sufficient to transfer a proportionate share of the Transferor's interest in the security constituted by the Finance Documents in the Transferor's or Transferee's jurisdiction. It is the responsibility of each Lender to ascertain whether any other documents are required for this purpose.

**SCHEDULE 6**  
**FORM OF COMPLIANCE CERTIFICATE**

To: DekaBank Deutsche Girozentrale  
Mainzer Landstraße 16  
60329 Frankfurt am Main  
Germany

From: Portorosa Marine Corp.  
Surf Maritime Co.

[1] 200[1]

Dear Sirs

**USD120,000,000 Loan Agreement**  
**dated 2009 (the "Agreement")**

- 1 We refer to the Agreement. This is a Compliance Certificate and attached hereto are the calculations which will provide evidence of compliance. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
- 2 We confirm that no Event of Default exists.
- 3 We refer to clause 11.18 of the Agreement and hereby confirm that:
  - (a) the ratio of Consolidated Cash Flow to Fixed Charges on a 12-month trailing basis is [1] to [1];
  - (b) Total Liabilities divided by the Total Assets is [1] %.
- 4 We confirm that on this date the Corporate Guarantor is in compliance with all financial covenants and obligations of the Corporate Guarantor as evidenced in the attached [annual][semi-annual] consolidated financial statements of the Corporate Guarantor.

---

[1]

for and on behalf of

**SCHEDULE 7**  
**INDENTURE EXCERPT**

**SECTION 4.10 Incurrence of Indebtedness and Issuance of Disqualified stock and Preferred Stock.**

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, “**incur**”) any Indebtedness (including Acquired Debt), and the Company shall not issue any shares of Disqualified Stock and the Company shall not permit any of its Restricted Subsidiaries to issue any shares of Disqualified Stock or preferred stock; *provided, further*, that the Company may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and any Guarantor may incur Indebtedness (including Acquired Debt), issue shares of Disqualified Stock or issue shares of preferred stock, if the Fixed Charge Coverage Ratio for the Company’s most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued, as the case may be, would have been at least 2.0 to 1.0, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, at the beginning of such four-quarter period.

20.6.5 Section 4.10(a) shall not prohibit the incurrence of any of the following items of Indebtedness (collectively, “**Permitted Debt** ”):

- (a) the incurrence by the Company or any Guarantor of Indebtedness and letters of credit under one or more Credit Facilities in an aggregate amount at any time outstanding under this clause (1) not to exceed \$475.0 million, *less* the amount of Non-Recourse Debt outstanding under clause (16) below;
- (b) the incurrence by the Company and its Restricted Subsidiaries of the Existing Indebtedness;
- (c) the incurrence of the Notes on the Issue Date, the Note Guarantees and the Exchange Securities to be issued pursuant to the Registration Rights Agreement;
- (d) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used in the business of the Company or any of its Restricted Subsidiaries and Permitted Refinancing Indebtedness in respect thereof, in an aggregate amount not to exceed at any time outstanding the greater of (A) \$20.0 million and (B) 3.0% of Total Tangible Assets;
- (e) Indebtedness of the Company or any of its Restricted Subsidiaries incurred to finance the replacement (through construction, acquisition, lease or otherwise) of one or more Vessels and any assets that shall become Related Assets, upon a total loss, destruction, condemnation, confiscation, requisition, seizure, forfeiture or other taking of title to or use of such Vessel (collectively, a “**Total Loss**”) in an aggregate amount no greater than the ready for sea cost (as determined in good faith by the Company) for such replacement Vessel, in each case, less all compensation, damages and other payments (including insurance proceeds other than in respect of business interruption insurance) actually received by the Company or any of its Restricted Subsidiaries from any Person in

connection with the Total Loss in excess of amounts actually used to repay Indebtedness secured by the Vessel subject to the Total Loss;

- (f) Indebtedness of the Company or any Restricted Subsidiary incurred in relation to: (i) maintenance, repairs, refurbishments and replacements required to maintain the classification of any of the Vessels owned, leased, time chartered or bareboat chartered to or by the Company or any Restricted Subsidiary; (ii) drydocking of any of the Vessels owned or leased by the Company or any Restricted Subsidiary for maintenance, repair, refurbishment or replacement purposes in the ordinary course of business; and (iii) any expenditures which will or may be reasonably expected to be recoverable from insurance on such Vessels;
- (g) the incurrence by the Company or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in respect of Indebtedness (other than intercompany Indebtedness) permitted to be incurred under Section 4.10(a) or Sections 4.10(b)(2), (b)(3), (b)(5), (b)(6), (b)(7) or (b)(14);
- (h) the incurrence of Indebtedness by the Company owed to a Restricted Subsidiary and Indebtedness by any Restricted Subsidiary owed to the Company or any other Restricted Subsidiary; **provided, however**, that upon any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or such Indebtedness being owed to any Person other than the Company or a Restricted Subsidiary, the Company or such Restricted Subsidiary, as applicable, shall be deemed to have incurred Indebtedness not permitted by this clause (8);
- (i) the issuance by any of the Company's Restricted Subsidiaries to the Company or to any of its Restricted Subsidiaries of shares of Disqualified Stock or preferred stock; **provided, however**, that:
  - (i) any subsequent issuance or transfer of Equity Interests that results in any such Disqualified Stock or preferred stock being held by a Person other than the Company or a Restricted Subsidiary of the Company; and
  - (ii) any sale or other transfer of any such Disqualified Stock or preferred stock to a Person that is neither the Company nor a Restricted Subsidiary of the Company;
  - (iii) shall be deemed, in each case, to constitute an issuance of such Disqualified Stock or preferred stock by such Restricted Subsidiary that is not permitted by this clause (9);
- (j) the incurrence by the Company or any of its Restricted Subsidiaries of Permitted Hedging Obligations;
- (k) the guarantee by the Company or any Guarantor of Indebtedness of the Company or a Restricted Subsidiary of the Company that was permitted to be incurred by another provision of this Section 4.10; *provided* that if the Indebtedness being guaranteed is contractually subordinated to the Notes or a Guarantee, then the guarantee shall be contractually subordinated to the same extent as the Indebtedness guaranteed;
- (l) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, unemployment insurance, health, disability and other employee benefits or property, casualty or liability insurance, self-insurance obligations, bankers' acceptances, or performance, completion, bid, appeal and surety bonds, in each case, in the ordinary course of business;
- (m) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days;

- (n) Indebtedness, Disqualified Stock or preferred stock of (x) the Company or a Restricted Subsidiary incurred or issued to finance an acquisition or (y) a Person acquired by the Company or a Restricted Subsidiary or merged, consolidated, amalgamated or liquidated with or into a Restricted Subsidiary or the Company; *provided, however*, that after giving effect to such incurrence or issuance (and the related acquisition, merger, consolidation, amalgamation or liquidation), the Fixed Charge Coverage Ratio for the Company's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued, as the case may be, would have been at least 1.75 to 1.0;
  - (o) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness consisting of guarantees, earn-outs, indemnities or obligations in respect of purchase price adjustments in connection with the disposition or acquisition of assets, including, without limitation, shares of Capital Stock;
  - (p) Non-Recourse Debt incurred by a Securitization Subsidiary in a Qualified Securitization Transaction;
  - (q) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness constituting reimbursement obligations with respect to letters of credit so long each such obligation is satisfied within 30 days of the incurrence thereof; and
  - (r) the incurrence by the Company or any of its Restricted Subsidiaries of additional Indebtedness, Disqualified Stock or preferred stock in an aggregate amount at any time outstanding, including all Permitted Refinancing Indebtedness incurred pursuant to this clause (18), not to exceed \$25.0 million.
- 20.6.6 For purposes of determining compliance with this Section 4.10, in the event that an item of proposed Indebtedness, Disqualified Stock or preferred stock meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (18) of Section 4.10(b), or is entitled to be incurred pursuant to Section 4.10(a), the Company, in its sole discretion, may classify such item of Indebtedness, Disqualified Stock and preferred stock (or any portion thereof) on the date of its incurrence, or later reclassify, all or a portion of such item of Indebtedness, Disqualified Stock or preferred stock, in any manner that complies with this Section 4.10. Indebtedness under Credit Facilities outstanding on the Issue Date shall be deemed to have been incurred on such date in reliance on the exception provided by Section 4.10(b)(1), but thereafter may be reclassified in any manner that complies with this Section 4.10.
- 20.6.7 The accrual of interest, the accrual of dividends, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Stock or preferred stock in the form of additional shares of the same class of Disqualified Stock or preferred stock, as the case may be, shall not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock or preferred stock for purposes of this Section 4.10; *provided*, in each such case, that the amount thereof is included in Fixed Charges of the Company as accrued.
- 20.6.8 The amount of any Indebtedness outstanding as of any date shall be:
- (1) the accreted value of such Indebtedness, in the case of any Indebtedness issued with original issue discount;
  - (2) the principal amount of the Indebtedness, in the case of any other Indebtedness;
  - (3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

the Fair Market Value of such assets at the date of determination; and the amount of the Indebtedness of the other Person that is secured by such assets; and

- (4) in respect of the Indebtedness incurred by a Securitization Subsidiary, the amount of Obligations outstanding under the legal documents entered into as part of a Qualified Securitization Transaction on any date of determination characterized as principal or that would be characterized as principal if such securitization were structured as a secured lending transaction rather than as a purchase.
- 20.6.9 For purposes of determining compliance with this Section 4.10, (i) Acquired Debt shall be deemed to have been incurred by the Company or its Restricted Subsidiaries, as the case may be, at the time an acquired Person becomes such a Restricted Subsidiary of the Company (or is merged into the Company or such a Restricted Subsidiary) or at the time of the acquisition of assets, as the case may be, (ii) the maximum amount of Indebtedness, Disqualified Stock or preferred stock that the Company and its Restricted Subsidiaries may incur pursuant to this Section 4.10 shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, Disqualified Stock or preferred stock due solely to the result of fluctuations in the exchange rates of currencies and (iii) the outstanding principal amount of any particular Indebtedness shall be counted only once and any obligations arising under any guarantee, Lien, letter of credit or similar instrument supporting such Indebtedness permitted to be incurred under this covenant shall not be double counted.
- 20.6.10 For purposes of determining compliance of any non-U.S. dollar-denominated Indebtedness with this Section 4.10, the amount outstanding under any U.S. dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall at all times be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness (in each case determined, if available, by the rate of exchange quoted by Reuters at 10:00 a.m. (New York time) on the date of determination for spot purchases of the non-U.S. dollar currency with U.S. dollars and otherwise in accordance with customary practice); *provided, however*, that if such Indebtedness is incurred to refinance other Indebtedness denominated in the same or different currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced.

#### **SECTION 4.11 Limitations on Restricted Payments.**

- (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:
- (i) pay any dividend or make any other payment or distribution on account of the Company's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger, amalgamation or consolidation involving the Company or any of its Restricted Subsidiaries) or to the holders of the Company's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than (A) dividends or distributions payable in Qualified Equity Interests or (B) dividends or other payments or distributions payable to the Company or a Restricted Subsidiary of the Company);
  - (ii) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation) any Equity Interests of any direct or indirect parent of the Company;

(iii) make any voluntary or optional principal payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, any Indebtedness of the Company or any Guarantor that is contractually subordinated to the Notes or any Guarantee (excluding any Indebtedness owed to and held by the Company or any of its Restricted Subsidiaries), other than (x) payments of principal at the Stated Maturity thereof and (y) payments, purchases, redemptions, defeasances or other acquisitions or retirements for value in anticipation of satisfying a scheduled maturity, sinking fund or amortization or other installment obligation or mandatory redemption, in each case, due within one year of the Stated Maturity thereof; or

(iv) make any Restricted Investment (all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as “**Restricted Payments**”), unless, at the time of and after giving effect to such Restricted Payment:

no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(b) the Company would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.10(a); and

(c) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries since the date of this Indenture (excluding Restricted Payments permitted by clauses (2), (3), (4), (5), (6), (7), (8), (9), (8), (9), (10) and (14) of Section 4.11(b)), is not greater than the sum, without duplication, of:

50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from October 1, 2006 to the end of the Company’s most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); plus

(i) 100% of the aggregate net cash proceeds and (ii) 100% of the Fair Market Value of the property and assets other than cash, in each case, received by the Company after the date of this Indenture as a contribution to its equity capital or from the issue or sale (other than to a Restricted Subsidiary of the Company) of Qualified Equity Interests, including upon the exercise of options or warrants, or from the issue or sale (other than to a Restricted Subsidiary of the Company) of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities of the Company that have been converted into or exchanged for Qualified Equity Interests, together with the aggregate cash and Cash Equivalents received by the Company or any of its Restricted Subsidiaries at the time of such conversion or exchange; plus

to the extent that any Restricted Investment that was made after the date of this Indenture is sold or otherwise liquidated or repaid for cash or Cash Equivalents, the return of capital in cash or Cash Equivalents with respect to such Restricted Investment (less the cost of disposition, if any); *plus*

to the extent that any Unrestricted Subsidiary of the Company is redesignated as a Restricted Subsidiary after the date of this Indenture or is merged into the Company or a Restricted Subsidiary or transfers all or substantially all its assets of the Company or a Restricted Subsidiary, the Fair Market Value of the Investment of the Company and its Restricted Subsidiaries in such Subsidiary (or the assets so transferred, if applicable) as of



the date of such redesignation (other than to the extent of such Investment in such Unrestricted Subsidiary that was made as a Permitted Investment);  
*plus*

any amount which previously treated as a Restricted Payment on account of any guarantee entered into by the Company or a Restricted Subsidiary upon the unconditional release of such guarantee.

(b) The preceding provisions shall not prohibit:

the payment of any dividend or other distribution within 60 days after the date of declaration of the dividend or other distribution, if at the date of declaration such payment would have complied with the provisions of this Indenture;

the making of any Restricted Payment in exchange for, or out of the net proceeds of the substantially concurrent sale or issuance (other than to a Restricted Subsidiary of the Company), including upon exercise of an option or warrant, of, Qualified Equity Interests or from the substantially concurrent contribution of equity capital with respect to Qualified Equity Interests to the Company; *provided* that the amount of any such net proceeds that are utilized for any such Restricted Payment shall be excluded from clause (3) of Section 4.11(a);

the payment, defeasance, redemption, repurchase or other acquisition or retirement for value of Indebtedness of the Company or any of its Restricted Subsidiaries that is contractually subordinated to the Notes or to any Guarantee with the net proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness or in exchange for Qualified Equity Interests;

the payment of any dividend or other distribution (or, in the case of any partnership, limited liability company or similar entity, any similar distribution) by a Restricted Subsidiary of the Company to the holders of its Equity Interests on a *pro rata* basis taking into account the relative preferences, if any, of the various classes of Equity Interests in such Restricted Subsidiary;

the repurchase, redemption or other acquisition or retirement for value of any Qualified Equity Interests of the Company or any of its Restricted Subsidiaries held by any current or former officer, director, consultant or employee of the Company or any of its Restricted Subsidiaries (or Heirs or other permitted transferees thereof); *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed \$3.0 million in any calendar year; *provided, further*, that such amount may be increased by an amount not to exceed:

the cash proceeds from the sale of Qualified Equity Interests of the Company to directors, officers, employees or consultants of the Company or any of its Restricted Subsidiaries that occurs after the date of this Indenture (*provided* that the amount of such cash proceeds utilized for any such repurchase, redemption, acquisition or other retirement shall not increase the amount available for Restricted Payments under clause (3) of the immediately preceding paragraph); *plus*

the cash proceeds of key-man life insurance policies received by the Company or any Restricted Subsidiary after the date of this Indenture;

*provided* that to the extent that any portion of the \$3.0 million annual limit on such redemptions or repurchases is not utilized in any year, such unused portion may be carried forward and be utilized in one or more subsequent years;

(d) cancellation of Indebtedness owing to the Company from members of management of the Company in connection with a repurchase of Qualified Equity Interests of the Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement approved by the Board of

Directors to the extent such Indebtedness was issued to such member of management as consideration for the purchase of the Qualified Equity Interests so repurchased;

- (e) so long as no Default or Event of Default has occurred and is continuing or would result thereby, any dividend or distribution consisting of Equity Interests of an Unrestricted Subsidiary or the proceeds of the sale of Equity Interests of an Unrestricted Subsidiary;
- (f) the repurchase of Equity Interests deemed to occur upon the exercise of options, warrants or other convertible securities to the extent such Equity Interests represent a portion of the exercise price of those options, warrants or other convertible securities and cash payments in lieu of the issuance of fractional shares in connection with the exercise of options, warrants or other convertible securities;
- (g) so long as no Default or Event of Default has occurred and is continuing or would result thereby, the declaration and payment of cash dividends on Designated Preferred Stock in accordance with the certificate of designations therefor; *provided* that at the time of issuance of such Designated Preferred Stock, the Company would, after giving pro forma effect thereto as if such issuance had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.10(a);
- (h) so long as no Default or Event of Default has occurred and is continuing or would result thereby, the declaration and payment of cash dividends to holders of any class or series of Disqualified Stock of the Company issued in accordance with Section 4.10;
- (i) payments made to purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Company or any of its Restricted Subsidiaries that is contractually subordinated to the Notes or to any Guarantee (i) following the occurrence of a Change of Control, at a purchase price not greater than 101% of the outstanding principal amount (or accreted value, in the case of any debt issued at a discount from its principal amount at maturity) thereof, plus accrued and unpaid interest, if any, after the Company and its Restricted Subsidiaries have satisfied their obligations with respect to a Change of Control Offer set forth under Section 4.09 or (ii) with the Excess Proceeds of one or more Asset Sales, at a purchase price not greater than 100% of the principal amount (or accreted value, in the case of any debt issued at a discount from its principal amount at maturity) thereof, plus accrued and unpaid interest, if any, after the Company and its Restricted Subsidiaries have satisfied their obligations with respect to such Excess Proceeds pursuant to Section 4.13 to the extent that such subordinated Indebtedness is required to be repurchased or redeemed pursuant to the terms thereof as a result of such Change of Control or Asset Sale;
- (j) payments pursuant to clause (6) Section 4.14(b);
- (k) so long as no payment Default or Event of Default has occurred and is continuing or would result thereby, the payment of cash dividends on the Company's shares of common stock in the aggregate amount per fiscal quarter not to exceed \$0.0666 per share for each share of common stock of the Company outstanding as of the one record date for dividends payable in respect of such fiscal quarter (as such amount shall be appropriately adjusted for any stock splits, stock dividends, reverse stock splits, stock consolidations and similar transactions); and
- (l) other Restricted Payments in an aggregate amount not to exceed \$20.0 million since the date of this Indenture.

The amount of all Restricted Payments (other than cash and Cash Equivalents) shall be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

- (c) For purposes of determining compliance with this covenant, in the event that a Restricted Payment permitted pursuant to this Section 4.11 or a Permitted Investment meets the criteria of more than one of the categories of Restricted Payment described in clauses (1) through (14) above or one or more clauses of the definition of Permitted Investment, the Company shall be permitted to classify such Restricted Payment or Permitted Investment (or any portion thereof) on the date it is made, or later reclassify, all or a portion of such Restricted Payment or Permitted Investment, in any manner that complies with this covenant, and such Restricted Payment or Permitted Investment shall be treated as having been made pursuant to only one of such clauses of this Section 4.11 or of the definition of Permitted Investment.

#### **SECTION 4.12 Limitations on Liens.**

The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien that secures obligations under any Indebtedness or any related guarantee, on any asset of the Company or any Restricted Subsidiary, whether owned on the Issue Date or thereafter acquired, except Permitted Liens, unless contemporaneously therewith:

- (m) in the case of any Lien securing an obligation that ranks *pari passu* with the Notes or a Guarantee, effective provision is made to secure the Notes or such Guarantee, as the case may be, at least equally and ratably with or prior to such obligation with a Lien on the same collateral; and
- (n) in the case of any Lien securing an obligation that is subordinated in right of payment to the Notes or a Guarantee, effective provision is made to secure the Notes or such Guarantee, as the case may be, with a Lien on the same collateral that is prior to the Lien securing such subordinated obligation, in each case, for so long as such obligation is secured by such Lien (such Lien, the “ **Primary Lien** ”).

Notwithstanding the foregoing, the Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien under any of clauses (1), (3), (7), (16), (24) or (25) of the definition of “Permitted Liens” on any asset of the Company or any Restricted Subsidiary that secures obligations under any Indebtedness or any related guarantee, if such Lien is junior or subordinated in priority to any other Lien on such asset that secures obligations under any other Indebtedness or any related guarantee of the Company or any Restricted Subsidiary pursuant to an agreement which the Company or a Restricted Subsidiary is a party or the terms of which have been accepted, acknowledged or consented to by the Company or any Restricted Subsidiary in writing.

20.6.11 Any Lien created for the benefit of the Holders pursuant to Section 4.12(a) shall automatically and unconditionally be released and discharged upon the release and discharge of the Primary Lien, without any further action on the part of any Person.

#### **SECTION 4.15 Dividend and Other Payment Restrictions Affecting Subsidiaries.**

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any of its Restricted Subsidiaries to:

- (a) pay dividends or make any other distributions on its Capital Stock to the Company or any of its Restricted Subsidiaries, or pay any Indebtedness owed to the Company or any of its Restricted Subsidiaries;
- (b) make loans or advances to the Company or any of its Restricted Subsidiaries; or
- (c) transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

However, the preceding restrictions shall not apply to encumbrances or restrictions existing under or by reason of:

*agreements, including, without limitation, those governing Existing Indebtedness and Credit Facilities, as in effect on the date of this Indenture and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of those agreements; provided that the amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in those agreements on the date of this Indenture;*

*this Indenture, the Notes and the Note Guarantees;*

*applicable law, rules, regulations or order or governmental license, permit or concession;*

*any instrument governing Indebtedness or Equity Interests of a Person acquired by the Company or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Equity Interests were incurred or issued in connection with such acquisition to provide funds to consummate such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;*

*customary provisions restricting assignments, subletting or other similar transfers in contracts, licenses and other agreements (including, without limitation, leases and agreements relating to intellectual property) entered into in the ordinary course of business;*

*purchase money obligations and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in clause (3) of the preceding paragraph;*

*any agreement for the sale or other disposition of a Restricted Subsidiary or an asset that restricts distributions by that Restricted Subsidiary or transfers of such asset pending the sale or other disposition;*

*Permitted Refinancing Indebtedness; provided that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;*

*Liens and agreements related thereto that were permitted to be incurred under the provisions of Section 4.12 that limit the right of the debtor to dispose of the assets or property subject to such Liens;*

*provisions limiting the disposition or distribution of assets or property (including Capital Stock of any Person in which the Company has an Investment) in joint venture agreements, stockholder agreements, partnership agreements, limited liability company operating agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements*

*and other similar agreements, which limitation is applicable in all material respects only to the assets or property that are the subject of such agreements;*

*restrictions on cash or other deposits or net worth imposed under contracts entered into in the ordinary course of business;*

*customary provisions restricting the disposition of real property interests set forth in any easements or other similar agreements or arrangements of the Company or any Restricted Subsidiary;*

*provisions restricting the transfer of any Capital Stock of an Unrestricted Subsidiary;*

*Indebtedness of a Restricted Subsidiary incurred subsequent to the date of this Indenture pursuant to the provisions of Section 4.10 (i) in respect of the subordination provisions, if any, of such Indebtedness, (ii) if the encumbrances and restrictions contained in any such Indebtedness taken as a whole are not materially less favourable to the Holders than the encumbrances and restrictions contained in this Indenture or that may be contained in any Credit Agreement in accordance with this covenant or (iii) if such encumbrance or restriction is customary in comparable financings (as determined in good faith by the Company) and either (x) the Company determines in good faith that such encumbrance or restriction shall not adversely affect in any material respect the Company's ability to make principal or interest payments on the Notes as and when due or (y) such encumbrance or restriction applies only in the event of and during the continuance of a default under such Indebtedness; and*

*Non-Recourse Debt or other encumbrances, restrictions or contractual requirements of a Securitization Subsidiary in connection with a Qualified Securitization Transaction; provided that such restrictions apply only to such Securitization Subsidiary or the Securitization Assets that are subject to the Qualified Securitization Transaction.*

## **21 ARTICLE FIVE**

### **22 SUCCESSOR CORPORATION**

#### **SECTION 5.01 Mergers, Consolidations, Etc.**

The Company may not, directly or indirectly: (1) consolidate, amalgamate or merge with or into another Person (whether or not the Company is the surviving Person); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

- (a) either: (a) the Company is the surviving Person; or (b) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance or other disposition has been made (x) is a corporation, limited liability company, trust or limited partnership organized or existing under the laws an Eligible Jurisdiction and (y) assumes all the obligations of the Company under the Notes, this Indenture and the Registration Rights Agreement pursuant to agreements reasonably satisfactory to the Trustee;
- (b) immediately after giving effect to such transaction, no Default or Event of Default exists; and
- (c) either (a) the Company or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Company), or to which such sale, assignment, transfer, conveyance or other disposition has been made, shall, on the date of such transaction after giving pro forma effect thereto and to any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.10(a) or (b) the Fixed Charge Coverage Ratio for the Company or such surviving Person determined in accordance with Section 4.10(a) shall be greater than the Fixed Charge Coverage Ratio test for the Company and its Restricted Subsidiaries immediately prior to such transaction.

In addition, the Company may not, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person; *provided* that the foregoing shall not prohibit the chartering out of Vessels in the ordinary course of business.

For purposes of this Section 5.01, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries, the Equity Interests of which constitute all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

22.1.2 The Company shall not permit any Guarantor to, directly or indirectly, consolidate, amalgamate or merge with or into another Person (whether or not such Guarantor is the surviving Person) unless:

- (a) subject to the Note Guarantee release provisions of Section 4.16, such Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Company or a Guarantor) expressly assumes all the obligations of such Guarantor under the Note Guarantee of such Guarantor, this Indenture and the Registration Rights Agreement pursuant to agreements reasonably satisfactory to the Trustee; and
- (b) immediately after such transaction, no Default or Event of Default exists.

This Section 5.01 shall not apply to a merger of the Company, a Guarantor or a Wholly Owned Restricted Subsidiary of such Person with an Affiliate solely for the purpose, and with the effect, of reorganizing the Company, a Guarantor or a Wholly Owned Restricted Subsidiary, as the case may be, in an Eligible Jurisdiction. In addition, nothing in this Section 5.01 shall prohibit any Restricted Subsidiary from consolidating or amalgamating with, merging with or into or conveying, transferring or leasing, in one transaction or a series of transactions, all or substantially all of its assets to the Company or another Restricted Subsidiary or reconstituting itself in another jurisdiction for the purpose of reflagging a vessel.

EXECUTION PAGES

**BORROWERS**

**SIGNED** by Alexandros Laios )  
)  
for and on behalf of ) /s/ Alexandros Laios  
**PORTOROSA MARINE CORP.** )  
in the presence of: )

**SIGNED** by Alexandros Laios )  
)  
for and on behalf of ) /s/ Alexandros Laios  
**SURF MARITIME CO.** )  
in the presence of: )

**LENDERS**

**SIGNED** by Christian Walter and )  
Stefan Schütt )  
)  
for and on behalf of )  
**DEKABANK DEUTSCHE** ) /s/ Christian Walter  
**GIROZENTRALE** ) /s/ Stefan Schütt  
in the presence of: Tobias Zehnter )

**AGENT**

**SIGNED** by Christian Walter and )  
Stefan Schütt )  
)  
for and on behalf of )  
**DEKABANK DEUTSCHE** ) /s/ Christian Walter  
**GIROZENTRALE** ) /s/ Stefan Schütt  
in the presence of: Tobias Zehnter )

**SECURITY TRUSTEE**

**SIGNED** by Christian Walter and )  
Stefan Schütt )  
)  
for and on behalf of )  
**DEKABANK DEUTSCHE** ) /s/ Christian Walter  
**GIROZENTRALE** ) /s/ Stefan Schütt  
in the presence of: Tobias Zehnter )

**BOOKRUNNER**

**SIGNED** by Christian Walter and Stefan Schütt )  
 )  
for and on behalf of )  
**DEKABANK DEUTSCHE** )  
**GIROZENTRALE** ) /s/ Christian Walter  
in the presence of: Tobias Zehnter ) /s/ Stefan Schütt

**ARRANGER**

**SIGNED** by Christian Walter and Stefan Schütt )  
 )  
for and on behalf of ) /s/ Christian Walter  
**DEKABANK DEUTSCHE** ) /s/ Stefan Schütt  
**GIROZENTRALE** )  
in the presence of: Tobias Zehnter )



Date 28 August 2009

**CHILALI CORP.**  
**RUMER HOLDING LTD.**  
as joint and several Borrowers

-and-

**EMPORIKI BANK OF GREECE S.A.**  
as Bank

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**SECOND SUPPLEMENTAL AGREEMENT**

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**in relation to a Loan Agreement**  
**dated 11 December 2007 as amended by**  
**a supplemental agreement dated 10 July 2009,**  
**for a loan facility of up to USD130,000,000**



**PIRAEUS**

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**THIS SECOND SUPPLEMENTAL AGREEMENT** is made on 28 August 2009

**BETWEEN**

- (1) **CHILALI CORP.** and **RUMER HOLDING LTD.** as joint and several Borrowers (the "**Borrowers**");
- (2) **EMPORIKI BANK OF GREECE S.A.** as Bank.

**BACKGROUND**

- (A) By a Loan Agreement dated 11 December 2007 as amended by a supplemental agreement dated 10 July 2009 made between (i) the Borrowers as joint and several borrowers and (ii) the Bank, the Bank made available to the Borrowers a loan facility of up to USD130,000,000 upon the terms and for the purposes therein specified.
- (B) By a Loan Agreement dated 28 August 2009 (the "**DK Loan Agreement**") made between (i) Kohylia Shipmanagement S.A. and Ducale Marine Inc. both of the Marshall Islands as joint and several borrowers (the "**DK Borrowers**") and (ii) the Bank, the Bank made available to the DK Borrowers a loan facility of up to USD75,000,000 upon the terms and for the purposes therein specified.
- (C) The Bank has made a request to the Borrowers that they provide security additional to the security already provided by the DK Borrowers to the Bank pursuant to the DK Loan Agreement.
- (D) This Agreement sets out the terms and conditions on which the Borrowers agree, with effect on and from the date hereof, at the request of the Bank, to provide additional security to the DK Loan Agreement and the consequential amendments to the Loan Agreement.

**IT IS AGREED** as follows:

**1 INTERPRETATION**

1.1 **Defined expressions.** Words and expressions defined in the Loan Agreement shall have the same meanings when used in this Agreement unless the context otherwise requires.

1.2 **Definitions.** In this Agreement, unless the contrary intention appears:

"**Collateral Account Pledges**" means the second priority pledges required to be executed hereunder by the Borrowers over the Collateral Accounts in such form as the Bank may agree or require;

"**Collateral Charter Assignment**" means a second priority specific assignment of any Extended Employment Contract in respect of a Vessel required to be executed hereunder by either Borrower in favour of the Bank (including any notices and/or acknowledgements and/or undertakings associated therewith) in such form as the Bank may require in its sole discretion;

"**Collateral Charter Insurance Assignment**" means a second priority assignment of the Charter Insurances in respect of the Vessels executed or to be executed by such named insured as the Bank may require in favour of the Bank, in such form as the Bank may in its sole discretion require;

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

“**Collateral Guarantee**” means each guarantee required to be executed hereunder by the Borrowers in respect of the obligations of the DK Borrowers under the DK Loan Agreement in such form as the Bank may agree or require and in the plural means both of them;

“**Collateral Manager’s Undertakings**” means, collectively, the undertakings and (in respect of the Technical Manager’s undertakings) second priority assignments required to be executed respectively hereunder by the Technical Manager and the Commercial Manager in favour of the Bank in respect of each of the Vessels each in such form as the Bank may require in its sole discretion (and “**Collateral Managers’ Undertakings**” means all of them);

“**Collateral Mortgage**” means, in relation to each Vessel, the second preferred mortgage of such Vessel required to be executed hereunder by the Borrower which is the owner thereof in such form as the Bank may agree or require, and in the plural means both of them; and

“**Loan Agreement**” means the Loan Agreement dated 11 December 2007 as amended by a supplemental agreement dated 10 July 2009 referred to in Recital (A).

1.3 **Application of construction and Interpretation provisions of Loan Agreement.** Clauses 1.2, 1.3, 1.4 and 1.5 of the Loan Agreement apply, with any necessary modifications, to this Agreement.

## 2 UNDERTAKINGS

2.1 **Undertakings.** The Borrowers hereby irrevocably and unconditionally agree and undertake (for good and valuable consideration, receipt and adequacy whereof they hereby acknowledge) to deliver to the Bank forthwith:

(a) Corporate documents

Certified Copies of all documents which evidence or relate to the constitution of each Borrower and its current corporate existence;

(b) Corporate authorities

(i) Certified Copies of resolutions of the directors of each Borrower approving this Supplemental Agreement and authorising the execution and delivery hereof and performance of the relevant Borrower’s obligations hereunder, additionally certified by an officer of the relevant Borrower as having been duly passed at a duly convened meeting of the directors of the relevant Borrower and not having been amended, modified or revoked and being in full force and effect; and

(ii) originals or Certified Copies of any powers of attorney issued by the Borrowers pursuant to such resolutions;

(d) Certificate of incumbency

a list of directors and officers of each Borrower specifying the names and positions of such persons, certified by an officer of the relevant Borrower to be true, complete and up to date;

(e) Further opinions, etc

any further opinions, consents, agreements and documents in connection with this Agreement and the Security Documents which the Bank may request by notice to the Borrowers; and

(f) Endorsement

the endorsement at the end of this Agreement signed by each Security Party (other than the Borrowers);

### 3 AMENDMENTS TO LOAN AGREEMENT AND OTHER SECURITY DOCUMENTS

#### 3.1 Specific amendments to Loan Agreement. With effect on and from the date hereof the Loan Agreement shall be, and shall be deemed by this Agreement to be, amended as follows:

- (a) by adding in Clause 1.2 thereof each of the definitions in Clause 1.2 of this Agreement (other than the definition of “**Loan Agreement**”);
- (b) by adding at the end of the definition of “Group” in clause 1.2 the words “but excluding any company which is publicly listed”;
- (c) by deleting the definitions of “Earnings Account” and “Earnings Account Pledge” and replacing them with the following:

“**Earnings Account**” means, in respect of each Borrower, an interest bearing USD Account required to be opened hereunder with the Bank in the name of such Borrower designated “[Borrower’s name] — Earnings Account” and includes any other account designated in writing by the Bank to be an Earnings Account for the purposes of this Agreement and in the plural means both of them;

“**Earnings Account Pledges**” means the pledges required to be executed hereunder by the Borrowers over the Earnings Accounts in such form as the Bank may agree or require;

- (d) by construing all references in the Loan Agreement to “Earnings Account” or “Earnings Account Pledge” to be to both Earnings Accounts and both Earnings Account Pledges respectively;
- (e) by deleting from item (f) of Part G of Schedule 2 the words “(in respect of the first Vessel to be delivered only);”
- (f) by deleting from item (i) of Part G of Schedule 2 and replacing it with the words:

“(i) **Earnings Account**

evidence that the Earnings Account in respect of the Relevant Vessel has been opened by the Relevant Owner and duly completed mandates in relation thereto have been delivered to the Bank;”

- (g) by adding a new paragraph (u) in Schedule 2 Part G to read as follows:

“(u) **Collateral Security Documents**

the Collateral Mortgage, the Collateral General Assignment, (in relation to the first Relevant Vessel to be delivered only) the Collateral Earnings Account Pledge, the

Collateral Guarantee, the Collateral Charter Assignment and the Collateral Charter Insurance Assignment in respect of the Relevant Vessel each duly executed and delivered and evidence that the said Collateral Mortgage has been registered against the Relevant Vessel through the Registry under the laws and flag of the Flag State.”

- (h) by construing references throughout to “this Agreement”, “hereunder” and other like expressions as if the same referred to the Loan Agreement as amended and supplemented by this Agreement.

**3.2 Amendments to Security Documents.** With effect on and from the date hereof each of the Security Documents other than the Loan Agreement, shall be, and shall be deemed by this Agreement to be, amended as follows:

- (a) the definition of, and references throughout each of the Security Documents to, the Loan Agreement and any of the other Security Documents shall be construed as if the same referred to the Loan Agreement and those Security Documents as amended and supplemented by this Agreement;
- (b) by construing references throughout each of the Security Documents to “this Agreement”, “this Deed”, “hereunder” and other like expressions as if the same referred to such Security Documents as amended and supplemented by this Agreement.

**3.3 Security Documents to remain in full force and effect.** The Security Documents shall remain in full force and effect as amended and supplemented by:

- (a) the amendments to the Security Documents contained or referred to in Clauses 3.1 and 3.2; and
- (b) such further or consequential modifications as may be necessary to give full effect to the terms of this Agreement,

#### **4 FURTHER ASSURANCES**

**4.1 Borrowers’ obligation to execute further documents etc.** The Borrowers shall, and shall procure that any other party to any Security Document shall:

- (a) execute and deliver to the Bank (or as it may direct) any assignment, mortgage, power of attorney, proxy or other document, governed by the law of England or such other country as the Bank may, in any particular case, specify,
- (b) effect any registration or notarisation, give any notice or take any other step, which the Bank may, by notice to the Borrowers or other party, specify for any of the purposes described in Clause 4.2 or for any similar or related purpose.

**4.2 Purposes of further assurances.** Those purposes are:

- (a) validly and effectively to create any Security Interest or right of any kind which the Lender intended should be created by or pursuant to the Loan Agreement or any other Security Document, each as amended and supplemented by this Agreement; and
- (b) implementing the terms and provisions of this Agreement.

**4.3 Terms of further assurances.** The Bank may specify the terms of any document to be executed by the Borrowers or any other party under Clause 4.1, and those terms may include

any covenants, powers and provisions which the Bank considers appropriate to protect its interests.

4.4 **Obligation to comply with notice.** The Borrowers shall comply with a notice under Clause 4.1 by the date specified in the notice.

4.5 **Additional corporate action.** At the same time as the Borrowers or any other party delivers to the Bank any document executed under Clause 4.1(a), that Borrower or such other party shall also deliver to the Bank a certificate signed by 2 of that Borrower's or that other party's directors which shall:

- (a) set out the text of a resolution of that Borrower's or that other party's directors specifically authorising the execution of the document specified by the Bank, and
- (b) state that either the resolution was duly passed at a meeting of the directors validly convened and held throughout which a quorum of directors entitled to vote on the resolution was present or that the resolution has been signed by all the directors and is valid under that Borrower's or that other party's articles of association or other constitutional documents.

5 **NOTICES**

5.1 **General.** The provisions of clause 16 (Notices) of the Loan Agreement, as amended and supplemented by this Agreement, shall apply to this Agreement as if they were expressly incorporated in this Agreement with any necessary modifications.

6 **SUPPLEMENTAL**

6.1 **Counterparts.** This Agreement may be executed in any number of counterparts.

6.2 **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.

7 **LAW AND JURISDICTION**

7.1 **Governing law.** This Agreement shall be governed by and construed in accordance with English law.

7.2 **Incorporation of the Loan Agreement provisions.** The provisions of clauses 18 and 19 (Governing Law and Jurisdiction) of the Loan Agreement, as amended and supplemented by this Agreement, shall apply to this Agreement as if they were expressly incorporated in this Agreement with any necessary modifications.

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

SIGNED by Alexandros Laios )  
the duly authorised attorney-in-fact of )/s/ Alexandros Laios  
**CHILALI CORP.** )

SIGNED by Alexandros Laios )  
the duly authorised attorney-in-fact of )/s/ Alexandros Laios  
**RUMER HOLDING LTD.** )

SIGNED by Christina Margelou and Chryssa Voulgare )  
for and on behalf of ) /s/ Christina Margelou and /s/ Chryssa Voulgare  
**EMPORIKI BANK OF GREECE S.A.** )

Witness to all the above )  
Signatures: Ronan Le Du ) /s/ Ronan Le Du  
Name:  
Address:  
47-49 Akti Miaouli  
Piraeus  
Greece

**COUNTERSIGNED** this 28 day of August 2009 by the following parties who, by executing the same confirm and acknowledge that they have read and understood the terms and conditions of the above Supplemental Agreement, that they agree in all respects to the same and that the Security Documents to which they are respectively a party shall remain in full force and effect and shall continue to stand as security for the obligations of the Borrowers under the Loan Agreement, as amended by the above Supplemental Agreement, and they hereby reaffirm the Security Documents to which they are respectively a party as the same is amended by the above Supplemental Agreement.

/s/ Alexandros Laios

duly authorized on behalf of  
**NAVIOS MARITIME HOLDINGS INC.**



**DATED 28 August 2009**

**SHIKHAR VENTURES S.A.  
as Borrower**

**DNB NOR BANK ASA  
as Lenders**

**DNB NOR BANK ASA  
as Swap Bank, Agent, Account Bank  
and Security Trustee**

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**FACILITY AGREEMENT FOR A USD 66,500,000**

**TERM LOAN FACILITY**

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Piraeus

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**THIS AGREEMENT** dated 28 August 2009 is made **BY** and **BETWEEN**:

- (1) **SHIKHAR VENTURES S.A.** as Borrower;
- (2) **DNB NOR BANK ASA** as Lender; and
- (3) **DNB NOR BANK ASA** as Agent, Swap Bank, Account Bank and Security Trustee.

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

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

**1.1 Purpose**

This Agreement sets out the terms and conditions on which DnB NOR Bank ASA agrees to make available to the Borrower a loan in the sum of up to sixty six million five hundred thousand Dollars (USD 66,500,000) in up to 2 Advances, for the purpose of part-financing the purchase price of one capesize bulk carriers which being constructed by the Builder for, and will be purchased by, the Borrower and of refinancing the obligations of the Borrower under the Existing Loan Agreement.

**1.2 Definitions**

In this Agreement, unless the context otherwise requires:

“**Account Bank**” means DnB NOR Bank ASA acting through its through its branch at 20 St. Dunstan’s Hill, London EC3R 8HY, England or such other Lender as may be designated by the Agent as the Account Bank for the purposes of this Agreement;

“**Acquisition Price**” means the aggregate of (i) the amount payable by the Borrower to the Builder under the Shipbuilding Contract and (ii) the amount payable to the Seller under the Share Purchase Agreement;

“**Advance**” means the principal amount of each drawing in respect of the Loan to be made pursuant to Clause 2.5;

“**Agent**” means DnB NOR Bank ASA acting through its branch at 20 St. Dunstan’s Hill, London EC3R 8HY, England (or of such other address as may last have been notified to

the other parties to this Agreement pursuant to clause 17.2.3) or such other person as may be appointed as agent by the Lenders pursuant to clause 16.13;

“**Approved Broker**” means each of (i) H Clarkson & Co. Ltd. of St Magnus House, 3 Lower Thames Street, London EC3R 6HE, England, (ii) Arrow Research Ltd. of Harbour House, Chelsea Harbour, London SW10 0XE, England and (iii) Fearnleys AS of Grev Wedels Plass 9, P.O.Box 1158 Sentrum, Oslo N-0107 Norway or such other reputable, independent and first class firm of shipbrokers specialising in the valuation of vessels of the relevant type appointed by the Agent and agreed with the Borrower;

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

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

“**Borrower**” means Shikhar Ventures S.A. having its registered office at 80 Broad Street, Monrovia, Liberia;

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

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

“**Certified Copy**” means in relation to any document delivered or issued by or on behalf of any company, a copy of such document certified as a true, complete and up to date

copy of the original by any of the directors or officers for the time being of such company or by such company's attorneys or solicitors;

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

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

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

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

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

**"Commercial Manager"** means any person appointed by the Borrower, with the prior written consent of the Agent, as the commercial manager of the Vessel;

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

**“Compliance Certificate”** means a certificate substantially in the form set out in schedule 9 signed by the chief financial officer of the Borrower;

**“Compulsory Acquisition”** means, in respect of the Vessel, requisition for title or other compulsory acquisition including, if the Vessel is not released therefrom within the Relevant Period, capture, appropriation, forfeiture, seizure, detention, deprivation or confiscation howsoever for any reason (but excluding requisition for use or hire) by or on behalf of any Government Entity or other competent authority or by pirates, hijackers, terrorists or similar persons; **“Relevant Period”** means for the purposes of this definition of Compulsory Acquisition either (i) sixty (60) days or, (ii) if relevant underwriters confirm in writing (in terms satisfactory to the Majority Lenders) prior to the end of such sixty (60) day period that such capture, seizure, detention or confiscation will be fully covered by the Borrower’s war risks insurance if continuing for a further period exceeding ten (10) calendar months, the shorter of twelve (12) months and such period at the end of which cover is confirmed to attach;

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

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

**“Credit Support Document”** has in relation to the Master Agreement, the meaning given to that expression therein;

**“Credit Support Provider”** means any person defined as such in the Master Agreement;

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

**“Delivery Date”** means the date on which title to and possession of the Vessel is transferred from the Builder to the Borrower which is expected to be 31 March 2010;

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

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

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

“**Drawdown Period**” means the period commencing on the Execution Date and ending on 30 July 2010 or on the date on which the Commitment is finally cancelled or no longer available under the terms of this Agreement;

“**Earnings Account**” means an interest bearing USD Account required to be opened hereunder with the Account Bank in the name of the Technical Manager designated “Navios — Earnings Account” and includes any other account designated in writing by the Agent to be the Earnings Account for the purposes of this Agreement;

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

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

“**Environmental Affiliate**” means any agent or employee of the Borrower, the Commercial Manager, the Technical Manager, or any other Group Member or any other person having a contractual relationship with the Borrower, the Commercial Manager, the Technical Manager, or any other Group Member in connection with any Relevant



Ship or its operation or the carriage of cargo and/or passengers thereon and/or the provision of goods and/or services on or from any Relevant Ship;

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

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

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

**“Environmental Laws”** means all laws, regulations, conventions and agreements whatsoever relating to pollution, human or wildlife well-being or protection of the

environment (including, without limitation, the United States Oil Pollution Act of 1990 and any comparable laws of the individual States of the USA);

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

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

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

**“Existing Loan Agreement”** means the loan agreement dated 24 June 2008 made between (inter alia) the Borrower and Sizzling Ventures Inc. and the Banks;

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

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

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

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

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

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

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

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

**“Indenture”** means the Indenture dated as of 18 December 2006 issued by the Corporate Guarantor and others for 9 ½% Senior Notes due on 18 December 2014;

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

**“Indenture Extract”** means the extract from the Indenture set out in Schedule 7;

**“Interest Payment Date”** means the last day of an Interest Period and, if an Interest Period is longer than 3 months, the date falling at the end of each successive period of 3 months during such Interest Period starting from its commencement;

**“Interest Period”** means each period for the calculation of interest in respect of the Loan ascertained in accordance with the provisions of clause 3;

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

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

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

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

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

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

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

**“LIBOR”** means, for a particular period, the rate equal to the offered quotation for deposits in USD in an amount comparable with the amount in relation to which LIBOR is to be determined for a period equal to, or as near as possible equal to, the relevant period which appears on Reuters Screen LIBOR01 at or about 11 a.m. on the second Banking Day before the first day of such period (and, for the purposes of this Agreement, “Reuters Screen LIBOR01” means the display designated as “LIBOR01” on the Reuters Service or such other page as may replace LIBOR01 on that service for the purpose of displaying rates comparable to that rate or on such other service as may be nominated by the British Bankers’ Association as the information vendor for the purpose of displaying the British Bankers’ Association Interest Settlement Rates for USD);

**“Liquidity”** means:

- (a) cash in hand legally and beneficially owned by any SEC Group Member; and
- (b) cash deposits legally and beneficially owned by any SEC Group Member and which are deposited with (i) any of the Banks or (ii) any other bank or financial institution; and
- (c) any undrawn Commitment under this Agreement which may be promptly drawn in accordance with the terms of this Agreement;

which in each case:

- (a) is free from any Encumbrance other than in respect of any deposit with a Lender, any Encumbrance given as security for the obligations of the Borrower under this Agreement; and
- (b) is otherwise at the free and unrestricted disposal of the relevant SEC Group Member by which it is owned;

“**Loan**” means the amount of up to USD66,500,000, being the aggregate of the Advances to be made available by the Lender to the Borrower to assist the Borrower in its acquisition of the Vessel, and, as the context requires, means the aggregate principal amount in respect of the Loan Facility owing to the Lenders under this Agreement at any relevant time;

“**Loan Facility**” means the loan facility provided by the Lenders on the terms and subject to the conditions of this Agreement in the amount of USD 66,500,000;

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

“**Management Agreements**” means, in respect of the Vessel, the agreements between (i) the Borrower and the Technical Manager and (ii) the Technical Manager and the Commercial Manager, each in a form previously approved in writing by the Agent (acting on the instructions of the Majority Lenders);

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

“**Mandatory Cost**” means the percentage rate calculated by the Agent in accordance with Schedule 6;

“**Margin**” means 2.25% per annum;

**“Master Agreement”** means an ISDA Master Agreement made or to be made between the Swap Bank and the Borrower;

**“Master Agreement Security Deed”** means the security deed in respect of the Master Agreement executed or (as the context may require) to be each executed by the Borrower in favour of the Security Trustee in such form as the Agent and the Majority Lenders may require in their sole discretion;

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

**“Maturity Date”** means the earlier of 30 April 2016 and the date falling 6 years after the Delivery Date;

**“MII & MAP Policy”** means a mortgagee’s interest and pollution risks insurance policy (including additional perils (pollution) cover) in respect of the Vessel to be effected by the Security Trustee on or before the first Drawdown Date to cover the Vessel as the same may be renewed or replaced annually thereafter and maintained throughout the Facility Period through such brokers, with such underwriters and containing such coverage as may be acceptable to the Security Trustee in its sole discretion, insuring a sum of at least one hundred and twenty per cent (120%) of the Loan in respect of mortgagee’s interest insurance and one hundred and twenty per cent (120%) of the Loan in respect of additional perils cover;

**“Minimum Liquidity”** means USD30,000,000 ;

**“month”** means a period beginning in one calendar month and ending in the next calendar month on the day numerically corresponding to the day of the calendar month on which it started, provided that (a) if the period started on the last Banking Day in a calendar month or if there is no such numerically corresponding day, it shall end on the last Banking Day in such next calendar month and (b) if such numerically corresponding

day is not a Banking Day, the period shall end on the next following Banking Day in the same calendar month but if there is no such Banking Day it shall end on the preceding Banking Day and “months” and “monthly” shall be construed accordingly;

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

“**Net Worth**” means, by reference to the Latest Accounts in respect of the SEC Group, the Total Assets (adjusted for market value taking into account the benefit of any charterparty) less Total Liabilities of the SEC Group;

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

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

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

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

“**Predelivery Security Assignment**” means a deed of assignment of the Shipbuilding Contract and of the Refund Guarantee in such form as the Agent and the Majority Lenders may require in their sole discretion;

“**Proceedings**” means any litigation, arbitration, legal action or complaint or judicial, quasi-judicial or administrative proceedings whatsoever arising or instigated by anyone (private or governmental) in any court, tribunal, public office or other forum whatsoever

and wheresoever (including, without limitation, any action for provisional or permanent attachment of any thing or for injunctive remedies or interim relief and any action instigated on an ex parte basis);

**“Refund Guarantee”** means the irrevocable and unconditional guarantee issued by the Refund Guarantor in favour of the Borrower in relation to the Shipbuilding Contract;

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

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

**“Repayment Dates”** means, subject to clause 6.3, each of the dates falling at six monthly intervals after the Drawdown Date in respect of the Advance referred to in Clause 2.5.1(b), up to and including the earlier of (i) the date falling 72 months after such Drawdown Date and (ii) 30 April 2016;

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

**“Required Security Amount”** means the amount in USD (as certified by the Agent) which is at any relevant time one hundred and twenty five per cent (125%) of the aggregate of the Loan and any Swap Exposure;



**"SEC Group"** means the Corporate Guarantor and any other person in relation to which the Corporate Guarantor is required to prepare consolidated financial reports on US form 6-K (or any successor form) and US form 20 — F (or any successor form);

**"SEC Group Member"** means any member of the SEC Group;

**"Security Documents"** means this Agreement, the Predelivery Security Assignment, the Master Agreement, the Master Agreement Security Deed, the Mortgage, the Guarantee, the General Assignment, the Charter Assignment, the Charter Insurance Assignment, the Earnings Accounts Pledge, the Manager's Undertakings, and any other documents as may have been or shall from time to time after the date of this Agreement be executed to guarantee and/or to govern and/or secure all or any part of the Loan, interest thereon and other moneys from time to time owing by the Borrower pursuant to this Agreement and/or the Master Agreement (whether or not any such document also secures moneys from time to time owing pursuant to any other document or agreement);

**"Security Party"** means the Borrower, the Commercial Manager, the Technical Manager, the Corporate Guarantor or any other person who may at any time be a party to any of the Security Documents (other than the Banks);

**"Security Trustee"** means DnB NOR Bank ASA acting through its through its branch at 20 St. Dunstan's Hill, London EC3R 8HY, England (or of such other address as may last have been notified to the other parties to this Agreement pursuant to clause 17.2.3) or such other person as may be appointed as Security Trustee and trustee by the Lenders, the Agent and the Agent pursuant to clause 16.14;

**"Security Value"** means the amount in USD (as certified by the Agent) which is, at any relevant time, the aggregate of (a) the Valuation Amounts of the Vessel as most recently determined in accordance with clause 8.2.2 and (b) the net realizable market value of any additional security for the time being actually provided to the Lenders pursuant to clause 8.2.1(b);

**"Share Purchase Agreement"** means the agreement dated 10 December 2007 made between the Shareholder as buyer and the Seller as seller of all of the shares of and in the Borrower;

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

**“Ship Security Documents”** means the Mortgage, the General Assignment, any Charter Assignment, the Charter Insurance Assignment and the Manager’s Undertakings;

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

**“Swap Bank”** means each of DnB NOR Bank ASA acting through its through its branch at 20 St. Dunstan’s Hill, London EC3R 8HY, England;

**“Swap Exposure”** means, as at any relevant date the amount certified by the Swap Bank to be the aggregate net amount in Dollars which would be payable by the Borrower to the Swap Bank under (and calculated in accordance with) section 6(e) (Payments on Early Termination) of the Master Agreement if an Early Termination Date (as therein defined) had occurred on the relevant date in relation to all continuing Transactions (as therein defined) entered into between the Borrower and the Swap Bank;

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

**“Technical Manager”** means Navios ShipManagement Inc., a company incorporated in the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960 or any other person appointed by the Borrower, with the prior written consent of the Agent, as the technical manager of the Vessel;

**“Total Assets”** and **“Total Liabilities”** mean, respectively, the total assets and total liabilities of the SEC Group as evidenced at any relevant time by the Latest Accounts, in which they shall have been calculated by reference to the meanings assigned to them in accordance with US GAAP provided that the value of any ship shall be the value thereof calculated in accordance with Clause 8.2.2 and not as set out in the Latest Accounts;

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

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

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

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

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

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

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

**“Trust Property”** means (i) the security, powers, rights, titles, benefits and interests (both present and future) constituted by and conferred on the Banks or any of them under or pursuant to the Security Documents (including, without limitation, the benefit of all covenants, undertakings, representations, warranties and obligations given, made or undertaken to any Bank in the Security Documents), (ii) all moneys, property and other assets paid or transferred to or vested in any Bank (or anyone else on such Bank’s behalf)

or received or recovered by any Bank (or anyone else on such Bank's behalf) pursuant to, or in connection with, any of the Security Documents whether from any Security Party or any other person and (iii) all moneys, investments, property and other assets at any time representing or deriving from any of the foregoing, including all interest, income and other sums at any time received or receivable by any Bank (or anyone else on such Bank's behalf) in respect of the same (or any part thereof);

**"Underlying Documents"** means, together, the Share Purchase Agreement, the Shipbuilding Contract, the Refund Guarantee, any Extended Employment Contracts and the Management Agreements;

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

**"USA"** means the United States of America;

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

Words and expressions defined in Schedule 10 (Vessel Details) shall have the meanings given to them therein as if the same were set out in full in this clause 1.2.

### 1.3 **Construction**

In this Agreement, unless the context otherwise requires:

- 1.3.1 clause headings and the index are inserted for convenience of reference only and shall be ignored in the construction of this Agreement;
- 1.3.2 references to clauses and schedules are to be construed as references to clauses of, and schedules to, this Agreement and references to this Agreement include its schedules and any supplemental agreements executed pursuant hereto;
- 1.3.3 references to (or to any specified provision of) this Agreement or any other document shall be construed as references to this Agreement, that provision or that document as in force for the time being and as duly amended and/or supplemented and/or novated;

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

1.3.14 and the words “other” and “otherwise” shall not be construed *eiusdem generis* with any foregoing words where a wider construction is possible.

#### 1.4 **Accounting terms and references to currencies**

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

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

Except for clause 19, no part of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

#### 1.6 **Majority Lenders**

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

## 2 **THE AVAILABLE COMMITMENT AND CANCELLATION**

### 2.1 **Agreement to lend**

The Lenders, relying upon each of the representations and warranties in clause 7, agree to provide to the Borrower upon and subject to the terms of this Agreement, the Loan in up to 2 Advances for the purposes of re-financing its obligations under the Existing Loan Agreement and financing part of the purchase price of the Vessel. Subject to the terms of

this Agreement, the obligations of the Lenders shall be to contribute to each Advance, the proportion of the relevant Advance which their respective Commitments bear to the aggregate Commitments on any relevant Drawdown Date.

## 2.2 **Obligations several**

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

## 2.3 **Interests several**

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

## 2.4 **Drawdown**

2.4.1 On the terms and subject to the conditions of this Agreement, the Loan shall be advanced in up to two (2) Advances on the relevant Drawdown Dates following receipt by the Agent from the Borrower of Drawdown Notices not later than 10 a.m. on the third Banking Day before each proposed Drawdown Date.

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

## 2.5 **Amount**

2.5.1 The principal amount specified in each Drawdown Notice for borrowing on the Drawdown Dates shall, subject to the terms of this Agreement, not exceed:

- (a) USD54,000,000 in respect of the principal amount outstanding under the Existing Loan Agreement; and
- (b) USD12,500,000 to be paid by the Borrower to the Builder under the Shipbuilding Contract in respect of the delivery instalment.

**2.6 Availability**

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

**2.7 Cancellation in changed circumstances**

The Borrower may also at any time during the Facility Period by notice to the Agent (effective only on actual receipt) prepay and cancel with effect from a date not less than fifteen (15) days after receipt by the Agent of such notice, the whole but not part only, but without prejudice to the Borrower's obligations under clauses 6.6 and 12, of the Contribution and Commitment (if any) of any Lender to which the Borrower shall have become obliged to pay additional amounts under clause 12 or clause 6.6. Upon any notice of such prepayment and cancellation being given, the Commitment of the relevant Lender shall be reduced to zero, the Borrower shall be obliged to prepay the Contribution of such Lender and such Lender's related costs (including but not limited to Break Costs) on such date and such Lender shall be under no obligation to participate in the Loan or the further Advance.

**2.8 Use of proceeds**

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



### 3 INTEREST AND INTEREST PERIODS

#### 3.1 Normal interest rate

The Borrower must pay interest on the Loan in respect of each Interest Period on each Interest Payment Date at the rate per annum determined by the Agent to be the aggregate of (i) in respect of Interest Periods of 12 months or less (a) the Margin and (b) LIBOR or (ii) in respect of Interest Periods of more than 12 months (a) the Margin, (b) (in respect of each Contribution) the actual cost of funds to that Lender to fund its Contribution and (c) Mandatory Costs (if any).

#### 3.2 Selection of Interest Periods

Subject to clause 3.3, the Borrower may by notice received by the Agent not later than 10:00 a.m. on the third Banking Day before the beginning of each Interest Period specify whether such Interest Period shall have a duration of one (1) month, three (3) months, six (6) months, twelve (12) months or such other period as the Borrower may select and the Agent (acting on the instructions of the Lenders) may agree and the Borrower may select no more than three Interest Periods having a duration of one (1) month period in any calendar year.

#### 3.3 Determination of Interest Periods

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

- 3.3.1 the first Interest Period shall start on the Drawdown Date in respect of the first Advance, and each subsequent Interest Period shall start on the last day of the previous Interest Period;
- 3.3.2 the first Interest Period in respect of the subsequent Advance shall commence on its Drawdown Date and terminate simultaneously with the Interest Period which is then current;
- 3.3.3 if any Interest Period would otherwise overrun a Repayment Date, then, in the case of the last Repayment Date, such Interest Period shall end on such Repayment Date, and in the case of any other Repayment Date shall be divided into parts so that there is one part in

the amount of the repayment instalment due on each Repayment Date falling in that Interest Period and having an Interest Period ending on the relevant Repayment Date and another part consisting of the balance of the Loan having an Interest Period ascertained in accordance with the other provisions of this clause 3; and

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

#### 3.4 **Default interest**

If the Borrower fails to pay any sum (including, without limitation, any sum payable pursuant to this clause 3.4) on its due date for payment under any of the Security Documents, the Borrower must pay interest on such sum on demand from the due date up to the date of actual payment (as well after as before judgment) at a rate determined by the Agent pursuant to this clause 3.4. The period starting on such due date and ending on such date of payment shall be divided into successive periods of not more than three (3) months as selected by the Agent each of which (other than the first, which shall start on such due date) shall start on the last day of the preceding such period. The rate of interest applicable to each such period shall be the aggregate (as determined by the Agent) of (a) two per cent (2%) per annum, (b) the Margin (which shall be for the purposes of this Clause, 1.25% per annum) and (c) LIBOR for such periods. Such interest shall be due and payable on demand, or, if no demand is made, then on the last day of each such period as determined by the Agent and on the day on which all amounts in respect of which interest is being paid under this Clause are paid, and each such day shall, for the purposes of this Agreement, be treated as an Interest Payment Date, provided that if such unpaid sum is an amount of principal which became due and payable by reason of a declaration by the Agent under clause 10.2.2 or a prepayment pursuant to clauses 4.3, 4.5, 8.2.1(a) or 12.1, on a date other than an Interest Payment Date relating thereto, the first such period selected by the Agent shall be of a duration equal to the period between the due date of such principal sum and such Interest Payment Date and interest shall be payable on such principal sum during such period at a rate of two per cent (2%) above the rate applicable thereto immediately before it shall have become so due and payable. If, for the reasons specified in clause 3.6.1, the Agent is unable to

determine a rate in accordance with the foregoing provisions of this clause 3.4, each Lender shall promptly notify the Agent of the cost of funds to such Lender and interest on any sum not paid on its due date for payment shall be calculated at a rate determined by the Agent to be two per cent (2%) per annum above the aggregate of the Margin and the arithmetic mean of the cost of funds to the Lenders compounded at such intervals as the Agent selects.

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

The Agent agrees to notify (i) the Lenders promptly of the duration of each Interest Period and (ii) the Borrower and the Lenders promptly of each rate of interest determined by it under this clause 3.5.

**3.6 Market disruption; non-availability**

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

- (a) the Agent shall have determined that adequate and fair means do not exist for ascertaining LIBOR during such Interest Period; or
- (b) the Agent shall have received notification from a Lender or Lenders that deposits in USD are not available to such Lender or Lenders in the London InterBank Market in the ordinary course of business to fund their Contributions to the Loan for such Interest Period
- (c) the Agent must promptly give notice (a “**Determination Notice**”) thereof to the Borrower and to each of the Lenders. A Determination Notice shall contain particulars of the relevant circumstances giving rise to its issue. After the giving of any Determination Notice, regardless of any other provision of this Agreement, the Commitment shall not be borrowed until notice to the contrary is given to the Borrower by the Agent.

3.6.2 Within ten (10) days of any Determination Notice being given by the Agent under clause 3.6.1, each Lender must certify an alternative basis (the “**Alternative Basis**”) for maintaining its Contribution. The Alternative Basis may at the relevant Lender’s sole discretion include (without limitation) alternative interest periods, alternative currencies

or alternative rates of interest but shall include a Margin above the cost of funds to such Lender. The Agent shall calculate the arithmetic mean of the Alternative Bases provided by the relevant Lenders (the “**Substitute Basis**”) and certify the same to the Borrower and the Lenders. The Substitute Basis so certified shall be binding upon the Borrower, and shall take effect in accordance with its terms from the date specified in the Determination Notice until such time as the Agent notifies the Borrower that none of the circumstances specified in clause 3.6.1 continues to exist whereupon the normal interest rate fixing provisions of this Agreement shall again apply and, subject to the other provisions of this Agreement, the Commitment may again be borrowed.

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

##### 4.1 **Repayment**

4.1.1 Subject as otherwise provided in this Agreement, the Borrower must repay the Loan by 12 equal semi-annual instalments of US\$2,900,000 each, one such instalment to be repaid on each of the Repayment Dates and a balloon instalment of US\$31,700,000 to be repaid on the final Repayment Date.

If the Commitment is not drawn in full, the amount of each repayment instalment shall be reduced proportionately.

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

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

Subject to clauses 4.5 and 4.6 the Borrower may, subject to having given 10 Banking Days prior notice thereof to the Agent, prepay any specified amount (such part being in an amount of one million Dollars (USD 1,000,000) or any larger sum which is an integral multiple of such amount) of the Loan on any relevant Interest Payment Date without premium or penalty.

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

On the date falling one hundred and eighty (180) days after that on which the Vessel became a Total Loss or, if earlier, on the date upon which the relevant insurance proceeds are, or Requisition Compensation (as defined in the Mortgage) is, received by the Borrower (or the Security Trustee pursuant to the Security Documents), the Borrower must prepay the Loan.

#### 4.3.1 Interpretation

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

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

**4.4 Mandatory prepayment on sale of the Vessel**

On the date of completion of the sale of the Vessel the Borrower must prepay the Loan.

**4.5 Amounts payable on prepayment**

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

4.5.1 accrued interest on the amount to be prepaid to the date of such prepayment;

4.5.2 any additional amount payable under clauses 3.6, 6.6 or 12.2; and

4.5.3 all other sums payable by the Borrower to the Banks under this Agreement or any of the other Security Documents including, without limitation any Break Costs and, if the whole Loan is being prepaid, any accrued commitment commission payable under clause 5.1.

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

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

4.6.2 Any amounts prepaid pursuant to clause 4.2 shall be applied against the Loan in reducing the Balloon Instalment and thereafter the repayment instalments in inverse order of their maturity.

4.6.3 The Borrower's obligations set out in Clause 4.1.1 shall not be affected by any prepayment in respect of the Loan pursuant to clause 4.2.

4.6.4 The Borrower may not prepay any part of the Loan except as expressly provided in this Agreement.

**5 FEES AND EXPENSES**

**5.1 Commission**

5.1.1 The Borrower agrees to pay to the Agent for the account of the Lenders pro rata in accordance with their Total Commitments quarterly in arrears from the Execution Date until the end of the Drawdown Period and on the last day of the Drawdown Period commitment commission computed from the Execution Date at a rate of zero point three per cent (0.30%) per annum on the daily amount of the undrawn Loan Facility.

5.1.2 The commission referred to in clause 5.1.1 must be paid by the Borrower to the Agent, whether or not any part of the Total Commitment is ever advanced and shall be non-refundable.

## 5.2 Expenses

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

5.2.1 in connection howsoever with the syndication of the Loan Facility and with the negotiation, preparation, execution and, where relevant, registration of the Security Documents and of any contemplated or actual amendment, or indulgence or the granting of any waiver or consent howsoever in connection with, any of the Security Documents (including legal fees and any travel expenses); and

5.2.2 in contemplation or furtherance of, or otherwise howsoever in connection with, the exercise or enforcement of, or preservation of any rights, powers, remedies or discretions under any of the Security Documents, or in consideration of the Banks' rights thereunder or any action proposed or taken following the occurrence of a Default or otherwise in respect of the moneys owing under any of the Security Documents,

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

## 5.3 Value added tax

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

**5.4 Stamp and other duties**

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

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

**6.1 No set-off or counterclaim**

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

**6.2 Payment by the Lenders**

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



### 6.3 **Non-Banking Days**

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

### 6.4 **Calculations**

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

### 6.5 **Currency of account**

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

### 6.6 **Grossing-up for Taxes — by the Borrower**

If at any time the Borrower must make any deduction or withholding in respect of Taxes or otherwise from any payment due under any of the Security Documents for the account of any Bank or if the Agent or the Security Trustee must make any deduction or withholding from a payment to another Bank or withholding in respect of Taxes from any payment due under any of the Security Documents, the sum due from the Borrower in respect of such payment must be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the relevant Bank receives on the due date for such payment (and retains, free from any liability in respect of such deduction or withholding), a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made and the Borrower must indemnify each Bank against any losses or costs incurred by it by reason of any failure of the Borrower to make any such deduction or withholding or by reason of any increased payment not being made on the due date for such payment. The Borrower must promptly deliver to the Agent any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.

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

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

**6.8 Loan account**

Each Lender shall maintain, in accordance with its usual practice, an account evidencing the amounts from time to time lent by, owing to and paid to it under the Security

Documents. The Agent and/or the Security Trustee shall maintain a control account showing the Loan, the Advances and other sums owing by the Borrower under the Security Documents and all payments in respect thereof being made from time to time. The control account shall, in the absence of manifest error, be prima facie evidence of the amount from time to time owing by the Borrower under the Security Documents.

**6.9 Agent may assume receipt**

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

**6.10 Partial payments**

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

- 6.10.1 first, in or towards payment, on a pro-rata basis, of any unpaid costs and expenses of the Agent, the Agent and the Security Trustee under any of the Security Documents;
- 6.10.2 secondly, in or towards payment of any fees payable to the Agent or any of the other Banks under, or in relation to, the Security Documents which remain unpaid;
- 6.10.3 thirdly, in or towards payment to the Lenders, on a pro rata basis, of any accrued interest owing in respect of the Loan which shall have become due under any of the Security Documents but remains unpaid;
- 6.10.4 fourthly, in or towards payment to the Lenders, on a pro rata basis, of any principal in respect of the Loan which shall have become due but remain unpaid;
- 6.10.5 fifthly, in or towards payment to the Lenders, on a pro rata basis, any Break Costs and any other sum relating to the Loan which shall have become due under any of the Security Documents (other than under or in relation to the Master Agreement) but remains unpaid; and
- 6.10.6 sixthly, in or towards payment to the Swap Banks of any other sum which shall have become due under the Master Agreement but remains unpaid.

The order of application set out in clauses 6.10.1 to 6.10.6 may be varied by the Agent if the Majority Lenders so direct, without any reference to, or consent or approval from, the Borrower.

## 7 REPRESENTATIONS AND WARRANTIES

### 7.1 Continuing representations and warranties

The Borrower represents and warrants to each Bank that:

#### 7.1.1 Due incorporation

each of the Security Parties is duly incorporated and validly existing in good standing, under the laws of its respective country of incorporation, in each case, as a corporation and has power to carry on its respective businesses as it is now being conducted and to

own their respective property and other assets to which it has unencumbered legal and beneficial title except as disclosed to the Agent in writing;

#### 7.1.2 Corporate power

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

#### 7.1.3 Binding obligations

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

#### 7.1.4 No conflict with other obligations

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

#### 7.1.5 No default

no Default has occurred;

7.1.6 No litigation or judgments

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

7.1.7 No filings required

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

7.1.8 Required Authorisations and legal compliance

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

7.1.9 Choice of law

the choice of English law to govern the Underlying Documents and the Security Documents (other than the Mortgages, the Earnings Account Pledges and the Retention Account Pledge), the choice of the law of the Flag State to govern the Mortgages, the choice of Greek law to govern the Earnings Account Pledges and the Retention Account Pledge and the submissions by the Security Parties to the jurisdiction of the English

courts and the obligations of such Security Parties associated therewith, are valid and binding;

7.1.10 No immunity

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

7.1.11 Financial statements correct and complete

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

7.1.12 Pari passu

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

7.1.13 Information/ Material Adverse Effect

all information, whatsoever provided by any Security Party to the Agent in connection with the negotiation and preparation of the Security Documents or otherwise provided hereafter in relation to, or pursuant to this Agreement is, or will be, true and accurate in all material respects and not misleading, does or will not omit material facts and all reasonable enquiries have been, or shall have been, made to verify the facts and statements contained therein and there has not occurred any event which could have a Material Adverse Effect on any Security Party since such information was provided to the

Agent; there are, or will be, no other facts the omission of which would make any fact or statement therein misleading ;

7.1.14 No withholding Taxes

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

7.1.15 Indenture

The entry by the Borrower into this Agreement, and its borrowing of the Loan hereunder, and the execution by the Corporate Guarantor of the Corporate Guarantee do not breach Section 4.10 or any other provision of the Indenture;

7.1.16 Use of proceeds

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

7.1.17 The Vessel

throughout the Facility Period, the Vessel will, following the Delivery date, be :

- (a) in the absolute sole, legal and beneficial ownership of the Borrower;
- (b) registered through the offices of the Registry as a ship under the laws and flag of the Flag State;
- (c) in compliance with the ISM Code and the ISPS Code and operationally seaworthy and in every way fit for service;
- (d) in good and sea-worthy and cargo-worthy condition; and
- (e) classed with the Classification free of all requirements and recommendations of the Classification Society.



#### 7.1.18 Vessel's employment

except with the prior written consent of the Agent, there will not be any agreement or arrangement whereby the Earnings (as defined in the Ship Security Documents) of the Vessel may be shared or pooled howsoever with any other person;

#### 7.1.19 Freedom from Encumbrances

neither the Vessel nor its Earnings, Insurances or Requisition Compensation (each as defined in the Ship Security Documents) nor the Earnings Account or the Retention Account nor any Extended Employment Contract in respect of the Vessel nor any other properties or rights which are, or are to be, the subject of any of the Security Documents nor any part thereof will be subject to any Encumbrance except Permitted Encumbrances;

#### 7.1.20 Environmental Matters

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

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

#### 7.1.21 ISM and ISPS Code

the Borrower has complied with and continues to comply with and has procured that the Technical Manager has complied with and continues to comply with the ISM Code, the ISPS Code and all other statutory and other requirements relative to its business and in particular the Borrower or the Technical Manager has obtained and maintains a valid DOC and SMC for the Vessel and that it and the Technical Manager has implemented and continues to implement an ISM SMS;

7.1.22 Copies true and complete

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

7.1.23 the Borrower is the ultimate beneficiary of the Loan;

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

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

7.1.26 the Borrower does not have an office in England.

7.2 **Repetition of representations and warranties**

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

8 **UNDERTAKINGS**

8.1 **General**

The Borrower undertakes with each Bank that, from the Execution Date until the end of the Facility Period, it will:

8.1.1 Notice of Default and Proceedings

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

8.1.2 Authorisation

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

8.1.3 Corporate Existence

ensure that each Security Party maintains its corporate existence as a body corporate duly organised and validly existing and in good standing under the laws of the Pertinent Jurisdiction;

8.1.4 Use of proceeds

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

#### 8.1.5 Pari passu

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

#### 8.1.6 Financial statements

provide to the Agent:

(a) within 75 days after the end of each of the first three fiscal quarters in each fiscal year, quarterly reports on US Form 6-K (or any successor form) in respect of the Corporate Guarantor containing unaudited financial statements (including a balance sheet and statement of income, changes in stockholders' equity and cash flow) and a management's discussion and analysis of financial condition and results of operations (or equivalent disclosure) for and as of the end of such fiscal quarter (with comparable financial statements for the corresponding fiscal quarter of the immediately preceding fiscal year);

(b) within 150 days after the end of each fiscal year of the Corporate Guarantor, an annual report on US Form 20-F (or any successor form) in respect of the Corporate Guarantor containing the information required to be contained therein for such fiscal year; and

(c) at or prior to such times as would be required to be filed or furnished to the SEC (as defined in the Indenture) (hereinafter, the "SEC") if the Corporate Guarantor was then a "foreign private issuer" subject to Section 13(a) or 15(d) of the US Exchange Act, all such other reports and information that the Corporate Guarantor would have been required to file pursuant thereto

(d) a copy of all such information and reports referred to in clauses (1) to (3) (inclusive) of Section 4.17(a) of the Indenture within the time periods specified therein (unless the SEC shall not accept such a filing) and, upon the Agent's request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act

*Provided* that, in relation to (a), (b) and (c) above, to the extent that the Corporate Guarantor ceases to qualify as a “foreign private issuer” within the meaning of the US Exchange Act, whether or not the Corporate Guarantor is then subject to Section 13(a) or 15(d) of the US Exchange Act, the Borrower shall furnish to the Agent, so long as any Notes (as defined in the Indenture) are outstanding, within 30 days of the respective dates on which the Corporate Guarantor would be required to file such documents with the SEC if it was required to file such documents under the US Exchange Act, all reports and other information that would be required to be filed with (or furnished to) the SEC pursuant to Section 13(a) or 15(d) of the US Exchange Act.

#### 8.1.7 Reimbursement of MII & MAP Policy premiums

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

#### 8.1.8 Compliance Certificates

deliver to the Agent on each of (a) the earlier of (i) the date on which the annual reports are delivered under clause 8.1.6(b) and (ii) the date falling 150 days after the end of the financial year to which they refer and (b) the earlier of (i) the date on which the second quarterly reports in each financial year are delivered under clause 8.1.6(a) and (ii) the date falling 75 days after the financial quarter to which they refer, a Compliance Certificate together with such supporting information as the Agent may require together with a valuation of all ocean-going ships owned by a Group Member which is a wholly-owned subsidiary of the Corporate Guarantor.

#### 8.1.9 Provision of further information

provide the Agent, and procure that the Corporate Guarantor and the Commercial Manager shall provide the Agent, with such financial or other information concerning the Borrower, the Corporate Guarantor and their respective affairs, activities, financial standing, Indebtedness and operations and the performance of the Vessel and any other ship owned by any Group Member as the Agent may from time to time reasonably

require and, without the need for any request therefor provide to the Agent information of any significant nature in respect of the Borrower and/or the Corporate Guarantor and/or any other Group Member including, but not limited to, details of any loans borrowed or repaid by any of them, the purchase or sale of any substantial assets (including ships) by any of them and/or the restructuring of any loan of which any of them is a borrower;

8.1.10 Obligations under Security Documents

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

8.1.11 Compliance with ISM Code

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

8.1.12 Withdrawal of DOC and SMC

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

8.1.13 Issuance of DOC and SMC

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

8.1.14 ISPS Code Compliance

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

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

8.1.15 Compliance with Laws and payment of taxes

and will comply with all relevant Environmental Laws, laws, statutes and regulations (including, but not limited to, laws relating to any trading prohibition imposed by the Flag State, the country of incorporation of the Borrower or the country of nationality of any crew member of the Vessel by which such Borrower is bound) and pay all taxes for which it is liable as they fall due;

8.1.16 Charters etc.

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

8.1.17 Indenture

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

- (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 Borrower's obligations hereunder to comply with the obligations in the Indenture Excerpt, except with the consent of the Agent;

(c) the Borrower 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 Borrower will not, and will procure that the Corporate Guarantor will not, vary any term of the Indenture without the prior written consent of the Banks.

#### 8.1.18 Subordination

Ensure that all Indebtedness of the Borrower to its shareholders or to any other Group Member is fully subordinated, and to subordinate any Indebtedness issued to it by the Corporate Guarantor, all in a form acceptable to the Agent (acting on the instructions of the Majority Lenders).

#### 8.1.19 Refund Guarantee

The Borrower shall deliver to the Lender by no later than 1 September 2009 evidence acceptable to the Lender that the Refund Guarantor is bound by the Refund Guarantee and that the same secures the launching instalment payable under the Shipbuilding Contract notwithstanding that launch of the Vessel has not yet occurred.

#### 8.1.20 Launch

On completion of launching of the Vessel by the Builder the Borrower shall deliver to the Agent:

- (a) Documentary evidence that launch of the Vessel has been completed in accordance with the Shipbuilding Contract;
- (b) A duly issued invoice from the Builder showing all sums due and payable to the Builder pursuant to Article X2(e) of the Shipbuilding Contract upon launching of the Vessel; and



(c) Written confirmation issued by a Classification Society in a form acceptable to the Agent, that the load out of the Vessel has been completed.

## 8.2 Security value maintenance

### 8.2.1 Security shortfall

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

- (a) prepay within a period of thirty (30) days of the date of receipt by the Borrower of the Agent's said notice such part of the Loan as will result in the Security Value after such prepayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such prepayment) being equal to or higher than the Required Security Amount; or
- (b) within thirty (30) days of the date of receipt by the Borrower of the Agent's said notice constitute to the satisfaction of the Agent such further security for the Loan as shall be acceptable to the Majority Lenders having a value for security purposes (as determined by the Agent in its absolute discretion) at the date upon which such further security shall be constituted which, when added to the Security Value, shall not be less than the Required Security Amount as at such date.

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

### 8.2.2 Valuation of Vessel

The Vessel shall, for the purposes of this Agreement, be valued (at the Borrower's expense) in USD by taking a valuation prepared by any Approved Broker appointed by the Borrower, such valuation to be made without physical inspection, and on the basis of

a sale for prompt delivery for cash at arms' length, on normal commercial terms, as between a willing buyer and a willing seller, and subject to the proviso to this clause 8.2.2, taking into account the benefit of any charterparty but no other engagement concerning the Vessel provided that the Agent may, in its discretion request a second valuation (on the same terms) from a second Approved Broker and if such two valuations vary by more than 15%, then the Agent shall appoint a third Approved Broker to provide a valuation and the Valuation amount shall be the average of such three valuations, such valuations to be obtained:

- (a) On the date falling six months after the first Drawdown Date and twice yearly thereafter and
- (b) (in addition to (a) above) at any other time as the Agent (acting on the instructions of the Majority Lenders) shall additionally require, at the cost of the Lenders

The Approved Brokers' valuations, or, as the case may be, the average of such valuations, for the Vessel on each such occasion shall constitute the Valuation Amount of the Vessel for the purposes of this Agreement until superseded by the next such valuation.

The proviso referred to above in this clause is that the benefit of any charterparty or other engagement concerning the Vessel shall not be taken into account in calculating the Valuation Amount of the Vessel unless (i) the Borrower has obtained Charter Insurance in relation to any charterparty to which the Vessel is subject with an insurer and on terms in all respects acceptable to the Agent and (ii) the Security Trustee has received a Charter Insurance Assignment and notice of Assignment thereof duly executed by the Borrower.

### 8.2.3 Information

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

### 8.2.4 Costs

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

#### 8.2.5 Valuation of additional security

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

#### 8.2.6 Documents and evidence

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

#### 8.3 Indenture

Notwithstanding anything in this Agreement:

(i) any terms, transactions or events permitted by the Indenture Excerpt and

(ii) save as otherwise expressly provided in this Agreement, any other terms or transactions or events permitted by the Indenture

shall be deemed to be permitted by this Agreement.

#### 8.4 Financial Covenants of the SEC Group

The Borrower shall procure that

- (a) at no time shall the Liquidity of the SEC Group be less than the Minimum Liquidity;
- (b) the ratio of Consolidated Cash Flow (defined and applied as set out in the Indenture Extract, 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 Extract which definition shall not be varied without the Lenders' consent irrespective of any variation of the Indenture itself) on a 12 month trailing basis as applied in the Indenture shall at all times be at least 2 to 1; and
- (c) the Total Liabilities divided by the Total Assets (adjusted for market values of vessels calculated in accordance with Clause 8.2.2) shall be less than 75%.

## 9 CONDITIONS

### 9.1 Advance of an Advance

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

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

9.2 **Waiver of conditions precedent**

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

9.3 **Further conditions precedent**

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

10 **EVENTS OF DEFAULT**

10.1 **Events**

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

- 10.1.1 **Non-payment:** any Security Party fails to pay any sum payable by it under any of the Security Documents at the time, in the currency and in the manner stipulated in the Security Documents or the Underlying Documents (and so that, for this purpose, sums payable (i) under clauses 3.1 and 4.1 shall be treated as having been paid at the stipulated time if (aa) received by the Agent within two (2) days of the dates therein referred to and (bb) such delay in receipt is caused by administrative or other delays or errors within the banking system and (ii) on demand shall be treated as having been paid at the stipulated time if paid within two (2) Banking Days of demand); or
- 10.1.2 **Breach of Insurance and certain other obligations:** the Borrower or, as the context may require, the Technical Manager or any other person fails to obtain and/or maintain the Insurances (as defined in, and in accordance with the requirements of, the Ship Security

Documents) for the Vessel or if any insurer in respect of such Insurances cancels the Insurances or disclaims liability by reason, in either case, of misstatement in any proposal for the Insurances or for any other failure or default on the part of the Borrower or any other person or the Borrower commits any breach of or omits to observe any of the obligations or undertakings expressed to be assumed by them under clause 8; or

- 10.1.3 **Breach of other obligations:** any Security Party commits any breach of or omits to observe any of its obligations or undertakings expressed to be assumed by it under any of the Security Documents (other than those referred to in clauses 10.1.1 and 10.1.2 above) unless such breach or omission, in the opinion of the Agent (following consultation with the Banks) is capable of remedy, in which case the same shall constitute an Event of Default if it has not been remedied within fifteen (15) days of the occurrence thereof; or
- 10.1.4 **Misrepresentation:** any representation or warranty made or deemed to be made or repeated by or in respect of any Security Party in or pursuant to any of the Security Documents or in any notice, certificate or statement referred to in or delivered under any of the Security Documents is or proves to have been incorrect or misleading in any material respect; or
- 10.1.5 **Cross-default:** There shall occur a default (howsoever therein described) under the Indenture or any Indebtedness of the Borrower or any Indebtedness in excess of USD5,000,000 of any Security Party is not paid when due (subject to applicable grace periods) or any such Indebtedness of the Borrower or any Security Party becomes (whether by declaration or automatically in accordance with the relevant agreement or instrument constituting the same) due and payable prior to the date when it would otherwise have become due (unless as a result of the exercise by the Borrower or Security Party of a voluntary right of prepayment), or any creditor of the Borrower or any Security Party becomes entitled to declare any such Indebtedness due and payable or any facility or commitment available to the Borrower or any Security Party relating to Indebtedness is withdrawn, suspended or cancelled by reason of any default (however described) of the person concerned; or
- 10.1.6 **Execution:** any uninsured judgment or order made against any Security Party is not stayed, appealed against or complied with within fifteen (15) days or a creditor attaches

or takes possession of, or a distress, execution, sequestration or other process is levied or enforced upon or sued out against, any of the undertakings, assets, rights or revenues of any Security Party and is not discharged within thirty (30) days; or

- 10.1.7 **Insolvency:** any Security Party is unable or admits inability to pay its debts as they fall due; suspends making payments on any of its debts or announces an intention to do so; becomes insolvent; or has negative net worth (taking into account contingent liabilities); or suffers the declaration of a moratorium in respect of any of its Indebtedness; or
- 10.1.8 **Reduction or loss of capital:** a meeting is convened by any Security Party (other than the Corporate Guarantor) without the Agent's prior written consent, for the purpose of passing any resolution to purchase, reduce or redeem any of its share capital without the Agent's prior written consent; or
- 10.1.9 **Dissolution:** any corporate action, Proceedings or other steps are taken to dissolve or wind-up any Security Party or an order is made or resolution passed for the dissolution or winding up of any Security Party or a notice is issued convening a meeting for such purpose; or
- 10.1.10 **Administration:** any petition is presented, notice given or other steps are taken anywhere to appoint an administrator of any Security Party or the Agent believes that any such petition or other step is imminent or an administration order is made in relation to any Security Party; or
- 10.1.11 **Appointment of receivers and managers:** any administrative or other receiver is appointed anywhere of any Security Party or any part of its assets and/or undertaking or any other steps are taken to enforce any Encumbrance over all or any part of the assets of any Security Party; or
- 10.1.12 **Compositions:** any corporate action, legal proceedings or other procedures or steps are taken, or negotiations commenced, by any Security Party or by any of its creditors with a view to the general readjustment or rescheduling of all or part of its Indebtedness or to proposing any kind of composition, compromise or arrangement involving such company and any of its creditors; or

- 10.1.13 **Analogous proceedings:** there occurs, in relation to any Security Party, in any country or territory in which any of them carries on business or to the jurisdiction of whose courts any part of their assets is subject, any event which, in the reasonable opinion of the Agent, appears in that country or territory to correspond with, or have an effect equivalent or similar to, any of those mentioned in clauses 10.1.6 to 10.1.12 (inclusive) or any Security Party otherwise becomes subject, in any such country or territory, to the operation of any law relating to insolvency, bankruptcy or liquidation; or
- 10.1.14 **Cessation of business:** any Security Party suspends or ceases or threatens to suspend or cease to carry on its business without the prior written consent of the Agent, such consent not to be unreasonably withheld; or
- 10.1.15 **Seizure:** all or a material part of the undertaking, assets, rights or revenues of, or shares or other ownership interests in, any Security Party are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any Government Entity; or
- 10.1.16 **Invalidity:** any of the Security Documents and the Underlying Documents shall at any time and for any reason become invalid or unenforceable or otherwise cease to remain in full force and effect, or if the validity or enforceability of any of the Security Documents and the Underlying Documents shall at any time and for any reason be contested by any Security Party which is a party thereto, or if any such Security Party shall deny that it has any, or any further, liability thereunder; or
- 10.1.17 **Unlawfulness:** any Unlawfulness occurs or it becomes impossible or unlawful at any time for any Security Party, to fulfil any of the covenants and obligations expressed to be assumed by it in any of the Security Documents or for a Bank to exercise the rights or any of them vested in it under any of the Security Documents or otherwise; or
- 10.1.18 **Repudiation:** any Security Party repudiates any of the Security Documents or does or causes or permits to be done any act or thing evidencing an intention to repudiate any of the Security Documents; or
- 10.1.19 **Encumbrances enforceable:** any Encumbrance (other than Permitted Liens) in respect of any of the property (or part thereof) which is the subject of any of the Security Documents becomes enforceable; or



- 10.1.20 **Arrest:** the Vessel is arrested, confiscated, seized, taken in execution, impounded, forfeited, detained in exercise or purported exercise of any possessory lien or other claim or otherwise taken from the possession of the Borrower and the Borrower shall fail to procure the release of the Vessel within a period of fifteen (15) days thereafter; or
- 10.1.21 **Registration:** the registration of the Vessel under the laws and flag of the Flag State is cancelled or terminated without the prior written consent of the Majority Banks; or
- 10.1.22 **Unrest:** the Flag State or the country in which any Security Party is incorporated or domiciled becomes involved in hostilities or civil war or there is a seizure of power in the Flag State by unconstitutional means unless the Borrower shall have transferred the Vessel onto a new flag acceptable to the Banks within sixty (60) days of the start of such hostilities or civil war or seizure of power; or
- 10.1.23 **Environmental Incidents:** an Environmental Incident occurs which gives rise, or may give rise, to an Environmental Claim which could, in the opinion of the Agent be expected to have a material adverse effect (i) on the business, assets or financial condition of any Security Party or the Group taken as a whole or (ii) on the security constituted by any of the Security Documents or the enforceability of that security in accordance with its terms; or
- 10.1.24 **P&I:** the Borrower or the Technical Manager or any other person fails or omits to comply with any requirements of the protection and indemnity association or other insurer with which the Vessel is entered for insurance or insured against protection and indemnity risks (including oil pollution risks) to the effect that any cover (including, without limitation, any cover in respect of liability for Environmental Claims arising in jurisdictions where the Vessel operates or trades) is or may be liable to cancellation, qualification or exclusion at any time; or
- 10.1.25 **Material events:** any other event occurs or circumstance arises which, in the opinion of the Agent (following consultation with the Banks), is likely materially and adversely to affect either (i) the ability of any Security Party to perform all or any of its obligations under or otherwise to comply with the terms of any of the Security Documents or (ii) the security created by any of the Security Documents; or

- 10.1.26 **Required Authorisations:** any Required Authorisation is revoked or withheld or modified or is otherwise not granted or fails to remain in full force and effect or if any exchange control or other law or regulation shall exist which would make any transaction under the Security Documents or the continuation thereof, unlawful or would prevent the performance by any Security Party of any term of any of the Security Documents;
- 10.1.27 **Ownership:** there is any change in the ownership of the Borrower without the prior written consent of the Agent; or
- 10.1.28 **Shipbuilding Contract/Refund Guarantee:** the Shipbuilding Contract or the Refund Guarantee is terminated, cancelled, revoked, suspended, rescinded, transferred, novated or otherwise ceases to remain in full force and effect for any reason except with the consent of the Bank; or
- 10.1.29 **Money Laundering:** any Security Party is in breach of or fails to observe any law, requirement, measure or procedure implemented to combat “money laundering” as defined in Article 1 of the Directive (91/308 EEC) of the Council of the European Communities; or
- 10.1.30 **Change of Control.** There shall occur a “Change of Control” (as defined in the Indenture) of the Corporate Guarantor or the “Permitted Holder” (as defined in the Indenture) owns less than 20% of the issued share capital of the Corporate Guarantor;
- 10.1.31 **Master Agreement:** (i) an Event of Default or Potential Event of Default (in each case as defined in the Master Agreement) has occurred and is continuing under the Master Agreement or (ii) an Early Termination Date (as defined in the Master Agreement) has occurred or been effectively designated under the Master Agreement or (iii) a person entitled to do so gives notice of an Early Termination Date (as defined in the Master Agreement) or (iv) the Master Agreement is terminated, cancelled, suspended, rescinded or revoked or otherwise ceases to remain in full force and effect for any reason

## 10.2 **Acceleration**

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

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

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

### 10.3 **Demand Basis**

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

## 11 **INDEMNITIES**

### 11.1 **General indemnity**

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

### 11.2 **Environmental indemnity**

The Borrower shall indemnify each Bank on demand and hold it harmless from and against all costs, claims, expenses, payments, charges, losses, demands, liabilities, actions, Proceedings, penalties, fines, damages, judgements, orders, sanctions or other outgoings

of whatever nature which may be incurred or made or asserted whensoever against such Bank at any time, whether before or after the repayment in full of principal and interest under this Agreement, arising howsoever out of an Environmental Claim made or asserted against such Bank which would not have been, or been capable of being, made or asserted against such Bank had it not entered into any of the Security Documents or been involved in any of the resulting or associated transactions.

### **11.3 Capital adequacy and reserve requirements indemnity**

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

## **12 UNLAWFULNESS AND INCREASED COSTS**

### **12.1 Unlawfulness**

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

### **12.2 Increased costs**

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

- 12.2.1 subject any Lender to Taxes or change the basis of Taxation of any Lender with respect to any payment under any of the Security Documents (other than Taxes or Taxation on the overall net income, profits or gains of such Lender imposed in the jurisdiction in which its principal or lending office under this Agreement is located); and/or
- 12.2.2 increase the cost to, or impose an additional cost on, any Lender or its holding company in making or keeping such Lender's Commitment available or maintaining or funding all or part of such Lender's Contribution; and/or
- 12.2.3 reduce the amount payable or the effective return to any Lender under any of the Security Documents; and/or
- 12.2.4 reduce any Lender's or its holding company's rate of return on its overall capital by reason of a change in the manner in which it is required to allocate capital resources to such Lender's obligations under any of the Security Documents; and/or
- 12.2.5 require any Lender or its holding company to make a payment or forgo a return on or calculated by reference to any amount received or receivable by such Lender under any of the Security Documents; and/or
- 12.2.6 require any Lender or its holding company to incur or sustain a loss (including a loss of future potential profits) by reason of being obliged to deduct all or part of its Contribution or the Loan from its capital for regulatory purposes,  
then and in each such case (subject to clause 12.3):
  - (a) such Lender shall notify the Borrower in writing of such event promptly upon its becoming aware of the same; and

- (b) the Borrower shall on demand made at any time whether or not such Lender's Contribution has been repaid, pay to the Agent for the account of such Lender the amount which such Lender specifies (in a certificate setting forth the basis of the computation of such amount but not including any matters which such Lender or its holding company regards as confidential) is required to compensate such Lender and/or (as the case may be) its holding company for such liability to Taxes, cost, reduction, payment, forgone return or loss.

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

**12.3 Exception**

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

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

**13.1 Application of moneys**

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

- 13.1.1 first, in or towards payment, on a pro-rata basis, of any unpaid costs and expenses of the Banks or any of them under any of the Security Documents;
- 13.1.2 secondly, in or towards payment of any fees payable to the Agent or any of the other Banks under, or in relation to, the Security Documents which remain unpaid;
- 13.1.3 thirdly, in or towards payment to the Lenders, on a pro rata basis, of any accrued interest owing in respect of the Loan which shall have become due under any of the Security Documents but remains unpaid;

- 13.1.4 fourthly, in or towards repayment of the Loan and the Advances (in such proportions as the Lenders require and whether the same is due and payable or not) and shall be applied, in respect of the Loan, pro rata against the outstanding repayment instalments;
- 13.1.5 fifthly, in or towards payment to the Lenders, on a pro rata basis any Break Costs and any other sum relating to the Loan which shall have become due under any of the Security Documents (other than under or in relation to the Master Agreement) but remains unpaid;
- 13.1.6 sixthly, in or towards payment to the Swap Bank of any other sum which shall have become due under the Master Agreement but remains unpaid; and
- 13.1.7 seventhly, the surplus (if any) shall be paid to the Borrower or to whomsoever else may then be entitled to receive such surplus.

13.2 **Set-off**

- 13.2.1 The Borrower irrevocably authorises each Bank (without prejudice to any of such Bank's rights at law, in equity or otherwise), at any time and without notice to the Borrower, to apply any credit balance to which the Borrower is then entitled standing upon any account of the Borrower with any branch of such Bank in or towards satisfaction of any sum due and payable from the Borrower to such Bank under any of the Security Documents. For this purpose, each Bank is authorised to purchase with the moneys standing to the credit of such account such other currencies as may be necessary to effect such application.
- 13.2.2 No Bank shall be obliged to exercise any right given to it by this clause 13.2. Each Bank shall notify the Borrower through the Agent forthwith upon the exercise or purported exercise of any right of set off giving full details in relation thereto and the Agent shall inform the other Banks.
- 13.2.3 Nothing in this clause 13.2 shall be effective to create a charge or other security interest.

13.3 **Pro rata payments**

- 13.3.1 If at any time any Lender (the "**Recovering Lender**") receives or recovers any amount owing to it by the Borrower under this Agreement (other than pursuant to any other

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

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

13.3.2 If any part of the Relevant Receipt subsequently has to be wholly or partly refunded by the Recovering Lender (whether to a liquidator or otherwise) each Lender to which any part of such Relevant Receipt was so re-distributed shall on request from the Recovering Lender repay to the Recovering Lender such Lender's pro-rata share of the amount which has to be refunded by the Recovering Lender.

13.3.3 Each Lender shall on request supply to the Agent such information as the Agent may from time to time request for the purposes of this clause 13.3.

13.3.4 Notwithstanding the foregoing provisions of this clause 13.3, no Recovering Lender shall be obliged to share any Relevant Receipt which it receives or recovers pursuant to Proceedings taken by it to recover any sums owing to it under this Agreement with any



other party which has a legal right to, but does not, either join in such Proceedings or commence and diligently pursue separate Proceedings to enforce its rights in the same or another court (unless the Proceedings instituted by the Recovering Lender are instituted by it without prior notice having been given to such party through the Agent).

**13.4 No release**

For the avoidance of doubt it is hereby declared that failure by any Recovering Lender to comply with the provisions of clause 13.3 shall not release any other Recovering Lender from any of its obligations or liabilities under clause 13.3.

**13.5 No charge**

The provisions of this clause 13 shall not, and shall not be construed so as to, constitute a charge or create or declare a trust by a Lender over all or any part of a sum received or recovered by it in the circumstances mentioned in clause 13.3.

**13.6 Further assurance**

The Borrower undertakes with each Bank that the Security Documents shall both at the date of execution and delivery thereof and throughout the Facility Period be valid and binding obligations of the respective parties thereto which, with the rights of each Lender thereunder, are enforceable in accordance with their respective terms and that they will, at their expense, execute, sign, perfect and do, and will procure the execution, signing, perfecting and doing by each of the other Security Parties of, any and every such further assurance, document, act or thing as in the reasonable opinion of the Majority Lenders may be necessary or desirable for perfecting the security contemplated or constituted by the Security Documents.

**13.7 Conflicts**

In the event of any conflict between this Agreement and any of the other Security Documents, the provisions of this Agreement shall prevail.

**13.8 No implied waivers, remedies cumulative**

No failure or delay on the part of any of the Banks to exercise any power, right or remedy under any of the Security Documents shall operate as a waiver thereof, nor shall any single or partial exercise by any Bank of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The remedies provided in the Security Documents are cumulative and are not exclusive of any remedies provided by law. No waiver by any Bank shall be effective unless it is in writing.

**13.9 Severability**

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

**13.10 Force Majeure**

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

**13.11 Amendments**

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

**13.12 Counterparts**

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

**13.13 English language**

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

**14 EARNINGS ACCOUNT**

**14.1 General**

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

14.1.1 the Technical Manager will on or before the first Drawdown Date, open the Earnings Account in its name; and

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

**14.2 Earnings Account: withdrawals**

Any sums standing to the credit of the Earnings Account may be applied from time to time (i) Firstly and to make the payments required under this Agreement, (ii) secondly

subject to there being no breach of Clause 14.3 and to no Event of Default having occurred, in the operation of the Vessel and (iii) subject to there being at any time sufficient funds to pay amounts due under (i) and (ii) above as they fall due, thirdly for the general corporate purposes of the Borrower.

#### **14.3 Application of accounts**

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

#### **14.4 Charging of accounts**

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

### **15 ASSIGNMENT, TRANSFER AND LENDING OFFICE**

#### **15.1 Benefit and burden**

This Agreement shall be binding upon, and enure for the benefit of, the Banks and the Borrower and its successors in title.

#### **15.2 No assignment by Borrower**

The Borrower may not assign or transfer any of its rights or obligations under this Agreement.

#### **15.3 Transfers by Banks**

any Lender (the "**Transferor Lender**") may at any time cause all or any part of its rights, benefits and/or obligations under this Agreement and the other Security Documents to be transferred to another first class international bank or financial institution (in either case a

“**Transferee Lender**”) (i) without the Borrower’s consent if such transfer is to another branch, a subsidiary or affiliate of such Lender and (ii) otherwise with the prior consent of the Borrower, (which may not be unreasonably delayed or withheld), in each case by delivering to the Agent a Transfer Certificate duly completed and duly executed by the Transferor Lender and the Transferee Lender. No such transfer is binding on, or effective in relation to, the Borrower or the Agent unless (i) it is effected or evidenced by a Transfer Certificate which complies with the provisions of this clause 15.3 and is signed by or on behalf of the Transferor Lender, the Transferee Lender and the Agent (on behalf of itself, the Borrower and the other Banks) and (ii) such transfer of rights under the other Security Documents has been effected and registered. Upon signature of any such Transfer Certificate by the Agent, which signature shall be effected as promptly as is practicable after such Transfer Certificate has been delivered to the Agent, and subject to the terms of such Transfer Certificate, such Transfer Certificate shall have effect as set out below.

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

- 15.3.1 a Transfer Certificate may be in respect of a Lender’s rights in respect of all, or part of, its Commitment and shall be in respect of the same proportion of its Contribution;
- 15.3.2 a Transfer Certificate shall only be in respect of rights and obligations of the Transferor Lender in its capacity as a Lender and shall not transfer its rights and obligations (if applicable) as the Agent and/or the Agent, or in any other capacity, as the case may be and such other rights and obligations may only be transferred in accordance with any applicable provisions of this Agreement;
- 15.3.3 a Transfer Certificate shall take effect in accordance with English law as follows:
  - (a) to the extent specified in the Transfer Certificate, the Transferor Lender’s payment rights and all its other rights (other than those referred to in clause 15.3.2 above) under this Agreement are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender’s title and of any rights or equities which the Borrower had against the Transferor Lender and the Transferee Lender assumes all obligations of the Transferor Lender as are transferred by such Transfer Certificate;

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

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

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

**15.4 Reliance on Transfer Certificate**

- 15.4.1 The Agent shall be entitled to rely on any Transfer Certificate believed by it to be genuine and correct and to have been presented or signed by the persons by whom it purports to have been presented or signed, and shall not be liable to any of the parties to this Agreement and the Security Documents for the consequences of such reliance.
- 15.4.2 The Agent shall at all times during the continuation of this Agreement maintain a register in which it shall record the name, Commitments, Contributions and administrative details (including the lending office) from time to time of the Lenders holding a Transfer Certificate and the date at which the transfer referred to in such Transfer Certificate held by each Lender was transferred to such Lender, and the Agent shall make the said register available for inspection by any Lender or the Borrower during normal banking hours upon receipt by the Agent of reasonable prior notice requesting the Agent to do so.
- 15.4.3 The entries on the said register shall, in the absence of manifest error, be conclusive in determining the identities of the Commitments, the Contributions and the Transfer Certificates held by the Lenders from time to time and the principal amounts of such Transfer Certificates and may be relied upon by all parties to this Agreement.

**15.5 Transfer fees and expenses**

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

**15.6 Documenting transfers**

If any Lender assigns all or any part of its rights or transfers all or any part of its rights, benefits and/or obligations as provided in clause 15.3, the Borrower undertakes, immediately on being requested to do so by the Agent and at the cost of the Transferor Lender, to enter into, and procure that the other Security Parties shall (at the cost of the

Transferor Lender) enter into, such documents as may be necessary or desirable to transfer to the Transferee Lender all or the relevant part of such Lender's interest in the Security Documents and all relevant references in this Agreement to such Lender shall thereafter be construed as a reference to the Transferor Lender and/or its Transferee Lender (as the case may be) to the extent of their respective interests.

**15.7 Sub-Participation**

A Lender may sub-participate all or any part of its rights and/or obligations under the Security Documents at its own expense without the consent of, or notice to, the Borrower.

**15.8 Lending office**

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

**15.9 Disclosure of information**

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

**16 ARRANGERS, AGENT AND SECURITY TRUSTEE**

**16.1 Appointment of the Agent**

Each Swap Bank and each Lender irrevocably appoints the Agent and the Agent as its agent and Agent respectively for the purposes of this Agreement and such of the Security



Documents to which it may be appropriate for the Agent to be party. Accordingly each of the Lenders and each Swap Bank hereby authorise the Agent and the Agent:

- 16.1.1 to execute such documents as may be approved by the Majority Lenders for execution by the Agent and/or (as the case may be) the Agent; and
  - 16.1.2 (whether or not by or through employees or agents) to take such action on such Lender's behalf and to exercise such rights, remedies, powers and discretions as are specifically delegated to the Agent and/or the Agent by any Security Document, together with such powers and discretions as are reasonably incidental thereto.
- 16.2 **Agent's/Agent's actions**
- Any action taken by the Agent or the Agent under or in relation to any of the Security Documents whether with requisite authority or on the basis of appropriate instructions received from the Majority Lenders (or as otherwise duly authorised) shall be binding on all the Banks.
- 16.3 **Agent's and Agent's duties**
- 16.3.1 The Agent shall promptly notify each Lender of the contents of each notice, certificate or other document received by it from the Borrower under or pursuant to clauses 8.1.1, 8.1.6, 8.1.9, 8.1.10, 8.1.13 and 8.1.17; and
  - 16.3.2 The Agent and the Agent shall (subject to the other provisions of this clause 16) take (or instruct the Security Trustee to take) such action or, as the case may be, refrain from taking (or authorise the Security Trustee to refrain from taking) such action with respect to the exercise of any of its rights, remedies, powers and discretions as agent, as the Majority Lenders may direct.
- 16.4 **Security Trustee's and Agent's rights**
- The Security Trustee and the Agent may:
- 16.4.1 in the exercise of any right, remedy, power or discretion in relation to any matter, or in any context, not expressly provided for by this Agreement or any of the other Security Documents, act or, as the case may be, refrain from acting (or authorise the Security

Trustee to act or refrain from acting) in accordance with the instructions of the Lenders, and shall be fully protected in so doing;

- 16.4.2 unless and until it has received directions from the Majority Lenders, take such action or, as the case may be, refrain from taking such action (or authorise the Security Trustee to take or refrain from taking such action) in respect of a Default of which the Agent and/or the Agent has actual knowledge as it shall consider advisable in the best interests of the Lenders (but shall not be obliged to do so);
- 16.4.3 refrain from acting (or authorise the Security Trustee to refrain from acting) in accordance with any instructions of the Lenders to institute any Proceedings arising out of or in connection with any of the Security Documents until it and/or the Security Trustee has been indemnified and/or secured to its satisfaction against any and all costs, expenses or liabilities (including legal fees) which it would or might incur as a result;
- 16.4.4 deem and treat (i) each Lender as the person entitled to the benefit of the Contribution of such Lender for all purposes of this Agreement unless and until a notice shall have been filed with the Agent pursuant to clause 15.3 and shall have become effective, and (ii) the office set opposite the name of each of the Lenders in schedule 1 as its lending office unless and until a written notice of change of lending office shall have been received by the Agent and the Agent may act upon any such notice unless and until the same is superseded by a further such notice;
- 16.4.5 rely as to matters of fact which might reasonably be expected to be within the knowledge of any Security Party upon a certificate signed by any director or officer of the relevant Security Party on behalf of the relevant Security Party; and
- 16.4.6 do anything which is in its opinion necessary or desirable to comply with any law or regulation in any jurisdiction.

16.5 **No Liability of Agent**

None of the Security Trustee, the Agent nor any of their respective employees and agents shall:

- 16.5.1 be obliged to make any enquiry as to the use of any of the proceeds of the Loan unless (in the case of the Agent) so required in writing by a Lender, in which case the Agent shall promptly make the appropriate request to the Borrower; or
- 16.5.2 be obliged to make any enquiry as to any breach or default by the Borrower or any other Security Party in the performance or observance of any of the provisions of the Security Documents or as to the existence of a Default unless (in the case of the Agent) the Agent has actual knowledge thereof or has been notified in writing thereof by a Bank, in which case the Agent shall promptly notify the Banks of the relevant event or circumstance; or
- 16.5.3 be obliged to enquire whether or not any representation or warranty made by the Borrower or any other Security Party pursuant to this Agreement or any of the other Security Documents is true; or
- 16.5.4 be obliged to do anything (including, without limitation, disclosing any document or information) which would, or might in its opinion, be contrary to any law or regulation or be a breach of any duty of confidentiality or otherwise be actionable or render it liable to any person; or
- 16.5.5 be obliged to account to any Lender for any sum or the profit element of any sum received by it for its own account; or
- 16.5.6 be obliged to institute any Proceedings arising out of or in connection with any of the Security Documents other than on the instructions of the Majority Lenders; or
- 16.5.7 be liable to any Lender for any action taken or omitted under or in connection with any of the Security Documents unless caused by its gross negligence or wilful misconduct.

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

which may be a trade competitor of any Security Party or may otherwise have commercial interests similar to those of any Security Party.

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

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

**16.7 No responsibility on the Security Trustee or Agent for Borrower's performance**

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

- 16.7.1 on account of the failure of any Security Party to perform its obligations under any of the Security Documents; or
- 16.7.2 for the financial condition of any Security Party; or
- 16.7.3 for the completeness or accuracy of any statements, representations or warranties in any of the Security Documents or any document delivered under any of the Security Documents; or
- 16.7.4 for the execution, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence of any of the Security Documents or of any certificate, report or other document executed or delivered under any of the Security Documents; or

- 16.7.5 to investigate or make any enquiry into the title of the Borrower or any other Security Party to the Vessel or any other security or any part thereof; or
- 16.7.6 for the failure to register any of the Security Documents with any official or regulatory body or office or elsewhere; or
- 16.7.7 for taking or omitting to take any other action under or in relation to any of the Security Documents or any aspect of any of the Security Documents;  
or
- 16.7.8 on account of the failure of the Security Trustee to perform or discharge any of its duties or obligations under the Security Documents; or
- 16.7.9 otherwise in connection with the Security Documents or their negotiation or for acting (or, as the case may be, refraining from acting) in accordance with the instructions of the Lenders.

16.8 **Reliance on documents and professional advice**

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

16.9 **Other dealings**

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

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

With respect to its own Commitment and Contribution (if any) the Security Trustee and the Agent shall have the same rights and powers under the Security Documents as any

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

**16.11 Amendments and waivers**

- 16.11.1 Subject to clause 16.11, the Security Trustee and/or the Agent (as the case may be) may, with the consent of the Majority Lenders (or if and to the extent expressly authorised by the other provisions of any of the Security Documents) and, if so instructed by the Majority Lenders, shall:
- 16.11.2 agree (or authorise the Security Trustee to agree) amendments or modifications to any of the Security Documents with the Borrower and/or any other Security Party; and/or
- 16.11.3 vary or waive breaches of, or defaults under, or otherwise excuse performance of, any provision of any of the other Security Documents by the Borrower and/or any other Security Party (or authorise the Security Trustee to do so).

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

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

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

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

Each Lender shall reimburse the Security Trustee and the Agent (rateably in accordance with such Lender's Commitment or, after the first Advance or the Loan has been drawn, its Contribution,) to the extent that the Security Trustee or the Agent is not reimbursed by the Borrower, for the costs, charges and expenses incurred by the Security Trustee or the Agent which are expressed to be payable by the Borrower under clause 5.2 including (in each case), without limitation, the fees and expenses of legal or other professional advisers provided that, if following any payment to the Security Trustee or the Agent by a Lender under this clause the Security Trustee or the Agent receives payment from the

Borrower in respect of the same costs, fees or expenses, the Security Trustee or the Agent shall upon receipt thereof reimburse the relevant Lender. Each Lender must on demand indemnify the Security Trustee or the Agent (rateably in accordance with such Lender's Commitment or, after the first Advance or the Loan has been drawn, its Contribution) against all liabilities, damages, costs and claims whatsoever incurred by the Security Trustee in connection with any of the Security Documents or the performance of its duties under any of the Security Documents or any action taken or omitted by the Security Trustee or, as the case may be, the Agent, under any of the Security Documents, unless such liabilities, damages, costs or claims arise from the Security Trustee's or as the case may be, the Agent's own gross negligence or wilful misconduct.

**16.13 Retirement of the Security Trustee /Agent**

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

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

Any corporation into which the retiring Agent and/or the retiring Security Trustee (as the case may be) may be merged or converted or any corporation with which the Security Trustee and/or the Agent (as the case may be) may be consolidated or any corporation resulting from any merger, conversion, amalgamation, consolidation or other reorganisation to which the Security Trustee or the Agent (as the case may be) shall be a party shall, to the extent permitted by applicable law, be the successor Agent or Security Trustee under this Agreement and the other Security Documents without the execution



or filing of any document or any further act on the part of any of the parties to the Security Documents save that notice of any such merger, conversion, amalgamation, consolidation or other reorganisation shall forthwith be given to each Security Party and the Lenders. Prior to any such successor being appointed, the Agent agrees to consult with the Borrower and the Lenders as to the identity of the proposed successor and to take account of any reasonable objections which the Borrower and the Lenders may raise to such successor being appointed.

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

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

#### 16.14 **Appointment and retirement of Security Trustee**

##### 16.14.1 Appointment

Each of the Lenders, the Swap Banks and the Agent irrevocably appoints the Security Trustee as its Security Trustee and trustee for the purposes of the Security Documents, in each case on the terms set out in this Agreement. Accordingly, each of the Lenders, the Swap Banks and the Agent hereby authorises the Security Trustee (whether or not by or through employees or agents) to take such action on its behalf and to exercise such rights,

remedies, powers and discretions as are specifically delegated to the Security Trustee by this Agreement and/or the Security Documents, together with such powers and discretions as are reasonably incidental thereto.

#### 16.14.2 Retirement

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

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

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

Any corporation into which the retiring Security Trustee may be merged or converted or any corporation with which the Security Trustee may be consolidated or any corporation resulting from any merger, conversion, amalgamation, consolidation or other reorganisation to which the Security Trustee shall be a party shall, to the extent permitted by applicable law, be the successor Security Trustee under this Agreement, any Trust Deed and the other Security Documents without the execution or filing of any document or any further act on the part of any of the parties to this Agreement, any Trust Deed and the other Security Documents save that notice of any such merger, conversion, amalgamation, consolidation or other reorganisation shall forthwith be given to each

Security Party, the Swap Banks and the Lenders. Prior to any such successor being appointed, the Security Trustee agrees to consult with the Borrower as to the identity of the proposed successor and to take account of any reasonable objections which the Borrower may raise to such successor being appointed.

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

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

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

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

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

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

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

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

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

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

16.15.5 None of the Lenders, the Swap Banks nor the Agent shall have any independent power to enforce any of the Security Documents referred to in clause 16.14 or to exercise any rights, discretions or powers or to grant any consents or releases under or pursuant to such Security Documents or any of them or otherwise have direct recourse to the security

and/or guarantees constituted by such Security Documents or any of them except through the Security Trustee.

16.15.6 For the purpose of this clause 16, the Security Trustee may, rely and act in reliance upon any information from time to time furnished to the Security Trustee by the Agent (whether pursuant to clause 16.15.7 or otherwise) unless and until the same is superseded by further such information, so that the Security Trustee shall have no liability or responsibility to any party as a consequence of placing reliance on and acting in reliance upon any such information unless the Security Trustee has actual knowledge that such information is inaccurate or incorrect.

16.15.7 Without prejudice to the foregoing each of the Agent, the Swap Banks and the Lenders (whether directly or through the Agent) shall provide the Security Trustee with such written information as it may reasonably require for the purpose of carrying out its duties and obligations under the Security Documents referred to in clause 16.14.

16.16 **Trust provisions**

16.16.1 The trusts constituted or evidenced in or by this Agreement and the Trust Deed shall remain in full force and effect until whichever is the earlier of:

- (a) the expiration of a period of eighty (80) years from the date of this Agreement; and
- (b) receipt by the Security Trustee of confirmation in writing by the Agent that there is no longer outstanding any Indebtedness (actual or contingent) which is secured or guaranteed or otherwise assured by or under any of the Security Documents,

and the parties to this Agreement declare that the perpetuity period applicable to this Agreement and the trusts declared by the Trust Deed shall for the purposes of the Perpetuities and Accumulations Act 1964 be the period of eighty (80) years from the date of this Agreement.

16.16.2 In its capacity as trustee in relation to the Security Documents specified in clause 16.14, the Security Trustee shall, without prejudice to any of the powers, discretions and

immunities conferred upon trustees by law (and to the extent not inconsistent with the provisions of any of those Security Documents), have all the same powers and discretions as a natural person acting as the beneficial owner of such property and/or as are conferred upon the Security Trustee by any of those Security Documents.

16.16.3 It is expressly declared that, in its capacity as trustee in relation to the Security Documents specified in clause 16.14, the Security Trustee shall be entitled to invest moneys forming part of the security and which, in the opinion of the Security Trustee, may not be paid out promptly following receipt in the name or under the control of the Security Trustee in any of the investments for the time being authorised by law for the investment by trustees of trust moneys or in any other property or investments whether similar to the aforesaid or not or by placing the same on deposit in the name or under the control of the Security Trustee as the Security Trustee may think fit without being under any duty to diversify its investments and the Security Trustee may at any time vary or transpose any such property or investments for or into any others of a like nature and shall not be responsible for any loss due to depreciation in value or otherwise of such property or investments. Any investment of any part or all of the security may, at the discretion of the Security Trustee, be made or retained in the names of nominees.

16.17 **Independent action by Banks**

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

16.18 **Common Agent and Security Trustee**

The Agent and the Security Trustee have entered into the Security Documents in their separate capacities (a) as agent for the Lenders under and pursuant to this Agreement (in the case of the Agent) and (b) as Security Trustee and trustee for the Lenders, the Swap Banks and the Agent under and pursuant to this Agreement, to hold the guarantees and/or security created by the Security Documents specified in clause 16.14 on the terms

set out in such Security Documents (in the case of the Security Trustee). If and when the Agent and the Security Trustee are the same entity and any Security Document provides for the Agent to communicate with or provide instructions to the Security Trustee (and vice versa), all parties to this Agreement agree that any such communications or instructions on such occasions are unnecessary and are hereby waived.

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

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

**16.20 The Prompt distribution of proceeds**

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

any of them to provide for the whole of their respective claims against the Borrower or any other person liable.

**16.21 Reconventioning**

After consultation with the Borrower and the Lenders and notwithstanding clause 16.11, the Agent shall be entitled to make such amendments to this Agreement as it may determine to be necessary to take account of any changes in market practices as a consequence of the European Monetary Union (whether as to the settlement or rounding of obligations, business days, the calculation of interest or otherwise whatsoever). So far as possible such amendments shall be such as to put the parties in the same position as if the event or events giving rise the need to amend this Agreement had not occurred. Any amendment so made to this Agreement by the Agent shall be promptly notified to the other parties hereto and shall be binding on all parties hereto.

**16.22 Exclusivity**

Without prejudice to the Borrower's rights, in certain instances, to give their consent thereunder, clauses 15 and 16 are for the exclusive benefit of the Banks.

**17 NOTICES AND OTHER MATTERS**

**17.1 Notices**

17.1.1 unless otherwise specifically provided herein, every notice under or in connection with this Agreement shall be given in English by letter delivered personally and/or sent by post and/or transmitted by fax and/or electronically;

17.1.2 in this clause "notice" includes any demand, consent, authorisation, approval, instruction, certificate, request, waiver or other communication.

**17.2 Addresses for communications, effective date of notices**

17.2.1 Subject to clause 17.2.2, clause 17.2.5 and 17.3 notices to the Borrower shall be deemed to have been given and shall take effect when received in full legible form by the Borrower at the address and/or the fax number appearing below (or at such other address or fax



number as the Borrower may hereafter specify for such purpose to the Agent by notice in writing);

Address c/o Navios ShipManagement Inc.  
85 Akti Miaouli  
Piraeus  
Greece

Fax no: + 30 210 453 2070

17.2.2 notwithstanding the provisions of clause 17.2.1 or clause 17.2.5, a notice of Default and/or a notice given pursuant to clause 10.2 or clause 10.3 to the Borrower shall be deemed to have been given and shall take effect when delivered, sent or transmitted by the Banks or any of them to the Borrower to the address or fax number referred to in clause 17.2.1;

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

Agent:

Address: DnB NOR Bank ASA  
20 St. Dunstan's Hill  
London EC3R 8HY  
England

Attn: Shipping Dept.  
Fax no: +44 207 626 5956

17.2.4 subject to clause 17.2.5 and 17.3, notices to a Lender shall be deemed to be given and shall take effect when received in full legible form by such Lender at its address and/or fax

number specified in schedule 1 or in any relevant Transfer Certificate (or at any other address or fax number as such Lender may hereafter specify for such purpose to the other Banks); and

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

**17.3 Electronic Communication**

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

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

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

**17.4 Notices through the Agent**

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

Borrower shall (except otherwise provided in the Security Documents) be given to the Borrower by the Agent.

18 **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law.

19 **JURISDICTION**

19.1 **Exclusive Jurisdiction**

For the benefit of the Banks, and subject to clause 19.4 below, the Borrower hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction:

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

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

19.2 **Submission and service of process**

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

19.2.1 irrevocably empowers and appoints HFW Nominees Ltd at present of Marlow House, Lloyds Avenue, London EC3N 3AL, England as its agent to receive and accept on its behalf any process or other document relating to any proceedings before the English courts in connection with this Agreement;

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

- 19.2.3 agrees that failure by a process agent to notify the Borrower of service of process will not invalidate the proceedings concerned;
- 19.2.4 without prejudice to the effectiveness of service of process on its agent under clause 19.2.1 above but as an alternative method, consents to the service of process relating to any such proceedings by mailing or delivering a copy of the process to its address for the time being applying under clause 17.2;
- 19.2.5 agrees that if the appointment of any person mentioned in clause 19.2.1 ceases to be effective, the Borrower shall immediately appoint a further person in England to accept service of process on its behalf in England and, failing such appointment within seven (7) days the Lender shall thereupon be entitled and is hereby irrevocably authorised by the Borrower in those circumstances to appoint such person by notice to the Borrower.

19.3 **Forum non conveniens and enforcement abroad**

The Borrower:

- 19.3.1 waives any right and agrees not to apply to the English court or other court in any jurisdiction whatsoever to stay or strike out any proceedings commenced in England on the ground that England is an inappropriate forum and/or that Proceedings have been or will be started in any other jurisdiction in connection with any dispute or related matter falling within clause 19.1; and
- 19.3.2 agrees that a judgment or order of an English court in a dispute or other matter falling within clause 19.1 shall be conclusive and binding on the Borrower and may be enforced against it in the courts of any other jurisdiction.

19.4 **Right of Lender, but not Borrower, to bring proceedings in any other jurisdiction**

- 19.4.1 Nothing in this clause 19 limits the right of any Lender to bring Proceedings, including third party proceedings, against the Borrower, or to apply for interim remedies, in connection with this Agreement in any other court and/or concurrently in more than one jurisdiction;

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

**19.5 Enforceability despite invalidity of Agreement**

Without prejudice to the generality of clause 13.9, the jurisdiction agreement contained in this clause 19 shall be severable from the rest of this Agreement and shall remain valid, binding and in full force and shall continue to apply notwithstanding this Agreement or any part thereof being held to be avoided, rescinded, terminated, discharged, frustrated, invalid, unenforceable, illegal and/or otherwise of no effect for any reason.

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

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

19.6.2 the Borrower shall not bring or pursue any Foreign Proceedings against any Bank and shall use its best endeavours to prevent persons not party to this Agreement from bringing or pursuing any Foreign Proceedings against any Bank;

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

19.6.4 the Banks and the Borrower hereby agrees and declares that the benefit of this clause 19 shall extend to and may be enforced by any officer, employee, agent or business associate of any of the Banks against whom the Borrower brings a claim in connection howsoever with any of the

Security Documents or any assets subject thereto or any action of any kind whatsoever taken by, or on behalf of or for the purported benefit of any Bank pursuant thereto or which, if it were brought against the Lender, would fall within the material scope of clause 19.1. In those circumstances this clause 19 shall be read and construed as if references to any Bank were references to such officer, employee, agent or business associate, as the case may be.

**Schedule 1**  
**The Lenders and their Commitments**

<u>Name</u>	<u>Address and fax number</u>	<u>Original Commitment (USD)</u>	<u>Percentage of Total Commitment</u>
DnB NOR BANK ASA	<p><b>Lending Office</b> 20 St. Dunstan's Hill, London EC3R 8HY, England</p> <p><b>Address for Notices</b> As above Fax: +44 207 626 5956 Attn: Loan Administration Department</p> <p><b>Total Commitment</b></p>	USD 66,500,000	100%
		USD 66,500,000	100%

**Schedule 2**  
**Form of Drawdown Notice**

To: DnB NOR Bank ASA  
20 St. Dunstan's Hill,  
London EC3R 8HY,  
England (as Agent)

[•] 2009

Dear Sirs

**Re: Facility agreement dated [ ] August 2009 in respect of a loan of USD66,500,000 (the "Loan Agreement") made between (1) Shikhar Ventures S.A. as Borrower, (2) DnB NOR Bank ASA as Lender, (3) DnB NOR Bank ASA as Agent, Swap Bank and Security Trustee.**

We refer to the Loan Agreement. Words and expressions whose meanings are defined therein shall have the same meanings when used herein.

We hereby give you notice that we wish to draw the sum of USD [ ] on *[date]* 2009 for payment to [ ] and select a first Interest Period in respect of such drawing of [•] months. The funds should be credited to [ ] with [ ] .

We confirm that:

- (a) no Default has occurred;
- (b) the representations and warranties contained in clause 7 of the Loan Agreement are true and correct at the date hereof as if made with respect to the facts and circumstances existing at such date;
- (c) the borrowing to be effected by the drawdown of such Advance will be within our corporate powers, has been validly authorised by appropriate corporate action and will not



cause any limit on our borrowings (whether imposed by statute, regulation, agreement or otherwise howsoever) to be exceeded;

- (d) there has been no material adverse change in our financial position or in the combined financial position of the SEC Group from that described by us to the Banks or any of them in the negotiation of the Loan Agreement and/or in any documents or statements already delivered to the Agent in connection therewith; and
- (e) there are no Required Authorisations.

By

\_\_\_\_\_  
Authorised Signatory  
**Shikhar Ventures S.A.**

### Schedule 3

#### Conditions precedent

##### Part A

(referred to in clause 9.1.1)

(a) **Corporate documents**

Certified Copies of all documents which evidence or relate to the constitution of each Security Party and its current corporate existence;

(b) **Corporate authorities**

(i) Certified (in a certificate dated no earlier than 5 Banking Days prior to the date of this Agreement) Copies of resolutions of the directors and shareholders of each Security Party approving such of the Shipbuilding Contract and the Security Documents to which such Security Party is a party and authorising the execution and delivery thereof and performance of such Security Party's obligations thereunder, additionally certified by an officer of such Security Party as having been duly passed at duly convened meetings of the directors and shareholders of such Security Party and not having been amended, modified or revoked and being in full force and effect; and

(i) originals or Certified Copies of any powers of attorney issued by any Security Party pursuant to such resolutions;

(c) **Required Authorisations**

A certificate (dated no earlier than 5 Banking Days prior to the date of this Agreement) that there are no Required Authorisations or that there are no Required Authorisations except those described in such certificate which have been duly obtained and Certified Copies of which (including any conditions and/or documents ancillary thereto) are appended thereto.

(d) **Certificate of incumbency**

a list of directors and officers of each Security Party specifying the names and positions of such persons, certified (in a certificate dated no earlier than 5 Banking Days prior to the date of this Agreement) by an officer of such Security Party to be true, complete and up to date;

**(e) Share ownership**

Evidence in a form acceptable to the Agent that the Borrower is a wholly owned subsidiary of the Shareholder;

**(f) Share Purchase Agreement**

A copy of each Share Purchase Agreement in a form acceptable to the Agent, together with evidence acceptable to the Agent that all amounts required to be paid under each Share Purchase Agreement have been paid to and accepted by the Seller;

**(g) Refund Guarantee**

A Copy of the Refund Guarantee in a form acceptable to the Agent, together with evidence satisfactory to the Agent that the same covers the launching instalment payable under the Shipbuilding Contract which has been paid in advance.

**(h) Existing Loan Agreement**

Evidence acceptable to the Agent that all amounts due and payable under the Existing Loan Agreement have been paid in full.

**(i) Security Documents**

the Corporate Guarantee and the Predelivery Security Assignment duly executed and delivered together with all notices and acknowledgements required pursuant thereto duly signed;

**(j) know-your-customer**

such information and documentation as the Banks may require in order to satisfy its "Know Your Customer" procedures;

(k) **certified shipbuilding contract**

a Certified Copy (in a certificate dated no earlier than 5 Banking Days prior to the date of this Agreement) of the Shipbuilding Contract in a form and substance acceptable to the Agent, together with evidence acceptable to the Agent that there are no address of other commissions payable thereunder which have not been disclosed to the Agent by the Borrower;

(l) **Marshall Islands/Liberian opinions**

an opinion of Cozen O'Connor, special legal advisers to the Banks on Marshall Islands and Liberian laws;

(m) **process agent**

a letter from the Security Parties' agent for receipt of service of proceedings accepting its appointment under each of the other Security Documents in which it is or is to be appointed as the relevant Security Party's agent.

**PART B**

(referred to in Clause 9.1.2)

(a) **Corporate documents**

Certified Copies of all documents which evidence or relate to the constitution of each Security Party and its current corporate existence;

(b) **Corporate authorities**

(i) Certified Copies of resolutions of the directors and shareholders of the Borrower approving such of the Ship Security Documents and authorising the execution and delivery thereof and performance of its obligations thereunder, additionally certified by one of its officers as having been duly passed at duly convened meetings of its directors and shareholders and not having been amended, modified or revoked and being in full force and effect; and

(i) originals or Certified Copies of any powers of attorney issued by the Borrower pursuant to such resolutions;

(c) **Required Authorisations**

A certificate (dated no earlier than 5 Banking Days prior to the relevant Drawdown) that there are no Required Authorisations or that there are no Required Authorisations except those described in such certificate which have been duly obtained and Certified Copies of which (including any conditions and/or documents ancillary thereto) are appended thereto.

(d) **Certificate of incumbency**

a list of directors and officers of the Borrower specifying the names and positions of such persons, certified (in a certificate dated no earlier than 5 Banking Days prior to the date of this Agreement) by an officer of the Borrower to be true, complete and up to date;

(e) **Delivery**

Documentary evidence that the Vessel has been delivered to the Borrower in accordance with the Shipbuilding Contract.

(f) **Invoice**

A duly issued invoice from the Builder showing all sums due and payable to the Builder pursuant to Article X2(f) of the Shipbuilding Contract upon delivery of the Vessel together with evidence that all amounts payable thereunder (in addition to the part to be paid by the Relevant Advance) have been duly paid.

(g) **The Vessel**

evidence that the Vessel:

(i) **Registration and Encumbrances**

is registered in the name of the Borrower through the Registry under the laws and flag of the Flag State and that the Vessel and her Earnings, Insurances and Requisition Compensation (as defined in the Mortgage) are free of Encumbrances except Permitted Encumbrances;

(ii) **Classification**

maintains the Classification free of all requirements and recommendations of the Classification Society;

(iii) **Insurance**

is insured in accordance with the provisions of the Mortgage which relates to her and all requirements of the Mortgage in respect of such insurance have been complied with (including without limitation, confirmation from the protection and indemnity association or other insurer with which the Vessel is, or is to be, entered for insurance or insured against protection and indemnity risks (including oil pollution risks) that any necessary declarations required by the association or insurer for the removal of any oil pollution exclusion have been made and that any such exclusion does not apply to the Vessel, together with a letter from the Borrower to such protection and indemnity association or other insurer irrevocably instructing the same to provide the Agent with a copy of the Certificate of Entry for the Vessel and any other information relating to the entry of the Vessel with such protection and indemnity association or other insurer);

(iv) **Management**

is managed by the Commercial Manager and the Technical Manager on terms in all respects acceptable to the Agent and

(v) **Charter**

if the Vessel is then subject to an Extended Employment Contract, a copy thereof, in a form acceptable to the Agent;

(h) **Title**

evidence that good title to the Vessel has been transferred to the Borrower and that no Encumbrances are registered against the Vessel;

(i) **Security Documents**

the Mortgage, the General Assignment, the Earnings Account Pledge and the Manager's Undertakings and, if the Vessel is then subject to an Extended Employment Contract, a Charter Assignment in respect thereof, all duly executed and delivered;

(j) **Mortgage registration**

evidence that the Mortgage has been registered against the Vessel through the Registry under the laws and flag of the Flag State;

(k) **Notices of assignment and acknowledgements**

copies of duly executed notices of assignment together with original duly executed acknowledgements thereof required by the terms of the Security Documents relating to the Vessel and in the forms prescribed by such Security Documents;

(l) **Earnings Account**

evidence that the Earnings Account has been opened by the Technical Manager and duly completed mandates in relation thereto have been delivered to the Account Bank;

(m) **Charter Insurance Assignment**

The Charter Insurance Assignment duly executed by such named insured in respect of the Charter Insurances as the Agent requires, together with all notices required to be delivered by the terms thereof together with a letter of undertaking or acknowledgement (addressed to the Security Trustee) of notice of assignment from the insurers in respect of the Charter Insurances;

(n) **Marshall Islands/Liberian opinion**

an opinion of Messrs Cozen O'Connor special legal advisers in the Marshall Islands and Liberia to the Banks;

(o) **Proceedings**

Evidence acceptable to the Agent that there are no Proceedings taking place of which the Borrower would be required to give notice under Clause 8.1.1;

(p) **Further opinions**

any such further opinion as may be required by the Agent;

(q) **Registration forms**

such statutory forms duly signed by the Borrower and the other Security Parties as may be required by the Agent to perfect the security contemplated by the Security Documents;

(r) **Manager's confirmation**

the Technical Manager has confirmed in writing that the representations and warranties set out in clause 7.1.20 (Environmental Matters) and clause 7.1.21 (ISM Code) are true and correct;

(s) **Commission**

evidence that the commitment commission due under clause 5.1 has been paid in full;

(t) **Insurance opinion**

an opinion (to be provided at Borrower's expense) from insurance consultants acceptable to the Agent, on the insurances effected or to be effected in respect of the Vessel upon and following her Delivery Date;

(u) **Valuation**

a satisfactory, in the opinion of the Agent, valuation (at the cost of the Borrower) of the Vessel addressed to the Agent from a broker acceptable to the Agent; and

(v) **MII & MAP Policy premium**

evidence that the Borrower has reimbursed the Banks in the amount of the first annual premium for the MII & MAP Policy.



**Schedule 4**

**Form of Transfer Certificate**

(referred to in clause 15.3)

**TRANSFER CERTIFICATE**

**Lenders are advised not to employ Transfer Certificates or otherwise to assign or transfer interests in the Loan Agreement without further ensuring that the transaction complies with all applicable laws and regulations, including the Financial Services and Markets Act 2000 and regulations made thereunder and similar statutes which may be in force in other jurisdictions**

To: DnB NOR Bank ASA as Agent on its own behalf and on behalf of the Borrower, the Lenders, the Agent, the Swap Bank, the Account Bank and the Security Trustee as defined in the Loan Agreement referred to below.

*[Date]*

Attention: [•]

This certificate (“Transfer Certificate”) relates to a USD 66,500,000 term loan credit facility agreement dated [ ] August 2009 (the “Loan Agreement”) made between (1) Shikhar Ventures S.A. (as Borrower) , (2) DnB NOR BANK ASA (as Lenders), (3) DnB NOR BANK ASA (as Agent, Swap Bank, Account Bank and Security Trustee). Words and expressions defined in the Loan Agreement shall, unless otherwise defined herein, have the same meanings when used in this Certificate.

In this Certificate:

the “**Transferor**” means *[full name]* of *[lending office]*; and

the “**Transferee**” means *[full name]* of *[lending office]*.

1. The Transferor with full title guarantee assigns to the Transferee absolutely all rights and interests (present, future or contingent) which the Transferor has as a Lender under or by

virtue of the Loan Agreement and all the other Security Documents in relation to [•] per centum ([•]%) of the [Contribution] [Commitment] of the Transferor (or its predecessors in title).

2. By virtue of this Transfer Certificate and clause 15 of the Loan Agreement, the Transferor is discharged [entirely from its [Contribution] [Commitment] in respect of the Loan, which amounts to USD [•]] [from [•] per centum ([•]%) of its [Contribution] [Commitment] in respect of the Loan and the Transferee assumes all obligations in respect thereof.
3. The Transferee hereby requests the Agent (on behalf of itself, the Borrower, the Account Bank, the Swap Bank the Security Trustee, the Agent and the Lenders) to accept the executed copies of this Transfer Certificate as being delivered pursuant to and for the purposes of clause 15.3 of the Loan Agreement so as to take effect in accordance with the terms thereof on [date of transfer].
4. The Transferee:
  - 4.1 confirms that it has received a copy of the Loan Agreement and the other Security Documents together with such other documents and information as it has required in connection with the transaction contemplated thereby;
  - 4.2 confirms that it has not relied and will not hereafter rely on the Transferor, the Agent, the Account Bank, the Agent, the Lenders or the Security Trustee to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of the Loan Agreement, any of the Security Documents or any such documents or information;
  - 4.3 agrees that it has not relied and will not rely on the Transferor or any of the Banks to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Borrower, or any other Security Party (save as otherwise expressly provided therein);
  - 4.4 warrants that it has power and authority to become a party to the Loan Agreement and has taken all necessary action to authorise execution of this Transfer Certificate and to obtain all necessary approvals and consents to the assumption of its obligations under the Security Documents; and

- 4.5 if not already a Lender, appoints (i) the Agent to act as its agent and (ii) the Security Trustee to act as its Security Trustee and trustee, as provided in the Security Documents and agrees to be bound by the terms of all of the Security Documents.
5. The Transferor:
  - 5.1 warrants to the Transferee that it has full power to enter into this Transfer Certificate and has taken all corporate action necessary to authorise it to do so;
  - 5.2 warrants to the Transferee that this Transfer Certificate is binding on the Transferor under the laws of England, the country in which the Transferor is incorporated and the country in which its lending office is located; and
  - 5.3 agrees that it will, at its own expense, execute any documents which the Transferee reasonably requests for perfecting in any relevant jurisdiction the Transferee's title under this Transfer Certificate or for a similar purpose.
6. The Transferee hereby undertakes with the Transferor and each of the other parties to each of the Security Documents that it will perform in accordance with its terms all those obligations which by the terms of the Loan Agreement and the other Security Documents will be assumed by it after delivery of the executed copies of this Transfer Certificate to the Agent and satisfaction of the conditions (if any) subject to which this Transfer Certificate is expressed to take effect.
7. By execution of this Transfer Certificate on their behalf by the Agent and in reliance upon the representations and warranties of the Transferee, the Borrower and each of the Banks accept the Transferee as a party to the Security Documents with respect to all those rights and/or obligations which by the terms of the Security Documents will be assumed by the Transferee (including without limitation those about pro-rata sharing and the exclusion of liability on the part of, and the indemnification of, the Agent, the Account Bank, the Agent and the Security Trustee as provided by the Loan Agreement) after delivery of the executed copies of this Transfer Certificate to the Agent and satisfaction of the conditions (if any) subject to which this Transfer Certificate is expressed to take effect.
8. None of the Transferor or the Banks:

- 8.1 makes any representation or warranty nor assumes any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of any of the Security Documents or any document relating thereto; or
- 8.2 assumes any responsibility for the financial condition of any Security Party or any party to any such other document or for the performance and observance by any Security Party or any party to any such other document (save as otherwise expressly provided therein) and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded (except as aforesaid).
9. The Transferor and the Transferee each undertake that they will on demand fully indemnify the Agent in respect of any claim, proceeding, liability or expense which relates to or results from this Transfer Certificate or any matter concerned with or arising out of it unless caused by the Agent's gross negligence or wilful misconduct, as the case may be.
10. The agreements and undertakings of the Transferee in this Transfer Certificate are given to and for the benefit of and made with each of the other parties to each of the Security Documents.
11. This Transfer Certificate shall be governed by, and construed in accordance with, English law.

Transferor

Transferee

By: \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**Agent**

Agreed for and on behalf of itself as Agent, the Borrower, the Swap Bank, the Security Trustee, the Account Bank and the Lenders.

[•]

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**NOTE: The execution of this Transfer Certificate alone may not transfer a proportionate share of the Transferor's interest in the security constituted by the Security Documents in the Transferor's or Transferee's jurisdiction. It is the responsibility of the Transferee to ascertain whether any other documents are required to perfect a transfer of such a share in the Transferor's interest in such security in any such jurisdiction and, if so, to seek appropriate advice and arrange for execution of the same.**

***The schedule***

Contribution: USD [•]  
Commitment: USD [•]  
Portion Transferred: [•]%

**Administrative Details of Transferee**

Name of Transferee:

Lending Office:

Contact Person:

(Loan Administration Department)

Telephone:

Telefax No:

Contact Person:

(Credit Administration Department)

Telephone:

Telefax No:

[Account for payments:]

**Schedule 5**  
**Form of Trust Deed**

**THIS DECLARATION OF TRUST** is made by **DNB NOR BANK ASA** (the “**Security Trustee**”) on [•] August, 2009 and is supplemental to (and made pursuant to the terms of) a USD 66,500,000 facility agreement dated [ ] August, 2009 (the “**Loan Agreement**”) made between (1) Shikhar Ventures S.A. (as Borrower), (2) DnB NOR Bank ASA (as Lender), (3) DnB NOR Bank ASA (as Agent, Swap Bank, Account Bank and Security Trustee). Words and expressions whose meanings are defined in the Loan Agreement shall have the same meanings when used in this Deed.

**NOW THIS DEED WITNESSETH** as follows:

- (a) The Security Trustee hereby acknowledges and declares that, from the date of this Deed, it holds and shall hold the Trust Property on trust from time to time and at all times for the other Banks on the terms and basis set out in the Loan Agreement.
- (b) The declaration and acknowledgement contained in paragraph 1 above shall be irrevocable.

**IN WITNESS** whereof the Security Trustee has executed this Deed the day and year first above written.

**SIGNED, SEALED and DELIVERED**                 )  
as a **DEED**                                                 )  
by                                                                 )     \_\_\_\_\_     )  
for and on behalf of                                    )  
**DNB NOR BANK ASA**                                    )  
as Security Trustee                                     )

**SCHEDULE 6**  
**MANDATORY COSTS**

- 1 The Mandatory Cost is an addition to the interest rate to compensate Lenders for the cost of compliance with (a) the requirements of the Financial Services Authority (or any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.
- 2 On the first day of each Interest Period (or as soon as possible thereafter) the Agent shall calculate, as a percentage rate, a rate (the “Additional Cost Rate”) for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Agent as a weighted average of the Lenders’ Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Advance) and will be expressed as a percentage rate per annum.
- 3 The Additional Cost Rate for any Lender lending from a lending office in a Participating Member State will be the percentage notified by that Lender to the Agent. This percentage will be certified by that Lender in its notice to the Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender’s participation in the Loan made from that lending office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that lending office.
- 4 The Additional Cost Rate for any Lender lending from a lending office in the United Kingdom will be calculated by the Agent as follows:  
 $((0.01 \times E) \text{ divided by } 300)$  per cent. per annum  
Where:  
E is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Agent as being the most recent rate of charge supplied by the Reference Bank to the Agent pursuant to paragraph 6 below and expressed in pounds per £1,000,000.
- 5 For the purposes of this Schedule:

(a) “Eligible Liabilities” and “Special Deposits” have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;

(b) “Fees Rules” means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;

(c) “Fee Tariffs” means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate);

(d) “Participating Member State” means any member state of the European Union that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Union relating to European Monetary Union; and

(e) “Tariff Base” has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.

6 If requested by the Agent, the Reference Bank shall, as soon as practicable after publication by the Financial Services Authority, supply to the Agent, the rate of charge payable by the Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by the Reference Bank as being the average of the Fee Tariffs applicable to the Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of the Reference Bank.

7 Each Lender shall supply any information required by the Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information in writing on or prior to the date on which it becomes a Lender:

(a) the jurisdiction of its lending office; and

(b) any other information that the Agent may reasonably require for such purpose.



Each Lender shall promptly notify the Agent in writing of any change to the information provided by it pursuant to this paragraph.

- 8 The rate of charge of the Reference Bank for the purpose of E above shall be determined by the Agent based upon the information supplied to it pursuant to paragraph 6 above and on the assumption that, unless a Lender notifies the Agent to the contrary, each Lender's obligations in relation to cash ratio deposits and special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a lending office in the same jurisdiction as its lending office.
- 9 The Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or the Reference Bank pursuant to paragraphs 3, 6 and 7 above is true and correct in all respects.
- 10 The Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and the Reference Bank pursuant to paragraphs 3, 6 and 7 above.
- 11 Any determination by the Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all parties.
- 12 The Agent may from time to time, after consultation with the Borrower and the Lenders, determine and notify to all parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all parties.

SCHEDULE 7  
INDENTURE EXTRACT

SCHEDULE 8  
INDENTURE EXCERPT

**SECTION 4.10 Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.**

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, “**incur**”) any Indebtedness (including Acquired Debt), and the Company shall not issue any shares of Disqualified Stock and the Company shall not permit any of its Restricted Subsidiaries to issue any shares of Disqualified Stock or preferred stock; *provided, however*, that the Company may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and any Guarantor may incur Indebtedness (including Acquired Debt), issue shares of Disqualified Stock or issue shares of preferred stock, if the Fixed Charge Coverage Ratio for the Company’s most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued, as the case may be, would have been at least 2.0 to 1.0, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, at the beginning of such four-quarter period.

19.6.5 Section 4.10(a) shall not prohibit the incurrence of any of the following items of Indebtedness (collectively, “**Permitted Debt**”):

- (a) the incurrence by the Company or any Guarantor of Indebtedness and letters of credit under one or more Credit Facilities in an aggregate amount at any time outstanding under this clause (1) not to exceed \$475.0 million, *less* the amount of Non-Recourse Debt outstanding under clause (16) below;
- (b) the incurrence by the Company and its Restricted Subsidiaries of the Existing Indebtedness;
- (c) the incurrence of the Notes on the Issue Date, the Note Guarantees and the Exchange Securities to be issued pursuant to the Registration Rights Agreement;
- (d) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used in the business of the Company or any of its Restricted Subsidiaries and Permitted Refinancing Indebtedness in respect thereof, in an aggregate amount not to exceed at any time outstanding the greater of (A) \$20.0 million and (B) 3.0% of Total Tangible Assets;
- (e) Indebtedness of the Company or any of its Restricted Subsidiaries incurred to finance the replacement (through construction, acquisition, lease or otherwise) of one or more Vessels and any assets that shall become Related Assets, upon a total loss,

destruction, condemnation, confiscation, requisition, seizure, forfeiture or other taking of title to or use of such Vessel (collectively, a “**Total Loss**”) in an aggregate amount no greater than the ready for sea cost (as determined in good faith by the Company) for such replacement Vessel, in each case, less all compensation, damages and other payments (including insurance proceeds other than in respect of business interruption insurance) actually received by the Company or any of its Restricted Subsidiaries from any Person in connection with the Total Loss in excess of amounts actually used to repay Indebtedness secured by the Vessel subject to the Total Loss;

(f) Indebtedness of the Company or any Restricted Subsidiary incurred in relation to: (i) maintenance, repairs, refurbishments and replacements required to maintain the classification of any of the Vessels owned, leased, time chartered or bareboat chartered to or by the Company or any Restricted Subsidiary; (ii) drydocking of any of the Vessels owned or leased by the Company or any Restricted Subsidiary for maintenance, repair, refurbishment or replacement purposes in the ordinary course of business; and (iii) any expenditures which will or may be reasonably expected to be recoverable from insurance on such Vessels;

(g) the incurrence by the Company or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in respect of Indebtedness (other than intercompany Indebtedness) permitted to be incurred under Section 4.10(a) or Sections 4.10(b)(2), (b)(3), (b)(5), (b)(6), (b)(7) or (b)(14);

(h) the incurrence of Indebtedness by the Company owed to a Restricted Subsidiary and Indebtedness by any Restricted Subsidiary owed to the Company or any other Restricted Subsidiary; *provided, however*, that upon any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or such Indebtedness being owed to any Person other than the Company or a Restricted Subsidiary, the Company or such Restricted Subsidiary, as applicable, shall be deemed to have incurred Indebtedness not permitted by this clause (8);

(i) the issuance by any of the Company’s Restricted Subsidiaries to the Company or to any of its Restricted Subsidiaries of shares of Disqualified Stock or preferred stock; *provided, however*, that:

any subsequent issuance or transfer of Equity Interests that results in any such Disqualified Stock or preferred stock being held by a Person other than the Company or a Restricted Subsidiary of the Company; and

any sale or other transfer of any such Disqualified Stock or preferred stock to a Person that is neither the Company nor a Restricted Subsidiary of the Company;

shall be deemed, in each case, to constitute an issuance of such Disqualified Stock or preferred stock by such Restricted Subsidiary that is not permitted by this clause (9);

(j) the incurrence by the Company or any of its Restricted Subsidiaries of Permitted Hedging Obligations;

(k) the guarantee by the Company or any Guarantor of Indebtedness of the Company or a Restricted Subsidiary of the Company that was permitted to be incurred by another provision of this Section 4.10; *provided* that if the Indebtedness being guaranteed is contractually subordinated to the Notes or a Guarantee, then the guarantee shall be contractually subordinated to the same extent as the Indebtedness guaranteed;

(l) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, unemployment insurance, health, disability and other employee benefits or property, casualty or liability insurance, self-insurance obligations, bankers' acceptances, or performance, completion, bid, appeal and surety bonds, in each case, in the ordinary course of business;

(m) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days;

(n) Indebtedness, Disqualified Stock or preferred stock of (x) the Company or a Restricted Subsidiary incurred or issued to finance an acquisition or (y) a Person acquired by the Company or a Restricted Subsidiary or merged, consolidated, amalgamated or liquidated with or into a Restricted Subsidiary or the Company; *provided, however*, that after giving effect to such incurrence or issuance (and the related acquisition, merger, consolidation, amalgamation or liquidation), the Fixed Charge Coverage Ratio for the Company's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued, as the case may be, would have been at least 1.75 to 1.0;

(o) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness consisting of guarantees, earn-outs, indemnities or obligations in respect of purchase price adjustments in connection with the disposition or acquisition of assets, including, without limitation, shares of Capital Stock;

(p) Non-Recourse Debt incurred by a Securitization Subsidiary in a Qualified Securitization Transaction;

(q) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness constituting reimbursement obligations with respect to letters of credit so long each such obligation is satisfied within 30 days of the incurrence thereof; and

(r) the incurrence by the Company or any of its Restricted Subsidiaries of additional Indebtedness, Disqualified Stock or preferred stock in an aggregate amount at any time outstanding, including all Permitted Refinancing Indebtedness incurred pursuant to this clause (18), not to exceed \$25.0 million.

19.6.6 For purposes of determining compliance with this Section 4.10, in the event that an item of proposed Indebtedness, Disqualified Stock or preferred stock meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (18) of Section 4.10(b), or is entitled to be incurred pursuant to Section 4.10(a), the Company, in its sole discretion, may classify such item of Indebtedness, Disqualified Stock and preferred stock (or any portion thereof) on the date of its incurrence, or later reclassify, all or a portion of such item of Indebtedness, Disqualified Stock or preferred stock, in any manner that complies with this Section 4.10. Indebtedness under Credit Facilities outstanding on the Issue Date shall be deemed to have been incurred on such date in reliance on the exception provided by Section 4.10(b)(1), but thereafter may be reclassified in any manner that complies with this Section 4.10.

19.6.7 The accrual of interest, the accrual of dividends, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional

Indebtedness with the same terms, and the payment of dividends on Disqualified Stock or preferred stock in the form of additional shares of the same class of Disqualified Stock or preferred stock, as the case may be, shall not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock or preferred stock for purposes of this Section 4.10; *provided*, in each such case, that the amount thereof is included in Fixed Charges of the Company as accrued.

19.6.8 The amount of any Indebtedness outstanding as of any date shall be:

- (1) the accreted value of such Indebtedness, in the case of any Indebtedness issued with original issue discount;
- (2) the principal amount of the Indebtedness, in the case of any other Indebtedness;
- (3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:
  - the Fair Market Value of such assets at the date of determination; and
  - the amount of the Indebtedness of the other Person that is secured by such assets; and

(4) in respect of the Indebtedness incurred by a Securitization Subsidiary, the amount of Obligations outstanding under the legal documents entered into as part of a Qualified Securitization Transaction on any date of determination characterized as principal or that would be characterized as principal if such securitization were structured as a secured lending transaction rather than as a purchase.

19.6.9 For purposes of determining compliance with this Section 4.10, (i) Acquired Debt shall be deemed to have been incurred by the Company or its Restricted Subsidiaries, as the case may be, at the time an acquired Person becomes such a Restricted Subsidiary of the Company (or is merged into the Company or such a Restricted Subsidiary) or at the time of the acquisition of assets, as the case may be, (ii) the maximum amount of Indebtedness, Disqualified Stock or preferred stock that the Company and its Restricted Subsidiaries may incur pursuant to this Section 4.10 shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, Disqualified Stock or preferred stock due solely to the result of fluctuations in the exchange rates of currencies and (iii) the outstanding principal amount of any particular Indebtedness shall be counted only once and any obligations arising under any guarantee, Lien, letter of credit or similar instrument supporting such Indebtedness permitted to be incurred under this covenant shall not be double counted.

19.6.10 For purposes of determining compliance of any non-U.S. dollar-denominated Indebtedness with this Section 4.10, the amount outstanding under any U.S. dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall at all times be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness (in each case determined, if available, by the rate of exchange quoted by Reuters at 10:00 a.m. (New York time) on the date of determination for spot purchases of the non-U.S. dollar currency with U.S. dollars and otherwise in accordance with customary practice); *provided, however*, that if such Indebtedness is incurred to refinance other Indebtedness denominated in the same or different currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal

amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced.

**SECTION 4.11 Limitations on Restricted Payments.**

(a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(i) pay any dividend or make any other payment or distribution on account of the Company's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger, amalgamation or consolidation involving the Company or any of its Restricted Subsidiaries) or to the holders of the Company's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than (A) dividends or distributions payable in Qualified Equity Interests or (B) dividends or other payments or distributions payable to the Company or a Restricted Subsidiary of the Company);

(ii) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation) any Equity Interests of any direct or indirect parent of the Company;

(iii) make any voluntary or optional principal payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, any Indebtedness of the Company or any Guarantor that is contractually subordinated to the Notes or any Guarantee (excluding any Indebtedness owed to and held by the Company or any of its Restricted Subsidiaries), other than (x) payments of principal at the Stated Maturity thereof and (y) payments, purchases, redemptions, defeasances or other acquisitions or retirements for value in anticipation of satisfying a scheduled maturity, sinking fund or amortization or other installment obligation or mandatory redemption, in each case, due within one year of the Stated Maturity thereof; or

(iv) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "**Restricted Payments**"), unless, at the time of and after giving effect to such Restricted Payment:

no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(b) the Company would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.10(a); and

(c) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries since the date of this Indenture (excluding Restricted Payments permitted by clauses (2), (3), (4), (5), (6), (7), (8), (9), (8), (9), (10) and (14) of Section 4.11(b)), is not greater than the sum, without duplication, of:

50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from October 1, 2006 to the end of the Company's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); *plus*

(i) 100% of the aggregate net cash proceeds and (ii) 100% of the Fair Market Value of the property and assets other than cash, in each case, received by the Company after the date of this Indenture as a contribution to its equity capital or from the issue or sale (other than to a Restricted Subsidiary of the Company) of Qualified Equity Interests, including upon the exercise of options or warrants, or from the issue or sale (other than to a Restricted Subsidiary of the Company) of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities of the Company that have been converted into or exchanged for Qualified Equity Interests, together with the aggregate cash and Cash Equivalents received by the Company or any of its Restricted Subsidiaries at the time of such conversion or exchange; *plus*

to the extent that any Restricted Investment that was made after the date of this Indenture is sold or otherwise liquidated or repaid for cash or Cash Equivalents, the return of capital in cash or Cash Equivalents with respect to such Restricted Investment (less the cost of disposition, if any); *plus*

to the extent that any Unrestricted Subsidiary of the Company is redesignated as a Restricted Subsidiary after the date of this Indenture or is merged into the Company or a Restricted Subsidiary or transfers all or substantially all its assets of the Company or a Restricted Subsidiary, the Fair Market Value of the Investment of the Company and its Restricted Subsidiaries in such Subsidiary (or the assets so transferred, if applicable) as of the date of such redesignation (other than to the extent of such Investment in such Unrestricted Subsidiary that was made as a Permitted Investment); *plus*

any amount which previously treated as a Restricted Payment on account of any guarantee entered into by the Company or a Restricted Subsidiary upon the unconditional release of such guarantee.

(b) The preceding provisions shall not prohibit:

the payment of any dividend or other distribution within 60 days after the date of declaration of the dividend or other distribution, if at the date of declaration such payment would have complied with the provisions of this Indenture;

the making of any Restricted Payment in exchange for, or out of the net proceeds of the substantially concurrent sale or issuance (other than to a Restricted Subsidiary of the Company), including upon exercise of an option or warrant, of, Qualified Equity Interests or from the substantially concurrent contribution of equity capital with respect to Qualified Equity Interests to the Company; *provided* that the amount of any such net proceeds that are utilized for any such Restricted Payment shall be excluded from clause (3) of Section 4.11(a);

the payment, defeasance, redemption, repurchase or other acquisition or retirement for value of Indebtedness of the Company or any of its Restricted Subsidiaries that is contractually subordinated to the Notes or to any Guarantee with the net proceeds from a



substantially concurrent incurrence of Permitted Refinancing Indebtedness or in exchange for Qualified Equity Interests;

the payment of any dividend or other distribution (or, in the case of any partnership, limited liability company or similar entity, any similar distribution) by a Restricted Subsidiary of the Company to the holders of its Equity Interests on a *pro rata* basis taking into account the relative preferences, if any, of the various classes of Equity Interests in such Restricted Subsidiary;

the repurchase, redemption or other acquisition or retirement for value of any Qualified Equity Interests of the Company or any of its Restricted Subsidiaries held by any current or former officer, director, consultant or employee of the Company or any of its Restricted Subsidiaries (or Heirs or other permitted transferees thereof); *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed \$3.0 million in any calendar year; *provided, further*, that such amount may be increased by an amount not to exceed:

the cash proceeds from the sale of Qualified Equity Interests of the Company to directors, officers, employees or consultants of the Company or any of its Restricted Subsidiaries that occurs after the date of this Indenture (*provided* that the amount of such cash proceeds utilized for any such repurchase, redemption, acquisition or other retirement shall not increase the amount available for Restricted Payments under clause (3) of the immediately preceding paragraph); *plus*

the cash proceeds of key-man life insurance policies received by the Company or any Restricted Subsidiary after the date of this Indenture; *provided* that to the extent that any portion of the \$3.0 million annual limit on such redemptions or repurchases is not utilized in any year, such unused portion may be carried forward and be utilized in one or more subsequent years;

(d) cancellation of Indebtedness owing to the Company from members of management of the Company in connection with a repurchase of Qualified Equity Interests of the Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement approved by the Board of Directors to the extent such Indebtedness was issued to such member of management as consideration for the purchase of the Qualified Equity Interests so repurchased;

(e) so long as no Default or Event of Default has occurred and is continuing or would result thereby, any dividend or distribution consisting of Equity Interests of an Unrestricted Subsidiary or the proceeds of the sale of Equity Interests of an Unrestricted Subsidiary;

(f) the repurchase of Equity Interests deemed to occur upon the exercise of options, warrants or other convertible securities to the extent such Equity Interests represent a portion of the exercise price of those options, warrants or other convertible securities and cash payments in lieu of the issuance of fractional shares in connection with the exercise of options, warrants or other convertible securities;

(g) so long as no Default or Event of Default has occurred and is continuing or would result thereby, the declaration and payment of cash dividends on Designated

Preferred Stock in accordance with the certificate of designations therefor; *provided* that at the time of issuance of such Designated Preferred Stock, the Company would, after giving pro forma effect thereto as if such issuance had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.10(a);

(h) so long as no Default or Event of Default has occurred and is continuing or would result thereby, the declaration and payment of cash dividends to holders of any class or series of Disqualified Stock of the Company issued in accordance with Section 4.10;

(i) payments made to purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Company or any of its Restricted Subsidiaries that is contractually subordinated to the Notes or to any Guarantee (i) following the occurrence of a Change of Control, at a purchase price not greater than 101% of the outstanding principal amount (or accreted value, in the case of any debt issued at a discount from its principal amount at maturity) thereof, plus accrued and unpaid interest, if any, after the Company and its Restricted Subsidiaries have satisfied their obligations with respect to a Change of Control Offer set forth under Section 4.09 or (ii) with the Excess Proceeds of one or more Asset Sales, at a purchase price not greater than 100% of the principal amount (or accreted value, in the case of any debt issued at a discount from its principal amount at maturity) thereof, plus accrued and unpaid interest, if any, after the Company and its Restricted Subsidiaries have satisfied their obligations with respect to such Excess Proceeds pursuant to Section 4.13 to the extent that such subordinated Indebtedness is required to be repurchased or redeemed pursuant to the terms thereof as a result of such Change of Control or Asset Sale;

(j) payments pursuant to clause (6) Section 4.14(b);

(k) so long as no payment Default or Event of Default has occurred and is continuing or would result thereby, the payment of cash dividends on the Company's shares of common stock in the aggregate amount per fiscal quarter not to exceed \$0.0666 per share for each share of common stock of the Company outstanding as of the one record date for dividends payable in respect of such fiscal quarter (as such amount shall be appropriately adjusted for any stock splits, stock dividends, reverse stock splits, stock consolidations and similar transactions); and

(l) other Restricted Payments in an aggregate amount not to exceed \$20.0 million since the date of this Indenture.

The amount of all Restricted Payments (other than cash and Cash Equivalents) shall be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

(c) For purposes of determining compliance with this covenant, in the event that a Restricted Payment permitted pursuant to this Section 4.11 or a Permitted Investment meets the criteria of more than one of the categories of Restricted Payment described in clauses (1) through (14) above or one or more clauses of the definition of Permitted Investment, the Company shall be permitted to classify such Restricted Payment or Permitted Investment (or any portion thereof) on the date it is made, or later reclassify, all or a portion of such Restricted Payment or Permitted Investment, in any manner that complies with this covenant, and such Restricted Payment or Permitted Investment shall be treated as having been made

pursuant to only one of such clauses of this Section 4.11 or of the definition of Permitted Investment.

**SECTION 4.12 Limitations on Liens.**

The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien that secures obligations under any Indebtedness or any related guarantee, on any asset of the Company or any Restricted Subsidiary, whether owned on the Issue Date or thereafter acquired, except Permitted Liens, unless contemporaneously therewith:

(m) in the case of any Lien securing an obligation that ranks *pari passu* with the Notes or a Guarantee, effective provision is made to secure the Notes or such Guarantee, as the case may be, at least equally and ratably with or prior to such obligation with a Lien on the same collateral; and

(n) in the case of any Lien securing an obligation that is subordinated in right of payment to the Notes or a Guarantee, effective provision is made to secure the Notes or such Guarantee, as the case may be, with a Lien on the same collateral that is prior to the Lien securing such subordinated obligation, in each case, for so long as such obligation is secured by such Lien (such Lien, the “**Primary Lien**”).

Notwithstanding the foregoing, the Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien under any of clauses (1), (3), (7), (16), (24) or (25) of the definition of “Permitted Liens” on any asset of the Company or any Restricted Subsidiary that secures obligations under any Indebtedness or any related guarantee, if such Lien is junior or subordinated in priority to any other Lien on such asset that secures obligations under any other Indebtedness or any related guarantee of the Company or any Restricted Subsidiary pursuant to an agreement which the Company or a Restricted Subsidiary is a party or the terms of which have been accepted, acknowledged or consented to by the Company or any Restricted Subsidiary in writing.

19.6.11 Any Lien created for the benefit of the Holders pursuant to Section 4.12(a) shall automatically and unconditionally be released and discharged upon the release and discharge of the Primary Lien, without any further action on the part of any Person.

**SECTION 4.15 Dividend and Other Payment Restrictions Affecting Subsidiaries.**

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any of its Restricted Subsidiaries to:

(a) pay dividends or make any other distributions on its Capital Stock to the Company or any of its Restricted Subsidiaries, or pay any Indebtedness owed to the Company or any of its Restricted Subsidiaries;

(b) make loans or advances to the Company or any of its Restricted Subsidiaries; or

(c) transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

However, the preceding restrictions shall not apply to encumbrances or restrictions existing under or by reason of:

*agreements, including, without limitation, those governing Existing Indebtedness and Credit Facilities, as in effect on the date of this Indenture and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of those agreements; provided that the amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in those agreements on the date of this Indenture;*

*this Indenture, the Notes and the Note Guarantees;*

*applicable law, rules, regulations or order or governmental license, permit or concession;*

*any instrument governing Indebtedness or Equity Interests of a Person acquired by the Company or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Equity Interests were incurred or issued in connection with such acquisition to provide funds to consummate such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;*

*customary provisions restricting assignments, subletting or other similar transfers in contracts, licenses and other agreements (including, without limitation, leases and agreements relating to intellectual property) entered into in the ordinary course of business;*

*purchase money obligations and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in clause (3) of the preceding paragraph;*

*any agreement for the sale or other disposition of a Restricted Subsidiary or an asset that restricts distributions by that Restricted Subsidiary or transfers of such asset pending the sale or other disposition;*

*Permitted Refinancing Indebtedness; provided that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;*

*Liens and agreements related thereto that were permitted to be incurred under the provisions of Section 4.12 that limit the right of the debtor to dispose of the assets or property subject to such Liens;*

*provisions limiting the disposition or distribution of assets or property (including Capital Stock of any Person in which the Company has an Investment) in joint venture agreements, stockholder agreements, partnership agreements, limited liability company operating agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements*

and other similar agreements, which limitation is applicable in all material respects only to the assets or property that are the subject of such agreements;  
restrictions on cash or other deposits or net worth imposed under contracts entered into in the ordinary course of business;  
customary provisions restricting the disposition of real property interests set forth in any easements or other similar agreements or arrangements of the Company or any Restricted Subsidiary;  
provisions restricting the transfer of any Capital Stock of an Unrestricted Subsidiary;

Indebtedness of a Restricted Subsidiary incurred subsequent to the date of this Indenture pursuant to the provisions of Section 4.10 (i) in respect of the subordination provisions, if any, of such Indebtedness, (ii) if the encumbrances and restrictions contained in any such Indebtedness taken as a whole are not materially less favorable to the Holders than the encumbrances and restrictions contained in this Indenture or that may be contained in any Credit Agreement in accordance with this covenant or (iii) if such encumbrance or restriction is customary in comparable financings (as determined in good faith by the Company) and either (x) the Company determines in good faith that such encumbrance or restriction shall not adversely affect in any material respect the Company's ability to make principal or interest payments on the Notes as and when due or (y) such encumbrance or restriction applies only in the event of and during the continuance of a default under such Indebtedness; and

Non-Recourse Debt or other encumbrances, restrictions or contractual requirements of a Securitization Subsidiary in connection with a Qualified Securitization Transaction; provided that such restrictions apply only to such Securitization Subsidiary or the Securitization Assets that are subject to the Qualified Securitization Transaction.

## **20 ARTICLE FIVE**

### **21 SUCCESSOR CORPORATION**

#### **SECTION 5.01 Mergers, Consolidations, Etc.**

The Company may not, directly or indirectly: (1) consolidate, amalgamate or merge with or into another Person (whether or not the Company is the surviving Person); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

(a) either: (a) the Company is the surviving Person; or (b) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance or other disposition has been made (x) is a corporation, limited liability company, trust or limited partnership organized or existing under the laws an Eligible Jurisdiction and (y) assumes all the obligations of the Company under the Notes, this Indenture and the Registration Rights Agreement pursuant to agreements reasonably satisfactory to the Trustee;

(b) immediately after giving effect to such transaction, no Default or Event of Default exists; and

(c) either (a) the Company or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Company), or to which such sale, assignment, transfer, conveyance or other disposition has been made, shall, on the date of such transaction after giving pro forma effect thereto and to any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.10(a) or (b) the Fixed Charge Coverage Ratio for the Company or such surviving Person determined in accordance with Section 4.10(a) shall be greater than the Fixed Charge Coverage Ratio test for the Company and its Restricted Subsidiaries immediately prior to such transaction.

In addition, the Company may not, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person; *provided* that the foregoing shall not prohibit the chartering out of Vessels in the ordinary course of business.

For purposes of this Section 5.01, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries, the Equity Interests of which constitute all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

21.1.2 The Company shall not permit any Guarantor to, directly or indirectly, consolidate, amalgamate or merge with or into another Person (whether or not such Guarantor is the surviving Person) unless:

(a) subject to the Note Guarantee release provisions of Section 4.16, such Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Company or a Guarantor) expressly assumes all the obligations of such Guarantor under the Note Guarantee of such Guarantor, this Indenture and the Registration Rights Agreement pursuant to agreements reasonably satisfactory to the Trustee; and

(b) immediately after such transaction, no Default or Event of Default exists.

This Section 5.01 shall not apply to a merger of the Company, a Guarantor or a Wholly Owned Restricted Subsidiary of such Person with an Affiliate solely for the purpose, and with the effect, of reorganizing the Company, a Guarantor or a Wholly Owned Restricted Subsidiary, as the case may be, in an Eligible Jurisdiction. In addition, nothing in this Section 5.01 shall prohibit any Restricted Subsidiary from consolidating or amalgamating with, merging with or into or conveying, transferring or leasing, in one transaction or a series of transactions, all or substantially all of its assets to the Company or another Restricted Subsidiary or reconstituting itself in another jurisdiction for the purpose of reflagging a vessel.

**Schedule 9**  
**Form of Compliance Certificate**

To: DnB NOR Bank ASA (as Agent)

From:

Date [       ] 200[   ]

**Re: Facility agreement dated [   ] August 2009 in respect of a loan of USD66,500,000 (the "Loan Agreement") made between (1) Shikhar Ventures S.A. as Borrower, (2) DnB NOR Bank ASA as Lender, (3) DnB NOR Bank ASA as Agent, Swap Bank and Security Trustee.**

Dear Sirs

We refer to the Loan Agreement. Words and expressions whose meanings are defined in the Loan Agreement shall have the same meanings when used herein.

We hereby confirm that [except as stated below] as at the date hereof to the best of our knowledge and belief after due inquiry:-

1. all the Borrower's undertakings in the Loan Agreement set out in clause 8 are being fully complied with;
2. the Liquidity of the SEC Group is \$[                      ];
3. the ratio of Consolidated Cash Flow (which is \$[                      ]) to Fixed Charges (which is \$[                      ]) is [   ] to [   ];
4. the Total Liabilities (which are \$[                      ]) divided by the Total Assets (which are \$[                      ]) is [   ]%.
5. no Default has occurred; and
6. the representations set out in clause 7 of the Loan Agreement are true and accurate with reference to all facts and circumstances now existing and all Required Authorisations have been obtained and are in full force and effect.

*[State any exceptions/qualifications to the above statements]*

Yours faithfully

[   ]

By \_\_\_\_\_

[Chief Financial Officer : Navios Maritime Holdings Inc.]

[Chief Executive Officer : Navios Maritime Holdings Inc]

[Director : Navios Maritime Holdings Inc.]

## Schedule 10

### Vessel details

“**Builder**” means together, Sungdong Shipbuilding & Marine Engineering Co. Ltd. of South Korea;

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

“**Refund Guarantor**” means Woori Bank of South Korea, the issuer of the Refund Guarantee;

“**Seller**” means Union Fairtriton S.A. of the Marshall Islands;

“**Shipbuilding Contract**” means the Shipbuilding Contract dated 1 December 2006 entered into between the Builder and the Borrower for the construction by the Builder of the Vessel and its purchase by the Borrower, as supplemented from time to time;

“**Vessel**” means the capesize bulk carrier of about 170,000 dwt which is being or to be constructed by the Builder with Builder’s Hull No. S1081 for, and purchased by, the Borrower under the Shipbuilding Contract.



**Execution Pages**

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

SIGNED as a deed for and on behalf of )  
**SHIKHAR VENTURES S.A. by ALEXANDROS** )  
**LAIOS** (as Borrower under and pursuant to ) /s/ Alexandros Laios  
a power of attorney dated )  
7 July 2009) in the presence of )

SIGNED by Robin Parry )  
for and on behalf of ) /s/ Robin Parry  
**DNB NOR BANK ASA** )  
(as a Lender) in the presence of )

SIGNED by Robin Parry )  
for and on behalf of )  
**DNB NOR BANK ASA** ) /s/ Robin Parry  
(as Account Bank, Agent, Swap Bank and )  
Security Trustee) in the presence of Ronan Le Du )  
/s/ Ronan Le Du

Private and Confidential

DATED 28 August 2009

KOHYLIA SHIPMANAGEMENT S.A.

and

DUCALE MARINE INC. (1)

EMPORIKI BANK OF GREECE S.A. (2)

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FACILITY AGREEMENT 211/28 August 2009

in respect of

a loan of up to USD75,000,000  
in two tranches



Piraeus

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**THIS AGREEMENT** is dated August 28, 2009 and made **BETWEEN**:

- (1) **KOHYLIA SHIPMANAGEMENT S.A.** and **DUCALE MARINE INC.** as Borrowers; and
- (2) **EMPORIKI BANK OF GREECE S.A.** as Bank.

**IT IS AGREED** as follows:

## **1 PURPOSE AND DEFINITIONS**

### **1.1 Purpose**

This Agreement sets out the terms and conditions upon which the Bank agrees to make available to the Borrowers a facility of up to USD75,000,000 in 2 Tranches of up to USD37,500,000 each (each Tranche to be drawn in up to 3 Advances), for the purpose of part-financing the purchase and construction price of two capesize bulk carriers which are to be constructed by the Builder for, and purchased by, the Borrowers.

### **1.2 Definitions**

In this Agreement, unless the context otherwise requires:

“**Advance**” means the principal amount of each drawing in respect of the Loan to be made pursuant to Clause 2.3;

“**Approved Broker**” means each of (i) H Clarkson & Co. Ltd. of St Magnus House, 3 Lower Thames Street, London EC3R 6HE, England, (ii) Arrow Research Ltd. of Harbour House, Chelsea Harbour, London SW10 0XE, England and (iii) Fearnleys AS of Grev Wedels Plass 9, P.O.Box 1158 Sentrum, Oslo N-0107 Norway or such other reputable, independent and first class firm of shipbrokers specialising in the valuation of vessels of the relevant type appointed by the Bank and agreed with the Borrowers;

“**Assignee**” is defined in clause 15.3;

“**Bank**” means Emporiki Bank of Greece S.A. acting through its branch at 114 Kolokotroni Street, 185 35 Piraeus, Greece (or of such other address as may last have been notified to the Borrowers pursuant to clause 16.2.3);

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

“**Borrowers**” means each of KOHYLIA SHIPMANAGEMENT S.A. (“**Kohylia**”) and DUCALE MARINE INC. (“**Ducale**”), each of which is incorporated in the Marshall Islands and has its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960, and in the plural means both of them;

“**Borrowers’ Security Documents**” means, at any relevant time, such of the Security Documents as shall have been executed by the Borrowers or either of them;

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

- (a) any repayment or prepayment of the Loan or any part thereof otherwise than in accordance with, respectively, clause 4.1 or clause 4.3 whether on a voluntary or involuntary basis or otherwise howsoever or
- (b) of the Borrowers failing or being incapable of drawing the Loan after a Drawdown Notice has been given;

**“Casualty Amount”** means five hundred thousand Dollars (USD500,000) (or the equivalent in any other currency);

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

**“Charter Assignment”** means a specific assignment of the Existing Charters and any Extended Employment Contract required to be executed hereunder by either Owner in favour of the Bank (including any notices and/or acknowledgements and/or undertakings associated therewith) in such form as the Bank may require in its sole discretion;

**“Charter Insurance Assignment”** means a first priority assignment of the Charter Insurances executed or to be executed by such named insured as the Bank may require in favour of the Bank, in such form as the Bank may in its sole discretion require;

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

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

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

**“Collateral Account”** means an interest bearing USD Account required to be opened hereunder with the Bank in the name of the Technical Manager designated “Navios — Earnings Account” and includes any other account designated in writing by the Bank to be the Collateral Account for the purposes of this Agreement;

**“Collateral Account Pledge”** means the second priority pledge required to be executed hereunder by the Technical Manager over the Collateral Account in such form as the Bank may agree or require;

**“Collateral Charter Assignment”** means a second priority specific assignment of any Extended Employment Contract in respect of a Collateral Vessel required to be executed hereunder by either Collateral Guarantor in favour of the Bank (including any notices and/or acknowledgements and/or undertakings associated therewith) in such form as the Bank may require in its sole discretion;

**“Collateral Charter Insurance Assignment”** means a second priority assignment of the Charter Insurances in respect of the Collateral Vessels executed or to be executed by such named insured as the Bank may require in favour of the Bank, in such form as the Bank may in its sole discretion require;

**“Collateral General Assignment”** means, in respect of each Collateral Vessel, the second priority deed of assignment of its earnings, insurances and requisition compensation executed or to be executed by the relevant Collateral Guarantor in favour of the Bank in such form as the Bank may require in its sole discretion, and in the plural means both of them;

**“Collateral Guarantee”** means each guarantee required to be executed hereunder by the Collateral Guarantors in such form as the Bank may agree or require and in the plural means both of them;

**“Collateral Guarantor”** means each of Chilali Corp. (**“Chilali”**) and Rumer Holding Ltd. (**“Rumer”**), each of which is incorporated in the Marshall Islands and has its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960, and in the plural means both of them;

**“Collateral Loan Agreement”** means the loan agreement dated 11 December 2007 (as amended) made between the Collateral Guarantors as borrowers and the Bank as lender;

**“Collateral Loan Agreement Supplement”** means an agreement supplemental to the Collateral Loan Agreement providing for the execution of the Collateral Guarantees, the Collateral Mortgages, the Collateral General assignments, the Collateral Charter Assignments, the Collateral Charter Insurance assignments and the Collateral Manager’s Undertakings, made or to be made by the Collateral Guarantors and the Bank thereof in such form as the Bank may agree or require;

**“Collateral Manager’s Undertakings”** means, collectively, the undertakings and (in respect of the Technical Manager’s undertakings) assignments required to be executed respectively hereunder by the Technical Manager and the Commercial Manager in favour of the Bank in respect of each of the Collateral Vessels each in such form as the Bank may require in its sole discretion (and **“Collateral Managers’ Undertakings”** means all of them);

**“Collateral Mortgage”** means, in relation to each Collateral Vessel, the second preferred mortgage of such Collateral Vessel required to be executed hereunder by the Collateral Guarantor which is the owner thereof in such form as the Bank may agree or require, and in the plural means both of them;

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

**“Commercial Manager”** means any person appointed by an Owner, with the prior written consent of the Bank, as the commercial manager of the relevant Vessel

“**Commitment**” means, in relation to each Tranche, or, as the context may require, the Loan, the maximum amount which the Bank has agreed to lend to the Borrowers under clause 2.1 as reduced by any relevant term of this Agreement;

“**Compulsory Acquisition**” means, in respect of a Vessel, requisition for title or other compulsory acquisition including, if that ship is not released therefrom within the Relevant Period, capture, appropriation, forfeiture, seizure, detention, deprivation or confiscation howsoever for any reason (but excluding requisition for use or hire) by or on behalf of any Government Entity or other competent authority or by pirates, hijackers, terrorists or similar persons; “**Relevant Period**” means for the purposes of this definition of Compulsory Acquisition either (i) sixty (60) days or, (ii) if relevant underwriters confirm in writing (in terms satisfactory to the Bank) prior to the end of such sixty (60) day period that such capture, seizure, detention or confiscation will be fully covered by the relevant Owner’s war risks insurance if continuing for a further period exceeding ten (10) calendar months, the shorter of twelve (12) months and such period at the end of which cover is confirmed to attach;

“**Corporate Guarantee**” means the guarantee required to be executed hereunder by the Corporate Guarantor in such form as the Bank may agree or require ;

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

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

“**Delivery Date**” means, in relation to a Vessel, the date on which title to and possession of that Vessel is transferred from the Builder to the relevant Borrower, which are expected to be, in respect of Vessel A, 31 October 2010, and in respect of Vessel B, 31 December 2010;

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

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

“**Drawdown Notice**” means, in relation to each Advance, a notice substantially in the form of schedule 1;

“**Drawdown Period**” means the period commencing on the Execution Date and ending on the earlier of (i) 31 August 2011 and (ii) any date on which the Commitment is finally cancelled or fully drawn under the terms of this Agreement;

“**Earnings Account**” means an interest bearing USD Account required to be opened hereunder with the Bank in the name of the Borrowers designated “Kohylia/ Ducale — Earnings Account” and includes any other account designated in writing by the Bank to be the Earnings Account for the purposes of this Agreement;

**“Earnings Account Pledge”** means the pledge required to be executed hereunder by the Borrowers over the Earnings Account in such form as the Bank may agree or require;

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

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

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

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

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

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

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



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

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

“**Extended Employment Contract**” means, in respect of a Mortgaged Vessel, any time charterparty, contract of affreightment or other contract of employment of such ship (including the entry of either Vessel in any pool) which has a tenor of not less than twelve (12) months (including any options to renew or extend such tenor), including the Existing Charters;

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

“**Flag State**” means the Republic of Panama or such other state or territory agreed by the Bank, at the request of the Borrowers, as the “Flag State” of the Vessels for the purposes of the Security Documents;

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

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

“**Group**” means the Corporate Guarantor and its subsidiaries but excluding any company which is publicly listed;

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

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

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

“**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 3;

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

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

**“ISM Code”** means in relation to its application to the Borrowers, the Vessels and their 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 December 1993 and incorporated on 19 May 1994 into Chapter IX of the International Convention for 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 December 1995,

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

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

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

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

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

**“LIBOR”** means, for a particular period, the rate equal to the offered quotation for deposits in USD in an amount comparable with the amount in relation to which LIBOR is to be determined for a period equal to, or as near as possible equal to, the relevant period which appears on Reuters Screen LIBOR01 at or about 11 a.m. on the second Banking Day before the first day of such period (and, for the purposes of this Agreement, “Reuters Screen LIBOR01” means the display designated as “LIBOR01” on the Reuters Service or such other page as may replace LIBOR01 on that service for the purpose of displaying rates comparable to that rate or on such other service as may be nominated by the British Bankers’ Association as the information vendor for the purpose of displaying the British Bankers’ Association Interest Settlement Rates for USD)) or (if the Bank is for any reason unable to ascertain the rate) the rate determined by the Bank to be that at which deposits in USD and in an amount comparable with the amount in relation to which LIBOR is to be determined and for a period equal to the relevant period were being offered by the Bank to prime banks in the London Interbank Market at or about 11 a.m. on the second Banking Day before the first day of such period

**“Loan”** means the principal amount borrowed by the Borrowers under this Agreement or (as the context may require) the principal amount owing to the Bank under this Agreement at any relevant time;

**“MII & MAP Policy”** means a mortgagee’s interest and (if required by the Bank) pollution risks insurance policy (including additional perils (pollution) cover) in respect of each Mortgaged Vessel and Collateral Vessel to be effected by the Bank to cover the Mortgaged Vessels and Collateral Vessels as the same may be renewed or replaced annually thereafter and maintained throughout the Facility Period through such brokers, with such underwriters and containing such coverage as may be acceptable to the Bank in its sole discretion, insuring a sum of at least one hundred and twenty per cent (120%) of the Loan;

**“Management Agreements”** means, in respect of each Vessel, the agreements between (i) the relevant Owner and the Technical Manager and (ii) the relevant Owner and the Commercial Manager, each in a form previously approved in writing by the Bank;

**“Manager’s Undertakings”** means, collectively, the undertakings and (in respect of the Technical Manager’s undertakings) assignments required to be executed respectively hereunder by the Technical Manager and the Commercial Manager in favour of the Bank in respect of each of the Vessels each in such form as the Bank may require in its sole discretion (and **“Managers’ Undertakings”** means all of them);

**“Margin”** means, in respect of each Tranche, 1.75 per cent per annum;

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

**“Mortgage”** means, in relation to each Vessel, the first preferred mortgage of such Vessel required to be executed hereunder by the Borrower which is the owner thereof in such form as the Bank may agree or require, and in the plural means both of them;

**“Mortgaged Vessel”** means, at any relevant time, a Vessel which is at such time subject to a Mortgage and/or the Earnings, Insurances and Requisition Compensation (each such term as defined in the relevant Ship Security Documents) of which are subject to an Encumbrance pursuant to the relevant Ship Security Documents and a Vessel shall, for the purposes of this Agreement, be regarded as a Mortgaged Vessel as from whichever shall be the earlier of (a) her Delivery Date and (b) the date on which the Mortgage of that Vessel has been executed and registered in accordance with this Agreement until whichever shall be the earlier of (i) the payment in full of the amount required to be paid to the Bank pursuant to clause 4.3 or 4.4 following the Total Loss or sale respectively of such Vessel and (ii) the end of the Facility Period

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

**“Owner”** means, in relation to Vessel A, Kohylia and in relation to Vessel B, Ducale, and in the plural means both of them;

**“Permitted Encumbrance”** means any Encumbrance created pursuant to or expressly permitted by the Security Documents and Permitted Liens or otherwise permitted by the Bank;

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

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

**“Predelivery Security Assignment”** means, in respect of each Vessel, a deed of assignment of the Shipbuilding Contract and of the Refund Guarantee in respect thereof in such form as the Bank may agree or require and in the plural means both of them;

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

**“Receiving Bank”** means Wachovia Bank of New York, USA or such other bank as may from time to time be notified by the Bank to the Borrowers;

**“Refund Guarantee”** means each of the Vessel A Refund Guarantee and the Vessel B Refund Guarantee and in the plural means both of them;

**“Refund Guarantor”** means each of the Vessel A Refund Guarantor and the Vessel B Refund Guarantor and in the plural means both of them;

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

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

**“Repayment Dates”** means, in respect of each Tranche, subject to clause 6.3, each of the dates falling at six monthly intervals after the Drawdown Date in respect of the Advance referred to in Clause 2.3.1 (c) or Clause 2.3.2 (c) as the case may be in respect of such Tranche, up to and including the date falling 120 months after such Drawdown Date;

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

security under the relevant Security Documents and/or to ensure the continuous validity and enforceability thereof;

**“Required Security Amount”** means the amount in USD (as certified by the Bank) which is at any relevant time (i) for five years following the first Delivery Date, 115% of the Loan and (ii) thereafter 125% of the Loan;

**“Retention Account”** means, an interest bearing USD account in the name of the Borrowers opened or (as the context may require) to be opened by the Borrowers with the Bank and includes any sub-accounts thereof and any other account designated in writing by the Bank to be the Retention Account for the purposes of this Agreement;

**“Retention Account Pledge”** means the pledge required to be executed hereunder by the Borrowers over the Retention Account in such form as the Bank may agree or require;;

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

- (c) one-sixth (1/6th) of the repayment instalment in respect of the relevant Tranche falling due for payment pursuant to clause 4.1 (as the same may have been reduced by any prepayment) on the next Repayment Date in respect of such Tranche after the relevant Retention Date; and
- (d) the applicable fraction (as hereinafter defined) of the aggregate amount of interest falling due for payment in respect of each part of the relevant Tranche during and at the end of each Interest Period in respect thereof current at the relevant Retention Date and, for this purpose, the expression **“applicable fraction”** in relation to each Interest Period shall mean a fraction having a numerator of one and a denominator equal to the number of Retention Dates falling within the relevant Interest Period;

**“Retention Dates”** means, in relation to each Tranche, the date falling thirty (30) days after the Delivery Date in respect of the Vessel in respect of which such Tranche was made available, and each of the dates falling at monthly intervals after such date and prior to the final Repayment Date;

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

**“Security Party”** means the Borrowers, the Corporate Guarantor, the Collateral Guarantors, the Manager or any other person who may at any time be a party to any of the Security Documents (other than the Bank);

“**Security Value**” means the amount in USD (as certified by the Bank) which, at any relevant time, is the aggregate of (i) the Valuation Amounts of the Vessels as most recently determined in clause 8.2.2 and (ii) the market value of any additional security (or, in the case of cash Dollars, its face value) the at that time held by the Bank and provided under clause 8.2.1 or otherwise;

“**Seller**” means in relation to Vessel A, the Vessel A Seller, and to Vessel B, the Vessel B Seller;

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

“**Ship Security Documents**” means in relation to each Vessel, the Mortgage, the General Assignment and the Manager’s Undertaking in respect of such Vessel;

“**Shipbuilding Contract**” means each of the Vessel A Shipbuilding Contract and the Vessel B Shipbuilding Contract and in the plural means both of them;

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

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

“**Total Loss**” means, in respect of each Vessel:

- (e) actual, constructive, compromised, agreed or arranged total loss of such Vessel; or
- (f) Compulsory Acquisition; or
- (g) the hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (other than Compulsory Acquisition) by any Government Entity, or by persons allegedly acting or purporting to act on behalf of any Government Entity, unless the Vessel be released and restored to the relevant Borrower within 30 days after such incident;

“**Tranche A**” means the amount of up to USD37,500,000, being the aggregate of all of the Advances to be made available by the Bank to the Borrowers to assist Kohylia in its acquisition of Vessel A;

“**Tranche B**” means the amount of up to USD37,500,000, being the aggregate of all of the Advances to be made available by the Bank to the Borrowers to assist Ducale in its acquisition of Vessel B; and

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

“**Transferee**” is defined in clause 15.4; and

“U.S.” means the United States of America;

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

“Underlying Documents” means, together, the Share Purchase Agreements, the Shipbuilding Contracts, the Refund Guarantees, any Extended Employment Contracts and the Management Agreements ;

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

“Valuation (charter-free) Amount” means, in respect of each Mortgaged Vessel, the value thereof as most recently determined under clause 8.2.2, but without taking into account any charterparty to which a Mortgaged Vessel is subject;

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

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

Words and expressions defined in Schedule 4 (Vessel Details) shall have the meanings given to them therein as if the same were set out in full in this clause 1.2.

### 1.3 Construction

In this Agreement, unless the context otherwise requires:

- 1.3.1 clause headings and the index are inserted for convenience of reference only and shall be ignored in the construction of this Agreement;
- 1.3.2 references to clauses and schedules are to be construed as references to clauses of, and schedules to, this Agreement and references to this Agreement include its schedules;
- 1.3.3 references to (or to any specified provision of) this Agreement or any other document shall be construed as references to this Agreement, that provision or that document as in force for the time being and as duly amended and/or supplemented and/or novated;
- 1.3.4 references to a “regulation” include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any Government Entity, central bank or any self-regulatory or other supra-national authority;
- 1.3.5 references to any person in or party to this Agreement shall include reference to such person’s lawful successors and assigns and references to the Bank shall also include a Transferee;
- 1.3.6 words importing the plural shall include the singular and vice versa;
- 1.3.7 references to a time of day are, unless otherwise stated, to London time;
- 1.3.8 references to a person shall be construed as references to an individual, firm, company, corporation or unincorporated body of persons or any Government Entity;

- 1.3.9 references to a “guarantee” include references to an indemnity or any other kind of assurance whatsoever (including, without limitation, any kind of negotiable instrument, bill or note) against financial loss or other liability including, without limitation, an obligation to purchase assets or services as a consequence of a default by any other person to pay any Indebtedness and “guaranteed” shall be construed accordingly;
- 1.3.10 references to any statute or other legislative provision are to be construed as references to any such statute or other legislative provision as the same may be re enacted or modified or substituted by any subsequent statute or legislative provision (whether before or after the date hereof) and shall include any regulations, orders, instruments or other subordinate legislation issued or made under such statute or legislative provision;
- 1.3.11 a certificate by the Bank as to any amount due or calculation made or any matter whatsoever determined in connection with this Agreement shall be conclusive and binding on the Borrowers except for manifest error;
- 1.3.12 if any document, term or other matter or thing is required to be approved, agreed or consented to by the Bank such approval, agreement or consent must be obtained in writing unless the contrary is stated;
- 1.3.13 time shall be of the essence in respect of all obligations whatsoever of the Borrowers under this Agreement, howsoever and whensoever arising; and
- 1.3.14 the words “other” and “otherwise” shall not be construed eiusdem generis with any foregoing words where a wider construction is possible.

#### 1.4 **Accounting Terms and references to currencies**

All accounting terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted international accounting principles (or such other accounting principles as the Bank deems appropriate).

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

Except for clause 18.6.4 no part of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

## 2 **THE BANK’S COMMITMENT, ADVANCE AND USE OF PROCEEDS**

### 2.1 **The Commitment**

In reliance upon each of the representations and warranties in clause 7, the Bank agrees to pay to the Builder by way of loan to the Borrowers on the terms of this Agreement the principal sum of up to USD 75,000,000 in two equal Tranches of USD37,500,000 each in up to three Advances.

### 2.2 **Advance**

On the terms and subject to the conditions of this Agreement, each Tranche shall be advanced in up to three (3) Advances on the relevant Drawdown Dates following receipt by the Bank from the Borrowers of Drawdown Notices not later than 10 a.m. on the second Banking Day before each proposed Drawdown Date. A Drawdown Notice shall be effective on actual receipt by the Bank and, once given, shall, subject as provided in clause 3.6.1, be irrevocable.



### 2.3 Amount

2.3.1 The principal amount specified in each Drawdown Notice for borrowing on the Drawdown Dates shall, subject to the terms of this Agreement, in respect of Tranche A, not exceed:

- (a) USD15,000,000 in respect of the amount payable by the relevant Borrower to refinance the amount paid by Kohylia to the relevant Seller under the Vessel A Purchase Agreement;
- (b) USD16,000,000 in respect of the instalment payable by the relevant Borrower to the Builder under the Vessel A Shipbuilding Contract on the day within 3 days after the relevant Refund Guarantor's written confirmation that the Vessel A Refund Guarantee continues in full force and effect;
- (c) the least of (i) USD6,500,000, (ii) such amount as when added to the already drawn Advances in respect of Tranche A will be 53.3% of the gross purchase price payable by the relevant Borrower under the Vessel A Shipbuilding Contract, (iii) such amount as when added to the already drawn Advances in respect of Tranche A will be 90% of the Valuation (charter-free) Amount of Vessel A as at her Delivery Date and (iv) such amount as when added to the already drawn Advances in respect of Tranche A will be 65% of the Valuation Amount of Vessel A as at her Delivery Date

2.3.2 The principal amount specified in each Drawdown Notice for borrowing on the Drawdown Dates shall, subject to the terms of this Agreement, in respect of Tranche B, not exceed:

- (a) USD14,671,000 in respect of the amount payable by the relevant Borrower to pay to the relevant Seller under the Vessel B Purchase Agreement;
- (b) USD16,000,000 in respect of the instalment payable by the relevant Borrower to the Builder under the Vessel B Shipbuilding Contract on the day within 3 days after the relevant Refund Guarantor's written confirmation that the Vessel B Refund Guarantee continues in full force and effect;
- (c) the least of (i) USD6,829,000, (ii) such amount as when added to the already drawn Advances in respect of Tranche B will be 53.3% of the gross purchase price payable by the relevant Borrower under the Vessel B Shipbuilding Contract, (iii) such amount as when added to the already drawn Advances in respect of Tranche B will be 90% of the Valuation (charter-free) Amount of Vessel B as at her Delivery Date and (iv) such amount as when added to the already drawn Advances in respect of Tranche B will be 65% of the Valuation Amount of Vessel B as at her Delivery Date.

### 2.4 Availability

Upon receipt of a Drawdown Notice complying with the terms of this Agreement the Bank shall, subject to the provisions of clause 9, make each Advance available to the Borrowers on the relevant Drawdown Date in accordance with clause 2.2. The Borrowers acknowledge that payment of each Advance to the Builder in accordance with clause 2.2 shall satisfy the obligation of the Bank to lend that part of the Commitment to the Borrowers under this Agreement.

### 2.5 Cancellation

If any part of the Loan is not drawn down by the end of the Drawdown Period, the Commitment shall thereupon be automatically cancelled and the Bank shall have no further obligation under this Agreement.

## **2.6 Use of Proceeds**

Without prejudice to the Borrowers' obligations under clause 8.1.4, the Bank shall have no responsibility for the Borrowers' use of the proceeds of the Loan.

## **3 INTEREST AND INTEREST PERIODS**

### **3.1 Normal interest rate**

The Borrowers agree to pay interest on each Tranche in respect of each Interest Period relating thereto on each Interest Payment Date (or, in the case of Interest Periods of more than six (6) months, by instalments, the first six (6) months from the commencement of the Interest Period and the subsequent instalments at intervals of six (6) months) at the rate per annum determined by the Bank to be the aggregate of (a) the Margin and (b) LIBOR for such period.

### **3.2 Selection of Interest Periods**

The Borrowers may by notice received by the Bank not later than 10 a.m. on the second Banking Day before the start of each Interest Period request that such Interest Period shall have a length three (3) or six (6) months or such other period as the Borrowers may select and the Bank may, subject to the same being available in the London Interbank Market, agree.

### **3.3 Determination of Interest Periods**

The length of each Interest Period shall be as requested by the Borrowers under clause 3.2 but so that:

- 3.3.1 the first Interest Period in respect of each Tranche shall start on the Drawdown Date in respect of the first Advance in respect of that Tranche, and each subsequent Interest Period shall start on the last day of the previous Interest Period;
- 3.3.2 the first Interest Period in respect of each subsequent Advance shall commence on its Drawdown Date and terminate simultaneously with the Interest Period which is then current for the Tranche under which the Advance is made available;
- 3.3.3 if any Interest Period would otherwise overrun a Repayment Date, then, in the case of the last Repayment Date, such Interest Period shall end on such Repayment Date, and in the case of any other Repayment Date the relevant Tranche shall be divided into parts so that there is one part in the amount of the repayment instalment due on each Repayment Date falling in that Interest Period and having an Interest Period ending on the relevant Repayment Date and another part consisting of the balance of the relevant Tranche having an Interest Period ascertained in accordance with the other provisions of this clause 3; and
- 3.3.4 if the Borrowers fail to specify the length of an Interest Period in accordance with the provisions of clause 3.2 and this clause 3.3 such Interest Period shall last three months or such other period as complies with this clause 3.3.

### **3.4 Default interest**

If the Bank fails to receive any sum whatsoever on its due date for payment under any of the Security Documents, the Borrowers must pay interest on such sum on demand from the due date up to the date of actual payment (as well after as before judgment) at a rate determined by the Bank under this clause 3.4. The period starting on such due date and ending on such date of payment shall be divided into successive periods of not more than three (3) months as selected by the Bank each of which (other than the first, which shall start on such due date) shall start on the last day of the preceding such period. The rate of interest applicable to each such period shall be the aggregate (as determined by the Bank) of (a) two and a half (2.5) per cent per annum, (b) the Margin and (c) LIBOR for such period. Such interest shall be due and payable on the last day of each such period as determined by the Bank and each such day shall be treated as an Interest Payment Date, provided that if such unpaid sum is an amount of principal which became due and payable, by reason of a declaration by the Bank under clause 10.2 or a prepayment pursuant to clauses 4.3, 4.4, 8.2 or 12.1, on a date other than an Interest Payment Date relating thereto, the first such period selected by the Bank shall be of a length equal to the period between the due date of such principal sum and such Interest Payment Date and interest shall be payable on such principal sum during such period at a rate of two and a half (2.5) per cent above the rate applicable immediately before it shall have become so due and payable. If, for the reasons specified in clause 3.6.1, the Bank is unable to determine a rate in accordance with the provisions of this clause 3.4, interest on any sum not paid on its due date for payment shall be calculated at a rate determined by the Bank to be two and a half (2.5) per cent per annum above the aggregate of the Margin and the cost of funds to the Bank compounded at such intervals as the Bank selects.

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

The Bank agrees to notify the Borrowers promptly of the length of each Interest Period and of each rate of interest determined by it under this clause 3.

### **3.6 Market disruption; non-availability**

3.6.1 Whenever, at any time prior to the start of any Interest Period, the Bank determines:

- (a) that adequate and fair means do not exist for determining LIBOR during such Interest Period; or
- (b) that deposits in USD are not available to the Bank in the London Interbank Market in its ordinary course of business in sufficient amounts to fund the Loan for such Interest Period;

the Bank shall promptly give notice (a "Determination Notice") thereof to the Borrowers. A Determination Notice shall give brief details of the circumstances giving rise to its issue. After the giving of any Determination Notice any undrawn amount of the Commitment may not be borrowed until notice to the contrary is given to the Borrowers by the Bank;

3.6.2 upon a Determination Notice being given, the Borrower and the Bank shall discuss the same in order to agree an alternative basis for maintaining the Loan, but if they are unable to agree an alternative basis within 30 days of the date of the Determination Notice, then 40 after the Determination Notice being given, the Bank shall certify an alternative (such basis, or if agreed, the basis agreed by the Bank and the Borrower, the "Substitute Basis") for maintaining the Loan. The Substitute Basis may include alternative interest periods, alternative currencies or alternative rates of interest but must include a margin above the cost of funds to the Bank equivalent to the Margin. Each Substitute Basis certified to the

Borrowers or agreed shall take effect in accordance with its terms from the date specified in the Determination Notice until such time as the Bank notifies the Borrowers that none of the circumstances specified in clause 3.6.1 continues to exist whereupon the normal interest rate fixing provisions of this Agreement shall again apply. If the Borrower does not agree with any Substitute Basis certified by the Bank if there is no agreement between the parties, then the Borrower may prepay the Loan or the relevant part thereof, and the terms of Clause 4.5 and 4.6 shall apply to any such prepayment

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

##### **4.1 Repayment**

Subject as otherwise provided in this Agreement, the Borrowers must repay each Tranche by 20 instalments, one such instalment to be repaid on each of the Repayment Dates and the balloon instalment referred to hereafter will also be repaid on the relevant final Repayment Date. Subject to the provisions of this Agreement, the amount of:

- (i) the first 20 instalments will be USD1,375,000 each; and
- (ii) the balloon instalment will be USD10,000,000.

If the Commitment in respect of either Tranche is not drawn in full, the amount of each repayment instalment for that Tranche shall be reduced proportionately.

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

The Borrowers may prepay the Loan in whole or part (being USD1,000,000 or any larger sum which is a whole multiple of USD1,000,000) on any Interest Payment Date relating to the part of the Loan to be repaid without premium or penalty.

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

On the date falling ninety (90) days after that on which a Mortgaged Vessel became a Total Loss or, if earlier, on the date upon which the relevant insurance proceeds are, or Requisition Compensation (as defined in the Mortgage for such Vessel) is, received by the relevant Borrower (or the Bank pursuant to the Security Documents), the Borrowers must prepay the Relevant Tranche.

###### **4.3.1 Interpretation**

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

- (a) in the case of an actual total loss of a Vessel, on the actual date and at the time such Vessel was lost or, if such date is not known, on the date on which such Vessel was last reported;
- (b) in the case of a constructive total loss of a Vessel, upon the date and at the time notice of abandonment of the ship is given to the then insurers of such Vessel (provided a claim for total loss is admitted by such insurers) or, if such insurers do not immediately admit such a claim, at the date and at the time at which either a total loss is subsequently admitted by such insurers or a total loss is subsequently adjudged by a competent court of law or arbitration tribunal to have occurred;

- (c) in the case of a compromised or arranged total loss of a Vessel, on the date upon which a binding agreement as to such compromised or arranged total loss has been entered into by the then insurers of such Vessel;
- (d) in the case of Compulsory Acquisition, on the date upon which the relevant requisition of title or other compulsory acquisition occurs; and
- (e) in the case of hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of a Vessel (other than within the definition of Compulsory Acquisition) by any Government Entity, or by persons allegedly acting or purporting to act on behalf of any Government Entity, which deprives an Owner of the use of such Vessel for more than thirty (30) days, upon the expiry of the period of thirty (30) days after the date upon which the relevant incident occurred.

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

On the date of completion of the sale of any Mortgaged Vessel the Borrowers must prepay the Relevant Tranche.

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

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

- 4.5.1 accrued interest on the amount to be prepaid to the date of such prepayment;
- 4.5.2 any additional amount payable under clauses 6.6 or 11.2; and
- 4.5.3 all other sums payable by the Borrowers to the Bank under this Agreement or any of the other Security Documents including, without limitation, any accrued commitment commission payable under clause 5.1 and any Break Costs.

#### 4.6 **Notice of prepayment; reduction of repayment instalments**

- 4.6.1 No prepayment may be effected under clause 4.2 unless the Borrowers shall have given the Bank at least fifteen (15) days' prior written notice of their intention to make such prepayment. Every notice of prepayment shall be effective only on actual receipt by the Bank, shall be irrevocable, shall specify the amount to be prepaid and shall oblige the Borrowers to make such prepayment on the date specified.
- 4.6.2 Any amounts prepaid pursuant to clause 4.2 shall be applied against the Loan in reducing the Balloon Instalments pro rata between the Tranches and thereafter the repayment instalments of each Tranche in inverse order of their maturity.
- 4.6.3 The Borrowers may not prepay any part of the Loan except as expressly provided in this Agreement.
- 4.6.4 No amount prepaid may be reborrowed.

### 5 **COMMITMENT COMMISSION, FEES AND EXPENSES**

#### 5.1 **Fees**

The Borrowers agree to pay to the Bank:

- 5.1.1 on the date of this Agreement, an arrangement fee of USD300,000, payable on or before the date of this Agreement; and
- 5.1.2 on each of the dates falling at three (3) monthly intervals commencing on the date falling three (3) months after the date of this Agreement until the end of the Drawdown Period, commitment commission computed from the date of this Agreement (in the case of the first payment of commission) and from the date of the preceding payment of commission (in the case of each subsequent payment) at the rate of zero point five per cent. (0.5%) per annum on the daily undrawn maximum available Commitment
- the fee referred to in clause 5.1.1 and the commitment commission referred to in clause 5.1.2 must be paid by the Borrowers to the Bank regardless of whether any part of the Commitment is ever advanced.

**5.2 Expenses**

The Borrowers agree to reimburse the Bank on a full indemnity basis on demand for all expenses and/or disbursements whatsoever certified by the Bank as having been incurred by it from time to time and at any time:

- 5.2.1 in connection howsoever with the negotiation, preparation, execution and, where relevant, registration of the Security Documents and of any contemplated or actual amendment, indulgence or the granting of any waiver or consent howsoever in connection with any of the Security Documents; and
- 5.2.2 in contemplation or furtherance of, or otherwise howsoever in connection with, the exercise or enforcement of, or preservation of any rights, powers, remedies or discretion under any of the Security Documents or any amendment thereto or consideration of the Bank's rights thereunder or any action proposed or taken with interest at the rate referred to in clause 3.4 from the date on which such expenses and/or disbursements were incurred to the date of payment (as well after as before judgment).

**5.3 Value Added Tax**

All fees and expenses payable under to this clause 5 must be paid with value added tax or any similar tax (if any) properly chargeable thereon. Any value added tax chargeable in respect of any services supplied by the Bank under this Agreement must, on delivery of the value added tax invoice, be paid in addition to any sum agreed to be paid hereunder.

**5.4 Stamp and other duties**

The Borrowers must pay all stamp, documentary, registration or other like duties or taxes (including any duties or taxes payable by the Bank) imposed on or in connection with any of the Shipbuilding Contracts, the Management Agreements, the Security Documents or the Loan and agree to indemnify the Bank against any liability arising by reason of any delay or omission by either Borrower to pay such duties or taxes.

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

**6.1 No set-off or counterclaim**

All payments to be made by the Borrowers under any of the Security Documents must be made in full, without any set-off or counterclaim whatsoever and, subject to clause 6.6, free

and clear of any deductions or withholdings, in USD not later than 11 a.m. London time on the due date to the account of the Bank at the Receiving Bank or to such other account at such other bank in such place as the Bank may from time to time notify to the Borrowers.

#### **6.2 Payment by the Bank**

The proceeds of the Loan to be advanced by the Bank to the Borrowers under this Agreement must be remitted in USD on the relevant Drawdown Date to the account or accounts specified in the relevant Drawdown Notice.

#### **6.3 Non-Banking Days**

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

#### **6.4 Calculations**

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

#### **6.5 Currency of account**

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

#### **6.6 Grossing-up for Taxes**

If at any time the Borrowers must make any deduction or withholding in respect of Taxes from any payment due under any of the Security Documents, the sum due from the Borrowers in respect of such payment must then be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Bank receives on the due date for such payment (and retains, free from any liability in respect of such deduction or withholding), a net sum equal to the sum which it would have received had no such deduction or withholding been made and the Borrowers agree to indemnify the Bank on demand against any losses or costs certified by the Bank to have been incurred by it by

reason of any failure of the Borrowers to make any such deduction or withholding or by reason of any increased payment not being made on the due date for such payment. The Borrowers must promptly deliver to the Bank any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.

#### 6.7 **Loan account**

The Bank agrees to maintain a control account showing the Loan and other sums owing by the Borrowers under the Security Documents and all payments in respect thereof being made from time to time. The control account shall, in the absence of manifest error, be conclusive as to the amount from time to time owing by the Borrowers under the Security Documents.

#### 6.8 **Bank may assume receipt**

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

#### 6.9 **Partial payments**

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

- 6.9.1 first, in or towards payment, on a pro-rata basis, of any unpaid costs and expenses of the Bank under any of the Security Documents;
- 6.9.2 secondly, in or towards payment of any fees payable to the Bank under, or in relation to, the Security Documents which remain unpaid;
- 6.9.3 thirdly, in or towards payment to the Bank of any accrued interest owing in respect of the Loan which shall have become due under any of the Security Documents but remains unpaid;
- 6.9.4 fourthly, in or towards payment to the Bank of any principal in respect of the Loan which shall have become due but remains unpaid;
- 6.9.5 fifthly, in or towards payment to the Bank for any loss suffered by reason of any such payment in respect of principal not being effected on an Interest Payment Date relating to the part of the Loan repaid and which amounts are so payable under this Agreement; and



6.9.6 sixthly, in or towards payment to the relevant person of any other sum which shall have become due under any of the Security Documents but remains unpaid (and, if more than one such sum so remains unpaid, on a pro rata basis).

The order of application set out in clauses 6.9.1 to 6.9.6 may be varied by the Bank without any reference to, or consent or approval from, the Borrowers..

## **7 REPRESENTATIONS AND WARRANTIES**

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

The Borrowers represent and warrant to the Bank that:

#### **7.1.1 Due incorporation**

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

#### **7.1.2 Corporate power**

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

#### **7.1.3 Binding obligations**

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

#### **7.1.4 No conflict with other obligations**

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

#### **7.1.5 No default**

no Default has occurred;

7.1.6 No litigation or judgments

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

7.1.7 No filings required

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

7.1.8 Required Authorisations and legal compliance

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

7.1.9 Choice of law

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

7.1.10 No immunity

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

7.1.11 Financial statements correct and complete

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

#### 7.1.12 Pari passu

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

#### 7.1.13 Information

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

#### 7.1.14 No withholding Taxes

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

#### 7.1.15 Indenture

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

#### 7.1.16 Use of proceeds

the Borrowers shall apply the Loan only for the purposes specified in clause 2.1;

#### 7.1.17 The Mortgaged Vessels

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

- (a) in the absolute sole, legal and beneficial ownership of the relevant Owner;
- (b) registered through the offices of the relevant Registry as a ship under the laws and flag of the relevant Flag State;
- (c) in compliance with the ISM Code and the ISPS Code and operationally seaworthy and in every way fit for service;
- (d) in good and sea-worthy and cargo-worthy condition; and
- (e) classed with the relevant Classification free of all requirements and recommendations of the relevant Classification Society.

#### 7.1.18 Mortgaged Vessels' employment

except with the prior written consent of the Bank, there will not be any agreement or arrangement whereby the Earnings (as defined in the relevant Ship Security Documents) of either Mortgaged Vessel may be shared or pooled howsoever with any other person;

#### 7.1.19 Freedom from Encumbrances

neither Mortgaged Vessel nor its Earnings, Insurances or Requisition Compensation (each as defined in the relevant Ship Security Documents) nor the Earnings Account or the Retention Account nor any Extended Employment Contract in respect of such Mortgaged Vessel nor any other properties or rights which are, or are to be, the subject of any of the Security Documents nor any part thereof will be subject to any Encumbrance except Permitted Encumbrances;

#### 7.1.20 Environmental Matters

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

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

#### 7.1.21 ISM and ISPS Code

each of the Borrowers has complied with and continues to comply with and has procured that the Technical Manager has complied with and continues to comply with the ISM Code, the ISPS Code and all other statutory and other requirements relative to its business and in particular each Borrower or the Technical Manager has obtained and maintains a valid DOC and SMC for each Mortgaged Vessels and that it and the Technical Manager has implemented and continues to implement an ISM SMS;

#### 7.1.22 Copies true and complete

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

#### 7.1.23 the Borrowers are the ultimate beneficiaries of the Loan;

- 7.1.24 no Security Party has incurred any Indebtedness save under the Indenture, this Agreement or as otherwise disclosed by the Corporate Guarantor in its filings to the SEC from time to time;
- 7.1.25 the Corporate Guarantor and both Borrowers have filed all tax and other fiscal returns required to be filed by any tax authority to which they are subject;
- 7.1.26 neither Borrower has an office in England.

## 7.2 **Repetition of representations and warranties**

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

## **8 UNDERTAKINGS**

### 8.1 **General**

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

#### 8.1.1 Notice of Default and Proceedings

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

#### 8.1.2 Authorisation

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

#### 8.1.3 Corporate Existence

ensure that each Security Party maintains its corporate existence as a body corporate duly organised and validly existing and in good standing under the laws of the Pertinent Jurisdiction;

#### 8.1.4 Use of proceeds

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

#### 8.1.5 Pari passu

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

#### 8.1.6 Financial statements

provide to the Bank:

(a) within 75 days after the end of each of the first three fiscal quarters in each fiscal year, quarterly reports on US Form 6-K (or any successor form) in respect of the Corporate Guarantor containing unaudited financial statements (including a balance sheet and statement of income, changes in stockholders' equity and cash flow) and a management's discussion and analysis of financial condition and results of operations (or equivalent disclosure) for and as of the end of such fiscal quarter (with comparable financial statements for the corresponding fiscal quarter of the immediately preceding fiscal year);

(b) within 150 days after the end of each fiscal year of the Corporate Guarantor, an annual report on US Form 20-F (or any successor form) in respect of the Corporate Guarantor containing the information required to be contained therein for such fiscal year; and

(c) at or prior to such times as would be required to be filed or furnished to the SEC (as defined in the Indenture) (hereinafter, the "SEC") if the Corporate Guarantor was then a "foreign private issuer" subject to Section 13(a) or 15(d) of the US Exchange Act, all such other reports and information that the Corporate Guarantor would have been required to file pursuant thereto

(d) a copy of all such information and reports referred to in clauses (1) to (3) (inclusive) of Section 4.17(a) of the Indenture within the time periods specified therein (unless the SEC shall not accept such a filing) and, upon the Bank's request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act

*Provided* that, in relation to (a), (b) and (c) above, to the extent that the Corporate Guarantor ceases to qualify as a "foreign private issuer" within the meaning of the US Exchange Act, whether or not the Corporate Guarantor is then subject to Section 13(a) or 15(d) of the US Exchange Act, the Borrowers shall furnish to the Bank, so long as any Notes (as defined in the Indenture) are outstanding, within 30 days of the respective dates on which the Corporate Guarantor would be required to file such documents with the SEC if it was required to file such documents under the US Exchange Act, all reports and other information that would be required to be filed with (or furnished to) the SEC pursuant to Section 13(a) or 15(d) of the US Exchange Act.

#### 8.1.7 Reimbursement of MII & MAP Policy premiums

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

#### 8.1.8 Compliance Certificates

deliver to the Bank simultaneously with delivering the same under the Indenture, a copy of the compliance certificate to be issued and delivered in accordance with Section 4.06 of the Indenture;

8.1.9 Provision of further information

provide the Bank, and procure that the Corporate Guarantor and the Commercial Manager shall provide the Bank, with such financial or other information concerning the Borrowers, the Corporate Guarantor and their respective affairs, activities, financial standing, Indebtedness and operations and the performance of the Mortgaged Vessels and any other ship owned by any Group Member as the Bank may from time to time require and, without the need for any request therefor provide to the Bank information of any significant nature in respect of a Borrower and/or the Corporate Guarantor and/or any other Group Member including, but not limited to, details of any loans borrowed or repaid by any of them, the purchase or sale of any substantial assets (including ships) by any of them and/or the restructuring of any loan of which any of them is a borrower;

8.1.10 Obligations under Security Documents

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

8.1.11 Compliance with ISM Code

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

8.1.12 Withdrawal of DOC and SMC

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

8.1.13 Issuance of DOC and SMC

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

8.1.14 ISPS Code Compliance

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

- (a) maintain at all times a valid and current ISSC in respect of each Mortgaged Vessel;
- (b) immediately notify the Bank in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC in respect of a Mortgaged Vessel; and

(c) procure that each Mortgaged Vessel will comply at all times with the ISPS Code;

8.1.15 Compliance with Laws and payment of taxes

and will comply with all relevant Environmental Laws, laws, statutes and regulations (including, but not limited to, laws relating to any trading prohibition imposed by the Flag State, the country of incorporation of the Borrowers or the country of nationality of any crew member of either Vessel by which such Borrower is bound) and pay all taxes for which it is liable as they fall due;

8.1.16 Charters etc.

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

8.1.17 Indenture

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:

(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 Bank;

(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 Banks.

8.1.18 Collateral Vessels

Forthwith upon delivery by the Builder of a Collateral Vessel to the Collateral Guarantor which is to be the owner thereof, the Borrowers shall deliver, or procure the delivery, to the Bank of the documentation and evidence referred to in Part E of Schedule 2.

8.1.19 Dividends

The Corporate Guarantor may not declare or pay dividends except in accordance with the terms of the Indenture and then only as long as no Event of Default has occurred which is continuing.



#### 8.1.20 Indebtedness

Neither Borrower shall incur any Indebtedness other than (i) in the ordinary course of trading the Vessel of which it is the owner or (ii) with the prior written consent of the Bank;

#### 8.1.21 Trading

The Borrowers shall not permit either Vessel to trade in any area prohibited by the government of the Flag State.

### 8.2 Security value maintenance

#### 8.2.1 Security shortfall

If, at any time after the first Delivery Date, the Security Value shall be less than the Required Security Amount, the Bank shall give notice to the Borrowers requiring that such deficiency be remedied and then the Borrowers must either:

- (a) prepay within a period of thirty (30) days of the date of receipt by the Borrowers of the Bank's said notice such part of the Loan as will result in the Security Value after such prepayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such prepayment) being equal to or higher than the Required Security Amount; or
- (b) within thirty (30) days of the date of receipt by the Borrower of the Bank's said notice constitute to the satisfaction of the Bank a first preferred ship mortgage over a ship as security for the Loan as shall be acceptable to the Bank having a value for security purposes (as determined in accordance with Clause 8.2.2) at the date upon which such mortgage is provided which, when added to the Security Value, shall not be less than the Required Security Amount as at such date; or
- (c) within thirty (30) days of the date of receipt by the Borrower of the Bank's said notice constitute to the satisfaction of the Bank such further security for the Loan as shall be acceptable to the Bank having a value for security purposes (as determined by the Bank in its reasonable discretion) at the date upon which such further security shall be constituted which, when added to the Security Value, shall not be less than the Required Security Amount as at such date.

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

#### 8.2.2 Valuation of Mortgaged Vessels

Each Mortgaged Vessel shall, for the purposes of this Agreement, be valued (at the Borrowers' expense) in USD by any Approved Broker, such valuations to be made without physical inspection, and on the basis of a sale for prompt delivery for cash at arms' length, on normal commercial terms, as between a willing buyer and a willing seller, taking into account the benefit or burden of any charterparty or other engagement concerning the relevant Mortgaged Vessel and such valuations to be no older than 3 months on the date on which it is

provided to the Bank, and to be provided to the Bank at such times as the Bank shall require at the cost of the Borrowers,

Provided that if the Bank or the Borrowers do not agree with any valuation produced as hereinbefore referred to then each of the Bank and the Borrowers shall nominate an Approved Broker, and the Valuation Amount for the relevant Mortgaged Vessel or Vessels shall be the average of the valuations produced by those two Approved Brokers in accordance with the terms of this Clause.

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

The Bank may request valuations of the Mortgaged Vessels at any time in its discretion.

#### 8.2.3 Information

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

#### 8.2.4 Costs

All costs in connection with the obtaining and any determining of any Valuation Amount pursuant to Clause 8.2.2 and any valuation either of any additional security for the purposes of ascertaining the Security Value at any time or necessitated by the Borrowers electing to constitute additional security pursuant to clause 8.2.1(b), must be paid by the Borrowers, provided that prior to the occurrence of an Event of Default which is continuing the Borrowers shall not pay for more than one valuation every three months.

#### 8.2.5 Valuation of additional security

For the purposes of this clause 8.2, the market value (i) of any additional security over a ship (other than the Vessels) shall be determined in accordance with clause 8.2.2 and (ii) of any other additional security provided or to be provided to the Bank shall be determined by the Bank in its reasonable discretion.

#### 8.2.6 Documents and evidence

In connection with any additional security provided in accordance with this clause 8.2, the Bank shall be entitled to receive (at the Borrowers' expense) such evidence and documents of the kind referred to in schedule 2 as may in the Bank's opinion be appropriate and such favourable legal opinions as the Bank shall in its absolute discretion require.

### 8.3 Indenture.

Notwithstanding anything in this Agreement:

- (i) any terms, transactions or events permitted by the Indenture Excerpt and
- (ii) save as otherwise expressly provided in this Agreement, any other terms or transactions or events permitted by the Indenture

shall be deemed to be permitted by this Agreement.

#### 8.4 Financial Covenants

The Borrower shall procure the Total Liabilities divided by the Total Assets (adjusted for market values of vessels calculated in accordance with Clause 8.2.2) shall be less than the Relevant Percentage,

where:

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

**“Total Assets”** and **“Total Liabilities”** mean, respectively, the total assets (adjusted (i) for market values of vessels calculated in accordance with Clause 8.2.2 of this Agreement and (ii) by deducting Unencumbered Cash) and total liabilities (less Unencumbered Cash) of the Group as evidenced at any relevant time by the Latest Accounts, in which they shall have been calculated by reference to the meanings assigned to them in accordance with US GAAP provided that the value of any ship shall be the value thereof calculated in accordance with Clause 8.2.2 and not as set out in the Latest Accounts; and

**“Relevant Percentage”** means, for the period of up to the fifth anniversary of the first Delivery Date, 80%, and thereafter 70%.

**“Unencumbered Cash”** means:

- (a) cash in hand legally and beneficially owned by any Group Member; and
- (b) cash deposits legally and beneficially owned by any Group Member and which is deposited with any bank or financial institution which in each case is free from any Encumbrance and is otherwise at the free and unrestricted disposal of the relevant Group Member by which it is owned.

### 9 CONDITIONS

#### 9.1 Documents and evidence

The Bank’s obligation to make available the Advances is subject to the following conditions precedent:

- 9.1.1 that, on or before the service of the first Drawdown Notice hereunder, the Bank has received the documents described in Part A of Schedule 2 in form and substance satisfactory to the Bank and its lawyers;
- 9.1.2 that, on or before drawdown of the Advance relating to the amount payable under either Vessel Purchase Contract, the Bank has received the documents described in Part B of Schedule 2 in respect of the Relevant Vessel (as defined in Schedule 2) in form and substance satisfactory to the Bank and its lawyers;
- 9.1.3 that, on or before drawdown of the Advance relating to the instalment payable under either Shipbuilding Contract upon the consent of the relevant Refund Guarantor to the

arrangements set out in the relevant Novation Agreement, the Bank has received the documents described in Part C of Schedule 2 in respect of the Relevant Vessel (as defined in Schedule 2) in form and substance satisfactory to the Bank and its lawyers;

- 9.1.4 that on or before the service of the Drawdown Notice in respect of the Advance relating to the delivery instalment payable under either Shipbuilding Contract, the Bank has received the documents described in Part D of Schedule 2 in respect of the Relevant Vessel in form and substance satisfactory to the Bank and its lawyers;
- 9.1.5 the representations and warranties contained in clause 7 and clauses 4.1 and 4.2 of the Corporate Guarantee being then true and correct as if each was made with respect to the facts and circumstances existing at such time; and
- 9.1.6 no Default having occurred and being continuing and there being no Default which would result from the making of the Loan.

**9.2 Waiver of conditions precedent**

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

**9.3 Further conditions precedent**

Not later than five (5) Banking Days prior to the Drawdown Date and not later than five (5) Banking Days prior to each Interest Payment Date, the Bank may reasonably request and the Borrowers must, not later than two (2) Banking Days prior to such date, deliver to the Bank (at the Borrowers' expense) on such request further favourable certificates and/or opinions as to any or all of the matters which are the subject of clauses 7, 8, 9 and 10 and clauses 4 and 5 of the Corporate Guarantee.

**9.4 English language**

All documents required to be delivered under and/or supplied in connection with any of the Security Documents must either be in the English language or accompanied by an English translation certified by a notary, lawyer or consulate acceptable to the Bank.

**10 EVENTS OF DEFAULT**

**10.1 Events**

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

- 10.1.1 **Non-payment:** any Security Party fails to pay any sum payable by it under any of the Security Documents at the time, in the currency and in the manner stipulated in the Security Documents or the Underlying Documents (and so that, for this purpose, sums payable (i) under clauses 3.1 and 4.1 shall be treated as having been paid at the stipulated time if (aa) received by the Bank within two (2) days of the dates therein referred to and (bb) such delay in receipt is caused by administrative or other delays or errors within the banking system and (ii) on demand shall be treated as having been paid at the stipulated time if paid within two (2) Banking Days of demand); or

- 10.1.2 **Breach of Insurance and certain other obligations:** any Owner or, as the context may require, the Technical Manager or any other person fails to obtain and/or maintain the Insurances (as defined in, and in accordance with the requirements of, the Ship Security Documents) for any of the Mortgaged Vessels or if any insurer in respect of such Insurances cancels the Insurances or disclaims liability by reason, in either case, of misstatement in any proposal for the Insurances or for any other failure or default on the part of the Borrower or any other person or the Borrower commits any breach of or omits to observe any of the obligations or undertakings expressed to be assumed by them under clause 8; or
- 10.1.3 **Breach of other obligations:** any Security Party commits any breach of or omits to observe any of its obligations or undertakings expressed to be assumed by it under any of the Security Documents (other than those referred to in clauses 10.1.1 and 10.1.2 above) unless such breach or omission, in the opinion of the Bank (following consultation with the Banks) is capable of remedy, in which case the same shall constitute an Event of Default if it has not been remedied within fifteen (15) days of the occurrence thereof; or
- 10.1.4 **Misrepresentation:** any representation or warranty made or deemed to be made or repeated by or in respect of any Security Party in or pursuant to any of the Security Documents or in any notice, certificate or statement referred to in or delivered under any of the Security Documents is or proves to have been incorrect or misleading in any material respect; or
- 10.1.5 **Cross-default:** There shall occur a default (howsoever therein described) under the Indenture or any Indebtedness of any Security Party is not paid when due (subject to applicable grace periods) or any Indebtedness of any Security Party becomes (whether by declaration or automatically in accordance with the relevant agreement or instrument constituting the same) due and payable prior to the date when it would otherwise have become due (unless as a result of the exercise by the relevant Security Party of a voluntary right of prepayment), or any creditor of any Security Party becomes entitled to declare any such Indebtedness due and payable or any facility or commitment available to any Security Party relating to Indebtedness is withdrawn, suspended or cancelled by reason of any default (however described) of the person concerned; or
- 10.1.6 **Execution:** any uninsured judgment or order made against any Security Party is not stayed, appealed against or complied with within fifteen (15) days or a creditor attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced upon or sued out against, any of the undertakings, assets, rights or revenues of any Security Party and is not discharged within thirty (30) days; or
- 10.1.7 **Insolvency:** any Security Party is unable or admits inability to pay its debts as they fall due; suspends making payments on any of its debts or announces an intention to do so; becomes insolvent; or has negative net worth (taking into account contingent liabilities); or suffers the declaration of a moratorium in respect of any of its Indebtedness; or
- 10.1.8 **Reduction or loss of capital:** a meeting is convened by any Security Party (other than the Borrower) without the Bank's prior written consent, for the purpose of passing any resolution to purchase, reduce or redeem any of its share capital without the Bank's prior written consent; or
- 10.1.9 **Dissolution:** any corporate action, Proceedings or other steps are taken to dissolve or wind-up any Security Party or an order is made or resolution passed for the dissolution or winding up of any Security Party or a notice is issued convening a meeting for such purpose; or

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

- 10.1.20 **Arrest:** any Mortgaged Vessel is arrested, confiscated, seized, taken in execution, impounded, forfeited, detained in exercise or purported exercise of any possessory lien or other claim or otherwise taken from the possession of its Owner and that Owner shall fail to procure the release of such Mortgaged Vessel within a period of fifteen (15) days thereafter; or
- 10.1.21 **Registration:** the registration of any Mortgaged Vessel under the laws and flag of the relevant Flag State is cancelled or terminated without the prior written consent of the Majority Banks; or
- 10.1.22 **Unrest:** the Flag State of any Vessel or the country in which any Security Party is incorporated or domiciled becomes involved in hostilities or civil war or there is a seizure of power in the Flag State by unconstitutional means unless the Owner of the Vessel registered in such Flag State shall have transferred its Vessel onto a new flag acceptable to the Banks within sixty (60) days of the start of such hostilities or civil war or seizure of power; or
- 10.1.23 **Environmental Incidents:** an Environmental Incident occurs which gives rise, or may give rise, to an Environmental Claim which could, in the opinion of the Bank be expected to have a material adverse effect (i) on the business, assets or financial condition of any Security Party or the Group taken as a whole or (ii) on the security constituted by any of the Security Documents or the enforceability of that security in accordance with its terms; or
- 10.1.24 **P&I:** an Owner or the Technical Manager or any other person fails or omits to comply with any requirements of the protection and indemnity association or other insurer with which a Mortgaged Vessel is entered for insurance or insured against protection and indemnity risks (including oil pollution risks) to the effect that any cover (including, without limitation, any cover in respect of liability for Environmental Claims arising in jurisdictions where such Mortgaged Vessel operates or trades) is or may be liable to cancellation, qualification or exclusion at any time; or
- 10.1.25 **Material events:** any other event occurs or circumstance arises which, in the opinion of the Bank, is likely materially and adversely to affect either (i) the ability of any Security Party to perform all or any of its obligations under or otherwise to comply with the terms of any of the Security Documents or (ii) the security created by any of the Security Documents; or
- 10.1.26 **Required Authorisations:** any Required Authorisation is revoked or withheld or modified or is otherwise not granted or fails to remain in full force and effect or if any exchange control or other law or regulation shall exist which would make any transaction under the Security Documents or the continuation thereof, unlawful or would prevent the performance by any Security Party of any term of any of the Security Documents;
- 10.1.27 **Ownership/management:** there is any change in the ownership of either Borrower or either Vessel or change of Manager of either Vessel without the prior written consent of the Bank; or
- 11.1.29 **Shipbuilding Contract/Refund Guarantee:** either Shipbuilding Contract or Refund Guarantee is terminated, cancelled, revoked, suspended, rescinded, transferred, novated or otherwise ceases to remain in full force and effect for any reason except with the consent of the Bank; or
- 10.1.28 **Money Laundering:** any Security Party is in breach of or fails to observe any law, requirement, measure or procedure implemented to combat “money laundering” as defined in Article 1 of the Directive (91/308 EEC) of the Council of the European Communities; or

10.1.29 **Collateral Loan Agreement:** there shall occur an event of default (however therein described) under the Collateral Loan Agreement; or

10.1.30 **Change of Control.** There shall occur a “Change of Control” (as defined in the Indenture) or the “Permitted Holder” (as defined in the Indenture) owns less than 20% of the issued share capital of the Corporate Guarantor.

## 10.2 **Acceleration**

The Bank may, without prejudice to any other rights of the Bank, at any time after the happening of an Event of Default so long as the same is continuing by notice to the Borrowers declare that:

10.2.1 the obligation of the Bank to make the Commitment available shall be terminated, whereupon the Commitment shall immediately be cancelled; and/or

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

## 10.3 **Demand basis**

If, under clause 10.2.2, the Bank has declared the Loan to be due and payable on demand, at any time thereafter the Bank may by further notice to the Borrowers demand repayment of the Loan on such date as may be specified whereupon the Loan shall become due and payable accordingly with all interest and commitment commission accrued and all other sums payable under this Agreement.

# 11 **INDEMNITIES**

## 11.1 **General indemnity**

Each Borrower agrees to indemnify the Bank on demand, without prejudice to any of the Bank’s other rights under any of the Security Documents, against any loss (including loss of Margin) or expense (including, without limitation, any Break Costs) which the Bank shall certify as sustained at any time by it in connection with this Agreement.

## 11.2 **Environmental indemnity**

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



### 11.3 **Capital adequacy and reserve requirements indemnity**

The Borrowers shall promptly indemnify the Bank on demand against any cost incurred or loss suffered by the Bank as a result of its complying with (i) the minimum reserve requirements from time to time of the European Central Bank (ii) any capital adequacy directive of the European Union and/or (iii) any revised framework for international convergence of capital measurements and capital standards and/or any regulation imposed by any Government Entity in connection therewith, and/or in connection with maintaining required reserves with a relevant national central bank to the extent that such compliance or maintenance relates to the Commitment or deposits obtained by it to fund the whole or part thereof and to the extent such cost or loss is not recoverable by the Bank under clause 11.2..

## 12 **UNLAWFULNESS AND INCREASED COSTS MITIGATION**

### 12.1 **Unlawfulness**

Regardless of any other provision of this Agreement, in the event that the Bank notifies the Borrowers that by reason of:

- (a) the introduction of or any change in any applicable law or regulation or any change in the interpretation or application thereof; or
- (b) compliance by the Bank with any directive, request or requirement (whether or not having the force of law) of any central bank or Government Entity

it becomes unlawful or it is prohibited by or contrary to such directive request or requirement for the Bank to maintain or give effect to any of its obligations in connection howsoever with this Agreement then (i) the Commitment shall be reduced to zero and (ii) the Borrowers shall be obliged to prepay the Loan either immediately or on a future date (specified in the Bank's notice) not being earlier than the latest date permitted by the relevant law, regulation, directive, request or requirement with interest and commitment commission accrued to the date of prepayment and all other sums payable whensoever by the Borrowers under this Agreement.

### 12.2 **Increased costs**

If the Bank certifies to the Borrowers that at any time the effect of any applicable law, regulation or regulatory requirements or the interpretation or application thereof or any change therein (including the imposition upon whomsoever of Taxes on payments hereunder or otherwise howsoever in connection with this Agreement other than taxes on the overall net income of the Bank) or the effect of complying with any applicable directive, request or requirement (whether or not having the force of law) of any central bank or Government Entity (including, but not limited to, the 1988 Basle Convergence Agreement and including any kind of liquidity, stock or capital adequacy controls or other banking or monetary controls or requirements which affect the manner in which the Bank or its holding company allocates capital resources to the Bank's obligations hereunder) is to:

- 12.2.1 subject the Bank to Taxes or change the basis of Taxation of the Bank relating to any payment under any of the Security Documents (other than Taxes or Taxation on the overall net income of the Bank imposed in the jurisdiction in which its principal or lending office under this Agreement is located); and/or

- 12.2.2 increase the cost to, or impose an additional cost on, the Bank or its holding company in making or keeping the Commitment available or maintaining or funding all or part of the Loan; and/or
- 12.2.3 reduce the amount payable or the effective return to the Bank under any of the Security Documents; and/or
- 12.2.4 reduce the Bank's or its holding company's rate of return on its overall capital by reason of a change in the manner in which it is required to allocate capital resources to the Bank's obligations under any of the Security Documents; and/or
- 12.2.5 require the Bank or its holding company to make a payment or forgo a return on or calculated by reference to any amount received or receivable by the Bank under any of the Security Documents; and/or
- 12.2.6 require the Bank or its holding company to incur or sustain a loss (including a loss of future potential profits) by reason of being obliged to deduct all or part of the Commitment or the Loan from its capital for regulatory purposes,  
then and in each such case (subject to clause 12.3) the Borrowers must on demand either:
  - (a) pay to the Bank the amount which the Bank certifies (in a certificate setting forth the basis of the computation of such amount but not including any matters which the Bank or its holding company regards as confidential) is required to compensate the Bank and/or (as the case may be) its holding company for such liability to Taxes, cost, reduction, payment, forgone return or loss; or
  - (b) prepay the Loan, in respect of which prepayment the terms of clause 4.5 shall apply.

For the purposes of this clause 12.2 and clause 12.4 "**holding company**" means the company or entity (if any) within the consolidated supervision of which the Bank is included.

### 12.3 **Exception**

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

## 13 **SECURITY, SET-OFF AND MISCELLANEOUS**

### 13.1 **Application of moneys**

All moneys received by the Bank under or pursuant to any of the Security Documents and expressed to be applicable in accordance with the provisions of this clause 13.1 shall be applied by the Bank as follows, or in such other order as the Bank may require in its absolute discretion:

- 13.1.1 first in or toward payment of all unpaid fees, commissions, sums which have been demanded by way of indemnity and expenses which may be owing to the Bank under any of the Security Documents;

- 13.1.2 secondly in or towards payment of any arrears of interest owing in respect of the Loan or any part thereof;
- 13.1.3 thirdly in or towards repayment of the Loan (whether the same is due and payable or not);
- 13.1.4 fourthly in or towards payment to the Bank for any loss which the Bank certifies it has suffered by reason of any such payment in respect of principal not being effected on an Interest Payment Date relating to the part of the Loan repaid;
- 13.1.5 fifthly in or towards payment to the Bank of any other sums which the Bank certifies are owing to it under any of the Security Documents; and
- 13.1.6 sixthly the surplus (if any) shall be paid to the Borrowers or to whomsoever else may appear to the Bank to be entitled to receive such surplus.

13.2 **Set-off**

- 13.2.1 Each Borrower authorises the Bank (without prejudice to any of the Bank's rights at law, in equity or otherwise), at any time and without notice to the Borrowers, to apply any credit balance to which either Borrower is then entitled standing upon any account of the Borrowers or either of them with any branch of the Bank in or towards satisfaction of any sum due and payable from the Borrowers to the Bank under any of the Security Documents. For this purpose, the Bank is authorised to purchase with the moneys standing to the credit of such account such other currencies as may be necessary to effect such application.
- 13.2.2 The Bank shall not be obliged to exercise any right given to it by this clause 13.2. The Bank shall notify the Borrowers prior to or upon the exercise or purported exercise of any right of set-off.
- 13.2.3 Nothing in this clause 13.2 shall be effective to create a charge or other security interest.

13.3 **Further assurance**

The Borrowers undertake with the Bank to ensure that, throughout the Facility Period, the Security Documents shall be valid and binding obligations of the respective parties thereto and rights of the Bank enforceable in accordance with their respective terms and that they will, at their expense, execute, sign, perfect and do, and will procure the execution, signing, perfecting and doing by each of the other Security Parties of, any and every such further assurance, document, act or thing as in the reasonable opinion of the Bank may be necessary or desirable for perfecting the security contemplated or constituted by the Security Documents.

13.4 **Conflicts**

In the event of any conflict between this Agreement and any of the other Borrower's Security Documents, the provisions of this Agreement shall prevail.

13.5 **No implied waivers, remedies cumulative**

No failure or delay on the part of the Bank to exercise any power, right or remedy under any of the Security Documents shall operate as a waiver thereof, nor shall any single or partial exercise by the Bank of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The remedies provided in the

Security Documents are cumulative and are not exclusive of any remedies provided by law. No waiver by the Bank shall be effective unless it is in writing.

**13.6 Severability**

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

**13.7 Force Majeure**

Regardless of any other provision of this Agreement the Bank shall not be liable for any failure to perform the whole or any part of this Agreement resulting directly or indirectly from (i) the action or inaction or purported action of any governmental or local authority (ii) any strike, lockout, boycott or blockade (including any strike, lockout, boycott or blockade effected by or upon the Bank or any of its representatives or employees) (iii) any act of God (iv) any act of war (whether declared or not) or terrorism (v) any failure of any information technology or other operational systems or equipment affecting the Bank or (vi) any other circumstances whatsoever outside the Bank's control.

**13.8 Amendments**

This Agreement may be amended or varied only by an instrument in writing executed by both parties hereto who irrevocably agree that the provisions of this clause 13.8 may not be waived or modified except by an instrument in writing to that effect signed by both of them.

**13.9 Counterparts**

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

**13.10 English language**

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

**14 ACCOUNTS**

**14.1 General**

The Borrowers undertake with the Bank that they will ensure that:

14.1.1 the Borrowers will on or before the first Delivery Date, open the Earnings Account in their names; and

14.1.2 all moneys payable to either Borrower in respect of the Earnings (as defined in the relevant Mortgage) of its Mortgaged Vessel shall, unless and until the Bank directs to the contrary pursuant to the provisions of the relevant Mortgage, be paid to the Earnings Account,

Provided however that if any of the moneys paid to the Earnings Account are payable in a currency other than USD, they shall be paid to a sub-account of the Earnings Account denominated in such currency (except that if the Borrowers fail to open such a sub-account, the Bank shall then convert such moneys into USD at the Bank's spot rate of exchange at the relevant time for the purchase of USD with such currency and the term "spot rate of exchange" shall include any premium and costs of exchange payable in connection with the purchase of USD with such currency).

#### 14.2 **Earnings Account: withdrawals**

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

#### 14.3 **Retention Account: credits and withdrawals**

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

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

Unless the Bank otherwise agrees in writing and subject to this clause 14.3.2, the Borrowers shall not be entitled to withdraw any moneys from the Retention Account at any time during the Facility Period.

#### 14.4 **Application of accounts**

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

#### 14.5 **Charging of accounts**

The Earnings Account and the Retention Account and all amounts from time to time respectively standing to the credit thereof shall be subject to the security constituted and the

rights conferred by, respectively, the Earnings Account Pledge and the Retention Account Pledge.

14.6 **Average balance**

As of the date falling 3 months after the second Delivery Date (or, if it is apparent that only one Vessel will be delivered by the Builder, the first Delivery Date), the Borrowers shall ensure that there is at all times credited to deposit accounts at the Bank in the names of either Borrower and/or the Corporate Guarantor and the Earnings Account and the Retention Account, an average balance of \$3,000,000 per month.

15 **ASSIGNMENT, TRANSFER AND LENDING OFFICE**

15.1 **Benefit and burden**

This Agreement shall be binding upon, and ensure for the benefit of, the Bank and the Borrowers and their respective successors.

15.2 **No assignment by Borrowers**

The Borrowers may not assign or transfer any of their respective rights or obligations under this Agreement.

15.3 **Assignment by Bank**

The Bank may assign all or any part of its rights under any of the Security Documents to any other bank or financial institution (an “Assignee”) without the consent of the Borrowers, but after consultation with them.

15.4 **Transfer by Bank**

The Bank may transfer all or any part of its rights, benefits and/or obligations under this Agreement and/or any of the other Security Documents to any one or more banks or other financial institutions (a “Transferee”) without the consent of the Borrowers, but after consultation with them, provided always that any such Transferee, by delivery of such undertaking as the Bank may approve, becomes bound by the terms of this Agreement and agrees to perform all or, as the case may be, relevant part of the Bank’s obligations under this Agreement.

15.5 **Documentation**

If the Bank assigns all or any part of its rights or transfers all or any part of its rights, benefits and/or obligations as provided in clause 15.3 or 15.4 the Borrowers undertake, immediately on being requested to do so by the Bank, to enter into, and procure that the other Security Parties shall enter into, such documents as may be necessary or desirable to transfer to the Assignee or Transferee all or the relevant part of the Bank’s interest in the Security Documents. Thereafter, all relevant references in this Agreement to the Bank shall be construed as a reference to the Bank and/or its Assignee or Transferee (as the case may be) to the extent of their respective interests.

15.6 **Lending office**

The Bank shall lend through its office at the address specified above or through any other office of the Bank selected from time to time by it through which the Bank wishes to lend for the purposes of this Agreement.

**15.7 Disclosure of information**

The Bank may disclose to a prospective Assignee, Transferee or to any other person who may propose entering into contractual relations with the Bank in relation to this Agreement such information about or in connection with any of the Security Parties and the Security Documents as the Bank considers appropriate.

**15.8 No additional costs**

If at the time of, or immediately after, any assignment and/or transfer by the Bank of all or any part of its rights and/or benefits and/or obligations under this Agreement, or any change in the office through which the Bank lends for the purposes of this Agreement, the Borrowers would be obliged to pay to the Assignee or Transferee or (in the case of a change of lending office) the Bank under clause 6.6 or 12.2 any sum exceeding the sum (if any) which it would have been obliged to pay to the Bank under the relevant clause had no such assignment, transfer or change taken place, the Borrowers shall not be obliged to pay such excess.

**16 NOTICES**

**16.1 General**

16.1.1 unless otherwise specifically provided herein, every notice under or in connection with this Agreement shall be given in English by letter delivered personally and/or sent by post and/or transmitted by fax;

16.1.2 in this clause “notice” includes any demand, consent, authorisation, approval, instruction, certificate, request, waiver or other communication.

**16.2 Addresses for communications, effective date of notices**

16.2.1 subject to clause 16.2.2 and clause 16.2.4 notices to the Borrowers shall be deemed to have been given and shall take effect when received in full legible form by the Borrowers at the address and/or the fax number appearing below (or at such other address or fax number as the Borrowers may hereafter specify for such purpose to the Bank by notice in writing);

Address           c/o Navios ShipManagement Inc.  
                      85 Akti Miaouli  
                      Piraeus  
                      Greece

Fax no:           + 30 210 453 2070

16.2.2 notwithstanding the provisions of clause 16.2.1 or clause 16.2.4, a notice of Default and/or a notice given pursuant to clause 10.2 or clause 10.3 shall be deemed to have been given and shall take effect when delivered, sent or transmitted by the Bank to the Borrowers to the address or fax number referred to in clause 16.2.1;

16.2.3 subject to clause 16.2.4, notices to the Bank shall be deemed to be given, and shall take effect, when received in full legible form by the Bank at the address and/or the fax number

appearing below (or at any such other address or fax number as the Bank may hereafter specify for such purpose to the Borrowers by notice in writing);

Address 114 Kolokotroni Street  
185 35 Piraeus  
Greece

Fax no: + 210 422 6779

16.2.4 if under clause 16.2.1 or clause 16.2.3 a notice would be deemed to have been given and effective on a day which is not a working day in the place of receipt or is outside the normal business hours in the place of receipt, the notice shall be deemed to have been given and to have taken effect at the opening of business on the next working day in such place.

## **17 BORROWERS' OBLIGATIONS**

### **17.1 Joint and several**

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

### **17.2 Borrowers as principal debtors**

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

### **17.3 Indemnity**

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



**17.4 Liability unconditional**

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

- 17.4.1 the death, bankruptcy, unsoundness of mind, insolvency, liquidation, dissolution, winding-up, administration, receivership, amalgamation, reconstruction or other incapacity of any person whatsoever (including, in the case of a partnership, a termination or change in the composition of the partnership) or any change of name or style or constitution of either Borrower or any other person liable;
- 17.4.2 the Bank granting any time, indulgence or concession to, or compounding with, discharging, releasing or varying the liability of, either Borrower or any other person liable or renewing, determining, varying or increasing any accommodation, facility or transaction or otherwise dealing with the same in any manner whatsoever or concurring in, accepting, varying any compromise, arrangement or settlement or omitting to claim or enforce payment from either Borrower or any other person liable; or
- 17.4.3 anything done or omitted which but for this provision might operate to exonerate the Borrowers or either of them.

**17.5 Recourse to other security**

The Bank shall not be obliged to make any claim or demand or to resort to any security or other means of payment now or hereafter held by or available to them for enforcing any of the Security Documents against either Borrower or any other person liable and no action taken or omitted by the Bank in connection with any such security or other means of payment will discharge, reduce, prejudice or affect the liability of the Borrowers under the Security Documents to which either of them is, or is to be, a party.

**17.6 Waiver of Borrowers' rights**

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

- 17.6.1 exercise any right of subrogation, reimbursement and indemnity against the other Borrower or any other person liable under the Security Documents;
- 17.6.2 demand or accept repayment in whole or in part of any Indebtedness now or hereafter due to such Borrower from the other Borrower or from any other person liable for such Indebtedness or demand or accept any guarantee against financial loss or any document or instrument created or evidencing an Encumbrance in respect of the same or dispose of the same;
- 17.6.3 take any steps to enforce any right against the other Borrower or any other person liable in respect of any such moneys; or
- 17.6.4 claim any set-off or counterclaim against the other Borrower or any other person liable or claim or prove in competition with the Bank in the liquidation of the other Borrower or any other person liable or have the benefit of, or share in, any payment from or composition with, the other Borrower or any other person liable or any security granted under any Security Document now or hereafter held by the Bank for any moneys owing under this Agreement or for the obligations or liabilities of any other person liable but so that, if so directed by the Bank, it will prove for the whole or any part of its claim in the liquidation of the other

Borrower or other person liable on terms that the benefit of such proof and all money received by it in respect thereof shall be held on trust for the Bank and applied in or towards discharge of any moneys owing under this Agreement in such manner as the Bank shall require.

## **18 GOVERNING LAW**

### **18.1 Law**

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

## **19 JURISDICTION**

### **19.1 Exclusive jurisdiction**

For the benefit of the Bank, and subject to clause 19.4 below, the Borrowers hereby irrevocably agree that the courts of England shall have exclusive jurisdiction:

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

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

### **19.2 Submission and service of process**

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

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

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

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

19.2.4 without prejudice to the effectiveness of service of process on its agent under clause 19.2.1 above but as an alternative method, consents to the service of process relating to any such proceedings by mailing or delivering a copy of the process to its address for the time being applying under clause 16.2;

19.2.5 agrees that if the appointment of any person mentioned in clause 19.2.1 ceases to be effective, the Borrowers shall immediately appoint a further person in England to accept service of process on its behalf in England and, failing such appointment within seven (7) days the Bank shall thereupon be entitled and is hereby irrevocably authorised by the Borrowers in those circumstances to appoint such person by notice to the Borrowers.

### 19.3 **Forum non conveniens and enforcement abroad**

The Borrowers:

19.3.1 waive any right and agree not to apply to the English court or other court in any jurisdiction whatsoever to stay or strike out any proceedings commenced in England on the ground that England is an inappropriate forum and/or that proceedings have been or will be started in any other jurisdiction in connection with any dispute or related matter falling within clause 19.1; and

19.3.2 agree that a judgment or order of an English court in a dispute or other matter falling within clause 19.1 shall be conclusive and binding on the Borrowers and may be enforced against it in the courts of any other jurisdiction.

### 19.4 **Right of Bank, but not Borrowers, to bring proceedings in any other jurisdiction**

19.4.1 nothing in this clause 19 limits the right of the Bank to bring proceedings, including third party proceedings, against the Borrowers or either of them, or to apply for interim remedies, in connection with this Agreement in any other court and/or concurrently in more than one jurisdiction;

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

### 19.5 **Enforceability despite invalidity of Agreement**

The jurisdiction agreement contained in this clause 19 shall be severable from the rest of this Agreement and shall remain valid, binding and in full force and shall continue to apply notwithstanding this Agreement or any part thereof being held to be avoided, rescinded, terminated, discharged, frustrated, invalid, unenforceable, illegal and/or otherwise of no effect for any reason.

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

19.6.1 for the purpose of this clause "Foreign Proceedings" shall mean any Proceedings except proceedings brought or pursued in England arising out of or in connection with or in any way related to any of the Security Documents or any assets subject thereto or any action of any kind whatsoever taken by the Bank pursuant thereto or which would, if brought by the Borrowers or either of them against the Bank, have been required to be brought in the English courts;

19.6.2 neither Borrower shall bring or pursue any Foreign Proceedings against the Bank and each Borrower shall use its best endeavours to prevent persons not party to this Agreement from bringing or pursuing any Foreign Proceedings against the Bank;

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

19.6.4 the Bank and the Borrowers hereby agree and declare that the benefit of this clause 19 shall extend to and may be enforced by any officer, employee, agent or business associate of the Bank against whom either Borrowers brings a claim in connection howsoever with (i) any of the Security Documents or any assets subject thereto or (ii) any action of any kind whatsoever taken by, or on behalf of or for the purported benefit of the Bank pursuant thereto, or which, if it were brought against the Bank, would fall within the material scope of clause 19.1. In those circumstances this clause 19 shall be read and construed as if references to the Bank were references to such officer, employee, agent or business associate, as the case may be.

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

**Schedule 1**  
**Form of Drawdown Notice**

**[date]**

To: Emporiki Bank of Greece S.A.  
114 Kolokotroni Street  
185 35 Piraeus  
Greece

**USD 75,000,000 Loan**

Loan Agreement dated \_\_\_\_\_ 2009 (the "**Loan Agreement**") between you and us

We refer to the Loan Agreement. Words and expressions defined therein shall have the same meanings when used herein.

We request to borrow an Advance as follows:

*Amount: USD[    ];*

*Drawdown Date: [    ];*

*Duration of the first Interest Period shall be [    ] months;*

Payment instructions : the account of [                    ] and numbered [                    ] with [                    ] of [                    ].

We confirm that:

- (a) No Default has occurred;
- (b) the representations and warranties contained in clause 7 of the Loan Agreement are true and correct at the date hereof as if made with respect to the facts and circumstances existing at such date;
- (c) there has been no material adverse change in our financial position from that described by us to the Bank in the negotiation of the Loan Agreement and/or in any documents or statements already delivered to the Bank in connection therewith; and
- (d) there are no Required authorisations.

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**DUCALE MARINE INC.**  
**KOHYLIA SHIPMANAGEMENT S.A.**

**Schedule 2**  
**Conditions precedent**

In this Schedule 2 “**Relevant Advance**” means the Advance which is being made available, “**Relevant Vessel**” means the Vessel in respect of which that Advance is being made available and “**Relevant Shipbuilding Contract**” means the Shipbuilding Contract in respect of the Relevant Vessel.

**Part A**

(referred to in clause 9.1.1)

**(a) Corporate documents**

Certified Copies of all documents which evidence or relate to the constitution of each Security Party (other than the Collateral Guarantors) and its current corporate existence;

**(b) Corporate authorities**

- (i) Certified (in a certificate dated no earlier than 5 Banking Days prior to the date of this Agreement) Copies of resolutions of the directors and shareholders of each Security Party (other than the Collateral Guarantors) approving such of the Shipbuilding Contracts and the Security Documents to which such Security Party is a party and authorising the execution and delivery thereof and performance of such Security Party’s obligations thereunder, additionally certified by an officer of such Security Party as having been duly passed at duly convened meetings of the directors and shareholders of such Security Party and not having been amended, modified or revoked and being in full force and effect; and
- (i) originals or Certified Copies of any powers of attorney issued by any Security Party pursuant to such resolutions;

**(c) Required Authorisations**

A certificate (dated no earlier than 5 Banking Days prior to the date of this Agreement) that there are no Required Authorisations or that there are no Required Authorisations except those described in such certificate which have been duly obtained and Certified Copies of which (including any conditions and/or documents ancillary thereto) are appended thereto.

**(d) Certificate of incumbency**

a list of directors and officers of each Security Party (other than the Collateral Guarantors) specifying the names and positions of such persons, certified (in a certificate dated no earlier than 5 Banking Days prior to the date of this Agreement) by an officer of such Security Party to be true, complete and up to date;

**(e) Share ownership**

Evidence in a form acceptable to the Bank that each Borrower is a wholly owned subsidiary of the Shareholder;

**(f) Security Documents**

the Corporate Guarantee, the Retention Account Pledge, the Collateral Loan Agreement Supplement, the Predelivery Security Assignment, the Charter Assignment and the Charter Insurance Assignment in respect of the Relevant Vessel, each duly executed and delivered together with all notices and acknowledgements required pursuant thereto duly signed;

**(g) Certified Shipbuilding Contract**

a Certified Copy (in a certificate dated no earlier than 5 Banking Days prior to the date of this Agreement) of the Shipbuilding Contract in respect of the Relevant Vessel in a form and substance acceptable to the Bank, together with evidence acceptable to the Bank that there are no address of other commissions payable thereunder which have not been disclosed to the Bank by the Borrowers, together with evidence that the total amount payable to the Builder thereunder is no more than \$70,300,000;

**(h) Certified Refund Guarantee**

a Certified Copy (in a certificate dated no earlier than 5 Banking Days prior to the date of this Agreement) of the Refund Guarantee in respect of the Relevant Vessel in a form and substance acceptable to the Bank;

**(i) Certified Vessel Purchase Agreement**

a Certified Copy (in a certificate dated no earlier than 5 Banking Days prior to the date of this Agreement) of the Vessel Purchase Agreement in respect of the Relevant Vessel in a form and substance acceptable to the Bank;

**(j) Certified Existing Charters**

a Certified Copy (in a certificate dated no earlier than 5 Banking Days prior to the date of this Agreement) of the Existing Charter in respect of the Relevant Vessel in a form and substance acceptable to the Bank; and

**(k) Insurance**

a letter of undertaking or acknowledgement (addressed to the Bank) of notice of assignment from the insurers in respect of the Charter Insurances in respect of the Relevant Vessel.

**(l) Know-your-customer**

such information and documentation as the Bank may require in order to satisfy its "Know Your Customer" procedures;

**(m) Retention Account**

Evidence that the Retention Account has been opened by the Borrowers and duly completed mandates in relation thereto have been delivered to the Bank

**(n) Marshall Islands Opinion**

an opinion of Cozen O'Connor, special legal advisers to the Bank on Marshall Islands law;

(o) **process agent**

a letter from the Security Parties' agent for receipt of service of proceedings accepting its appointment under each of the other Security Documents in which it is or is to be appointed as the relevant Security Party's agent.

**PART B**

(referred to in Clause 9.1.2)

(a) **Evidence**

A duly issued invoice from the relevant Seller or other evidence acceptable to the Bank showing all sums due and payable to that Seller pursuant to the relevant Vessel Purchase Agreement together with evidence that all such sums (in addition to the part to be paid by the Relevant Advance) have been paid to that Seller.

**PART C**

(referred to in Clause 9.1.3)

(a) **Invoice**

A duly issued invoice from the Builder showing all sums due and payable to the Builder pursuant to the Relevant Shipbuilding Contract together with evidence that all amounts payable thereunder (in addition to the part to be paid by the Relevant Advance) have been duly paid.

**PART D**

(referred to in Clause 9.1.4)

(a) **Delivery**

Documentary evidence that the Relevant Vessel has been delivered to the Relevant Owner in accordance with the relevant Shipbuilding Contract.

(b) **Invoice**

A duly issued invoice from the Builder showing all sums due and payable to the Builder pursuant to the Relevant Shipbuilding Contract upon delivery of the Relevant Vessel together with evidence that all amounts payable thereunder (in addition to the part to be paid by the Relevant Advance) have been duly paid.

(c) **The Relevant Vessel**



evidence that the Relevant Vessel:

(i) **Registration and Encumbrances**

is registered in the name of the Relevant Borrower through the Registry under the laws and flag of the Flag State and that the Vessel and her Earnings, Insurances and Requisition Compensation (as defined in the Mortgage) are free of Encumbrances except Permitted Encumbrances;

(ii) **Classification**

maintains the Classification free of all requirements and recommendations of the Classification Society;

(iii) **Insurance**

is insured in accordance with the provisions of the Mortgage which relate to her and all requirements of such Mortgage in respect of such insurance have been complied with (including without limitation, confirmation from the protection and indemnity association or other insurer with which the Relevant Vessel is, or is to be, entered for insurance or insured against protection and indemnity risks (including oil pollution risks) that any necessary declarations required by the association or insurer for the removal of any oil pollution exclusion have been made and that any such exclusion does not apply to the Relevant Vessel, together with a letter from the Relevant Borrower to such protection and indemnity association or other insurer irrevocably instructing the same to provide the Bank with a copy of the Certificate of Entry for the Relevant Vessel and any other information relating to the entry of the Relevant Vessel with such protection and indemnity association or other insurer); and

(iv) **Management**

is managed by the Manager on terms in all respects acceptable to the Bank.

(d) **Title**

evidence that good title to the Relevant Vessel has been transferred to the Relevant Borrower and that no Encumbrances are registered against the Relevant Vessel;

(e) **Security Documents**

the Mortgage, the General Assignment and the Manager's Undertaking in respect of the Relevant Vessel and (in respect of the first Vessel to be delivered only) the Earnings Account Pledge duly executed and delivered;

(f) **Mortgage registration**

evidence that the Mortgage in respect of the Relevant Vessel has been registered against the Relevant Vessel through the Registry under the laws and flag of the Flag State;

(g) **Notices of assignment and acknowledgements**

copies of duly executed notices of assignment together with original duly executed acknowledgements thereof required by the terms of the Security Documents relating to the Relevant Vessel and in the forms prescribed by such Security Documents;

(h) **Earnings Account**

(in respect of the first Vessel to be delivered only) evidence that the Earnings Account has been opened by the Technical Manager and duly completed mandates in relation thereto have been delivered to the Bank;

(i) **Marshall Islands opinion**

an opinion of Messrs Cozen O'Connor special legal advisers in the Marshall Islands to the Bank;

(j) **Further opinions**

any such further opinion as may be required by the Bank;

(k) **Registration forms**

such statutory forms duly signed by the Borrowers and the other Security Parties as may be required by the Bank to perfect the security contemplated by the Security Documents;

(l) **Manager's confirmation**

the Manager has confirmed in writing that the representations and warranties set out in clause 7.1.20 (Environmental Matters) and clause 7.1.21 (ISM Code) are true and correct;

(m) **Commission**

evidence that the commitment commission due under clause 5.1 has been paid in full;

(n) **Insurance opinion**

an opinion (to be provided at Borrowers' expense) from insurance consultants acceptable to the Bank, on the insurances effected or to be effected in respect of the Relevant Vessel upon and following her Delivery Date; and

(o) **Valuation**

If required by the Bank, a satisfactory, in the opinion of the Bank, Valuation Amount (at the cost of the Borrowers) of the Relevant Vessel addressed to the Bank from a broker acceptable to the Bank dated no more than one month before the relevant Drawdown Date;

(r) **Survey**

If required by the Bank a satisfactory survey report (at the cost of the Borrowers) in respect of the Relevant Vessel from an independent marine surveyor selected by the Bank who shall have conducted a physical inspection of the Relevant Vessel.

(s) **MII & MAP Policy premium**

evidence that the Borrowers have reimbursed the Bank in the amount of the first annual premium for the MII & MAP Policy.

(t) **Further conditions precedent**

such further evidence or opinions as may reasonably be required by the Bank.

**Part E**

(referred to in Clause 8.1.18)

In this Part E of Schedule 2 “**Relevant Collateral Vessel**” means the Collateral Vessel which is being delivered by the Builder and “**Relevant Collateral Guarantor**” means the Collateral Guarantor which is the buyer of the Relevant Collateral Vessel

(a) **Corporate documents**

Certified Copies of all documents which evidence or relate to the constitution of the Relevant Collateral Guarantor and its current corporate existence;

(b) **Corporate authorities**

- (i) Certified Copies of resolutions of the directors and shareholders of the Relevant Collateral Guarantor approving such of the Security Documents to which it is a party and authorising the execution and delivery thereof and performance of such Security Party’s obligations thereunder, additionally certified by an officer of such Security Party as having been duly passed at duly convened meetings of the directors and shareholders of such Security Party and not having been amended, modified or revoked and being in full force and effect; and
- (i) originals or Certified Copies of any powers of attorney issued by the Relevant Collateral Guarantor pursuant to such resolutions;

(c) **Required Authorisations**

A certificate that there are no Required Authorisations or that there are no Required Authorisations except those described in such certificate which have been duly obtained and Certified Copies of which (including any conditions and/or documents ancillary thereto) are appended thereto.

(d) **Certificate of incumbency**

a list of directors and officers of the Relevant Collateral Guarantor specifying the names and positions of such persons, certified by an officer of the Relevant Collateral Guarantor to be true, complete and up to date;

(e) **Delivery**

Documentary evidence that the Relevant Collateral Vessel has been delivered to the Relevant Collateral Guarantor.

(f) **The Relevant Collateral Vessel**

evidence that the Relevant Collateral Vessel:

(i) **Registration and Encumbrances**

is registered in the name of the Relevant Collateral Guarantor through the Registry under the laws and flag of the Flag State and that the Relevant Collateral Vessel and her Earnings, Insurances and Requisition Compensation (as defined in the relevant Collateral Mortgage) are free of Encumbrances except Permitted Encumbrances;

(ii) **Classification**

maintains the Classification free of all requirements and recommendations of the Classification Society;

(iii) **Insurance**

is insured in accordance with the provisions of the Collateral Mortgage which relates to her and all requirements of such Collateral Mortgage in respect of such insurance have been complied with (including without limitation, confirmation from the protection and indemnity association or other insurer with which the Relevant Collateral Vessel is, or is to be, entered for insurance or insured against protection and indemnity risks (including oil pollution risks) that any necessary declarations required by the association or insurer for the removal of any oil pollution exclusion have been made and that any such exclusion does not apply to the Relevant Collateral Vessel, together with a letter from the Relevant Collateral Guarantor to such protection and indemnity association or other insurer irrevocably instructing the same to provide the Bank with a copy of the Certificate of Entry for the Relevant Collateral Vessel and any other information relating to the entry of the Relevant Collateral Vessel with such protection and indemnity association or other insurer); and

(v) **Management**

is managed by the Manager on terms in all respects acceptable to the Bank.

(g) **Title**

evidence that good title to the Relevant Collateral Vessel has been transferred to the Relevant Collateral Guarantor and that no Encumbrances are registered against the Relevant Collateral Vessel except in favour of the Bank;

(h) **Security Documents**

the Collateral Mortgage, the Collateral General Assignment and the Collateral Manager's Undertaking in respect of the Relevant Collateral Vessel duly executed and delivered;

(i) **Mortgage registration**

evidence that the Collateral Mortgage in respect of the Relevant Collateral Vessel has been registered against the Relevant Collateral Vessel through the Registry under the laws and flag of the Flag State;

(j) **Notices of assignment and acknowledgements**

copies of duly executed notices of assignment together with original duly executed acknowledgements thereof required by the terms of the Security Documents relating to the Relevant Collateral Vessel and in the forms prescribed by such Security Documents;

(k) **Marshall Islands opinion**

an opinion of Messrs Cozen O'Connor special legal advisers in the Marshall Islands to the Bank; and

(l) **Further opinions**

any such further opinion as may be required by the Bank.

#### Schedule 4

##### Vessel details

“**Builder**” means Sungdong Shipbuilding & Marine Engineering Co. Ltd. of South Korea;

“**Collateral Vessel A**” means the capesize bulk carrier of about 170,000 dwt which is being or to be constructed by the Builder with Builder’s Hull No. S1068 for, and purchased by, Chilali;

“**Collateral Vessel B**” means the capesize bulk carrier of about 170,000 dwt which is being or to be constructed by the Builder with Builder’s Hull No. S1069 for, and purchased by, Rumer;

“**Existing Charters**” means, together:

- (a) the ten year (with options to extend for up to 2 years) time charterparty in respect of Vessel A dated 10 August 2007 made between Hanjin Shipping Co., Ltd. as charterer and the relevant Seller as amended by a nomination agreement dated 19 August 2009 pursuant to which Kohylia has been nominated as charterer by Avra Maritime Services S.A., for a charterhire of USD29,356 net per day;
- (b) the ten year (with options to extend for up to 2 years) time charterparty in respect of Vessel B dated 3 September 2007 made between Hanjin Shipping Co. Ltd. as charterer and the relevant Seller as amended by nomination agreement dated 19 August 2009 pursuant to which Ducale has been nominated as charterer by Avra Maritime Services S.A., for a charterhire of USD29,356 net per day;

“**Vessel A**” means the capesize bulk carrier of about 180,000 dwt which is being or to be constructed by the Builder with Builder’s Hull No. S1065 for, and purchased by, Kohylia under the Vessel A Shipbuilding Contract;

**“Vessel A Novation Agreement”** means the novation agreement in respect of the Vessel B Shipbuilding Contract dated 19 August 2009 made between the Vessel A Seller, the Builder and Kohylia;

**“Vessel A Purchase Contract”** means the agreement dated 19 August 2009 made between Kohylia as buyer and the relevant Seller as seller of Vessel A;

**“Vessel A Refund Guarantee”** means the irrevocable and unconditional guarantee dated 4 September 2007 issued by Woori Bank in relation to the Vessel A Shipbuilding Contract as amended by an addendum dated 25 August 2009 issued by Woori Bank confirming that the said guarantee continues in full force and effect notwithstanding the amendments to the Vessel A Shipbuilding Contract;

**“Vessel A Seller”** means Maganari Shipping S.A. of the Marshall Islands;

**“Vessel A Shipbuilding Contract”** means the Shipbuilding Contract dated 4 December 2006 entered into for the construction by the Builder of Vessel A as amended by (a) an addendum No. 1 dated 15 September 2007, (b) the Vessel A Novation Agreement and (c) a tripartite agreement dated 19 August 2009, as further supplemented from time to time;

**“Vessel B”** means the capesize bulk carrier of about 180,000 dwt which is being or to be constructed by the Builder with Builder’s Hull No. S1067 for, and purchased by, Ducale under the Vessel B Shipbuilding Contract;

**“Vessel B Novation Agreement”** means the novation agreement in respect of the Vessel B Shipbuilding Contract dated 19 June 2009 made between the Vessel B Seller, the Builder and Ducale;

**“Vessel B Purchase Contract”** means the agreement dated 19 August 2009 made between Ducale as buyer and the relevant Seller as seller of Vessel B;

**“Vessel B Refund Guarantee”** means the irrevocable and unconditional guarantee dated 18 September 2007 issued by Export-Import Bank of Korea in relation to the Vessel B

Shipbuilding Contract as amended by an addendum dated 25 August 2009 issued by Export-Import Bank of Korea confirming that the said guarantee continues in full force and effect notwithstanding the amendments to the Vessel B Shipbuilding Contract;

“**Vessel B Seller**” means Arachova Shipping S.A. of the Marshall Islands; and

“**Vessel B Shipbuilding Contract**” means the Shipbuilding Contract dated 4 December 2006 entered into for the construction by the Builder of Vessel B as amended by (a) an addendum No. 1 dated 15 September 2007, (b) the Vessel B Novation Agreement and (c) a tripartite agreement dated 19 August 2009, as further supplemented from time to time.



**Execution page**

SIGNED by Alexandros Laios )  
attorney-in-fact for and on behalf of )  
**DUCALE MARINE INC.** )  
pursuant to a Power of Attorney )  
dated 26 August 2009 )

/s/ Alexandros Laios  
Attorney-in-fact

SIGNED by Alexandros Laios )  
attorney-in-fact for and on behalf of )  
**KOHYLIA SHIPMANAGEMENT S.A.** )  
pursuant to a Power of Attorney )  
dated 26 August 2009 )

/s/ Alexandros Laios  
Attorney-in-fact

SIGNED by Christina Margelou and )  
Chryssa Voulgare )  
for and on behalf of )  
**EMPORIKI BANK OF GREECE S.A.** )

/s/ Christina Margelou and /s/ Chryssa Voulgare  
Authorised signatories

TWENTY-FIFTH SUPPLEMENTAL INDENTURE (this “**Twenty-fifth Supplemental Indenture**”), dated as of September 8, 2009, is entered into by and among Navios Maritime Holdings Inc. (or its permitted successor), a Marshall Islands corporation (the “**Company**”), Ducale Marine Inc., Kohylia Shipmanagement S.A. and Highbird Management Inc., each a Marshall Islands corporation (each a “**Guaranteeing Subsidiary**” and collectively, the “**Guaranteeing Subsidiaries**”) and each an indirect subsidiary of the Company, the other Guarantors (as defined in the Indenture referred to herein) and Wells Fargo Bank, N.A. (or its permitted successor) as trustee under the Indenture referred to below (the “**Trustee**”).

WITNESSETH

WHEREAS, the Company and the Guarantors have heretofore executed and delivered to the Trustee an indenture (as amended and supplemented, the “**Indenture**”), dated as of December 18, 2006 providing for the issuance of 9½% Senior Notes due 2014 (the “**Notes**”);

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiaries shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiaries shall unconditionally guarantee all of the Company’s obligations under the Notes and the Indenture on the terms and conditions set forth herein (the “**Note Guarantee**”); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Twenty-fifth Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiaries and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
2. AGREEMENT TO GUARANTEE. Each Guaranteeing Subsidiary hereby agrees to provide an unconditional Guarantee, on and subject to the terms, conditions and limitations set forth in the Notation of Guarantee and in the Indenture, including, but not limited, to Article Ten thereof.
3. NEW YORK LAW TO GOVERN. THIS TWENTY-FIFTH SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.
4. COUNTERPARTS. The parties may sign any number of copies of this Twenty-fifth Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

5. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

6. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Twenty-fifth Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Company.

IN WITNESS WHEREOF, the parties hereto have caused this Twenty-fifth Supplemental Indenture to be duly executed and attested, all as of the date first above written.

DUCALE MARINE INC.

By: /s/ Vasiliki Papaefthymiou  
Name: Vasiliki Papaefthymiou  
Title: Director and Authorized Officer

KOHYLIA SHIPMANAGEMENT S.A.

By: /s/ Vasiliki Papaefthymiou  
Name: Vasiliki Papaefthymiou  
Title: Director and Authorized Officer

HIGHBIRD MANAGEMENT INC.

By: /s/ Vasiliki Papaefthymiou  
Name: Vasiliki Papaefthymiou  
Title: Director and Authorized Officer

NAVIOS MARITIME HOLDINGS INC.

By: /s/ Vasiliki Papaefthymiou  
Name: Vasiliki Papaefthymiou  
Title: Executive Vice President, Legal

CUSTOMIZED DEVELOPMENT S.A.  
FLORAL MARINE LTD.  
RED ROSE SHIPPING CORP.  
PANDORA MARINE INC.  
GINGER SERVICES CO.  
QUENA SHIPMANAGEMENT INC.  
ASTRA MARITIME CORPORATION  
PRIMAVERA SHIPPING CORPORATION  
PUEBLO HOLDINGS LTD.  
SURF MARITIME CO.  
BEAUFIKS SHIPPING CORPORATION  
ROWBOAT MARINE INC.  
CORSAIR SHIPPING LTD.  
SAGITTARIUS SHIPPING CORPORATION  
ORBITER SHIPPING CORP.  
PHAROS NAVIGATION S.A.  
SIZZLING VENTURES INC.  
SHIKHAR VENTURES S.A.  
TAHARQA SPIRIT CORP.  
RHEIA ASSOCIATES CO.  
RUMER HOLDING LTD.  
CHILALI CORP.  
KLEIMAR N.V.,  
NAV HOLDINGS LIMITED  
NAVIOS CORPORATION  
ANEMOS MARITIME HOLDINGS INC.  
NAVIOS SHIPMANAGEMENT INC.  
AEGEAN SHIPPING CORPORATION  
ARC SHIPPING CORPORATION  
MAGELLAN SHIPPING CORPORATION  
IONIAN SHIPPING CORPORATION  
APOLLON SHIPPING CORPORATION  
HERAKLES SHIPPING CORPORATION  
ACHILLES SHIPPING CORPORATION  
KYPROS SHIPPING CORPORATION  
HIOS SHIPPING CORPORATION  
MERIDIAN SHIPPING ENTERPRISES INC.  
MERCATOR SHIPPING CORPORATION  
HORIZON SHIPPING ENTERPRISES CORPORATION  
HYPERION ENTERPRISES INC.  
STAR MARITIME ENTERPRISES CORPORATION  
NAVIOS HANDYBULK INC.  
NAVIOS INTERNATIONAL INC.,  
as Guarantors

By: /s/ Vasiliki Papaefthymiou  
Name: Vasiliki Papaefthymiou  
Title: Director and Authorized Officer

KLEIMAR LTD., as a Guarantor

By: /s/ George Akhniotis  
Name: George Akhniotis  
Title: Secretary and Director

NOSTOS SHIPMANAGEMENT CORP.,  
as a Guarantor

By: /s/ Vasiliki Papaefthymiou  
Name: Vasiliki Papaefthymiou  
Title: Secretary / Director

WHITE NARCISSUS MARINE S.A.,  
as a Guarantor

By: /s/ Vasiliki Papaefthymiou  
Name: Vasiliki Papaefthymiou  
Title: Vice President

PORTOROSA MARINE CORP, as a Guarantor

By: /s/ Vasiliki Papaefthymiou  
Name: Vasiliki Papaefthymiou  
Title: Secretary / Director

NAVIMAX CORPORATION, as a Guarantor

By: /s/ Shunji Sasada  
Name: Shunji Sasada  
Title: President

HESTIA SHIPPING LTD., as a Guarantor

By: /s/ Vasiliki Papaefthymiou

Name: Vasiliki Papaefthymiou

Title: Authorized Officer

WELLS FARGO BANK, N.A., as Trustee

By: /s/ Martin Reed

Authorized Signatory

Martin Reed

Vice President