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

FORM 20-F

(Mark One)

REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2018

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of event requiring this shell company report _____

For the transition period from _____ to _____

Commission file number 001-34153

Global Ship Lease, Inc.

(Exact name of Registrant as specified in its charter)

N/A

(Translation of Registrant's name into English)

Republic of The Marshall Islands
(Jurisdiction of incorporation or organization)

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Securities registered or to be registered pursuant to Section 12(b) of the Act.

Title of each class

Name of each exchange on which registered

Class A Common Shares, par value of \$0.01 per share
Depository Shares, each of which represents a 1/100th interest in a share
of 8.75% Series B Cumulative Redeemable Perpetual
Preferred Shares, par value \$0.01 per share
8.75% Series B Cumulative Redeemable Perpetual Preferred Shares*

New York Stock Exchange
New York Stock Exchange

* Not for trading, but only in connection with the registration of the Depository Shares representing such 1/100th interest in shares of 8.75% Series B Cumulative Redeemable Perpetual Preferred Shares, pursuant to the requirements of the Securities and Exchange Commission.

Securities registered or to be registered pursuant to Section 12(g) of the Act: None

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act: None

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

9,017,205 Class A common shares, par value of \$0.01 per share
925,745 Class B common shares, par value of \$0.01 per share
14,000 Series B Cumulative Redeemable Perpetual Preferred Shares, par value of \$0.01 per share
250,000 Series C Perpetual Preferred Shares, par value of \$0.01 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer Emerging growth company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards[†] provided pursuant to Section 13(a) of the Exchange Act.

[†] The term "new or revised financial accounting standard" refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP International Financial Reporting Standards as Issued by the International Accounting Standards Board Other

If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow.

Item 17 Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

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GLOBAL SHIP LEASE, INC.

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PART I

Unless the context otherwise requires, references to the “company,” “we,” “us,” “our” or “Global Ship Lease” refer to Global Ship Lease, Inc.; “CMA CGM” refers to CMA CGM S.A., currently our principal charterer; “CMA Ships” refers to CMA Ships, a wholly-owned subsidiary of CMA CGM and one of our ship technical managers, “Poseidon Containers” refers to Poseidon Containers Holdings LLC and K&T Marine LLC, collectively, with whom we completed a strategic combination on November 15, 2018, Technomar Shipping Inc (“Technomar”) refers to one of our ship technical managers and ConChart Commercial Inc (“Conchart”) refers to our commercial ship manager. For the definition of certain terms used in this Annual Report, please see “Glossary of Shipping Terms” at the end of this Annual Report. Unless otherwise indicated, all references to “\$” and “dollars” in this Annual Report are in U.S. dollars. We use the term “TEU”, meaning twenty-foot equivalent unit, the international standard measure of container size, in describing volumes in world container trade and other measures, including the capacity of our containerships, which we also refer to as vessels. Unless otherwise indicated, we calculate the average age of our vessels on a weighted average basis, based on TEU capacity. All share and per share amounts disclosed in this Annual Report give retroactive effect, for all periods presented, to the one-for-eight reverse stock split of our Class A common shares effected on March 25, 2019.

Special Note Regarding Forward-Looking Statements

This Annual Report contains forward-looking statements. Forward-looking statements provide our current expectations or forecasts of future events. Forward-looking statements include statements about our expectations, beliefs, plans, objectives, intentions, assumptions and other statements that are not historical facts. Words or phrases such as “anticipate,” “believe,” “continue,” “estimate,” “expect,” “intend,” “may,” “ongoing,” “plan,” “potential,” “predict,” “project,” “will” or similar words or phrases, or the negatives of those words or phrases, may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking. Examples of forward-looking statements in this Annual Report include, but are not limited to, statements regarding our disclosure concerning our operations, cash flows, financial position, dividend policy, the anticipated benefits of our strategic transaction with Poseidon Containers, and the likelihood of success in acquiring additional vessels to expand our business.

Forward-looking statements appear in a number of places in this Annual Report including, without limitation, in the sections entitled “Business Overview,” “Management’s Discussion and Analysis of Financial Conditions and Operations,” and “Dividend Policy.”

Forward-looking statements are subject to known and unknown risks and uncertainties and are based on potentially inaccurate assumptions that could cause actual results to differ materially from those expected or implied by the forward-looking statements. Our actual results could differ materially from those anticipated in forward-looking statements for many reasons, including the factors described in “Risk Factors” in this Annual Report. The risks described under “Risk Factors” are not exhaustive. Other sections of this Annual Report describe additional factors that could adversely affect our results of operations, financial condition, liquidity and the development of the industries in which we operate. New risks can emerge from time to time, and it is not possible for us to predict all such risks, nor can we assess the impact of all such risks on our business or the extent to which any risks, or combination of risks and other factors, may cause actual results to differ materially from those contained in any forward-looking statements. Accordingly, you should not unduly rely on these forward-looking statements, which speak only as of the date of this Annual Report. We undertake no obligation to publicly update or revise any forward-looking statement to reflect circumstances or events after the date of this Annual Report or to reflect the occurrence of unanticipated events. You should, however, review the factors and risks we describe in the reports we will file from time to time with the Securities and Exchange Commission, or “SEC,” after the date of this Annual Report.

Item 1. Identity of Directors, Senior Management and Advisers

Not applicable.

Item 2. Offer Statistics and Expected Timetable

Not applicable.

Item 3. Key Information

A. Selected Financial Data

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You should read the information set forth below in conjunction with “Item 5. Operating and Financial Review and Prospects—A. Operating Results—Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and notes thereto, which are referred to as our consolidated financial statements, included elsewhere in this Annual Report.

The historical selected consolidated financial data as of December 31, 2018 and 2017 and operating results for the years ended December 31, 2018, 2017, and 2016, are derived from our audited consolidated financial statements which are included in this report. The historical selected consolidated financial data as of December 31, 2016, 2015 and 2014 and for the years ended December 31, 2015 and December 31, 2014 have been derived from our audited financial statements not included in this report. This information is qualified by reference to, and should be read in conjunction with, “Item 5. Operating and Financial Review and Prospects” and our consolidated financial statements and notes thereto included elsewhere in this report.

	2018 (1)	2017	2016	2015	2014
	(Expressed in millions of U.S. dollars, except for per share data)				
Statements of Income					
Operating revenues:					
Time charter revenue	\$ 157.1	\$ 159.3	\$ 166.8	\$ 165.3	\$138.7
Operating expenses:					
Vessel operating expenses	(49.3)	(42.7)	(45.4)	(48.9)	(47.6)
Time charter and voyage expenses	(1.6)	(1.0)	(0.7)	(1.6)	(1.3)
Depreciation and amortization	(35.5)	(38.0)	(42.8)	(44.9)	(41.1)
Impairment of vessels	(71.8)	(87.6)	(92.4)	(44.7)	—
General and administrative expenses	(9.2)	(5.4)	(6.2)	(6.5)	(7.0)
Total operating expenses	(167.4)	(174.7)	(187.5)	(146.6)	(97.0)
Operating (loss) income	(10.3)	(15.4)	(20.7)	18.7	41.7
Non-operating income (expense)					
Interest income	1.4	0.5	0.2	0.1	0.1
Interest and other finance expense	(48.7)	(59.4)	(44.8)	(48.2)	(43.9)
Gain on redemption of Series A Preferred Shares	—	—	—	—	8.6
Realized (loss) on interest rate derivatives	—	—	—	—	(2.8)
Unrealized gain on interest rate derivatives	—	—	—	—	1.9
Other income, net	0.3	0.1	0.2	0.6	0.6
(Loss) income before income taxes	(57.3)	(74.2)	(65.1)	(28.8)	6.2
Income taxes	0.0	0.0	0.0	0.0	(0.1)
Net (loss) income	(57.3)	(74.2)	(65.1)	(28.8)	6.1
Earnings allocated to Series B Preferred Shares	(3.1)	(3.1)	(3.1)	(3.1)	(1.1)
Net (loss) income available to common shareholders	(60.4)	(77.3)	(68.2)	(31.9)	5.0
Net (loss) income per Class A common share, in \$					
Basic and diluted	(7.42)	(12.89)	(11.39)	(5.36)	0.8
Weighted average number of Class A common shares outstanding					
Basic in millions	6.5	6.0	6.0	6.0	6.0
Diluted in millions	6.5	6.0	6.0	6.0	6.0
Net income per Class B common share, in \$					
Basic and diluted	Nil	Nil	Nil	Nil	Nil
Weighted average number of Class B common shares outstanding					
Basic and diluted in millions	0.9	0.9	0.9	0.9	0.9
Dividend per Class A common share in \$					
	—	—	—	0.02	—
Statement of cash flow					
Net cash from Operating Activities	\$ 47.7	\$ 66.9	\$ 71.6	\$ 62.3	\$ 60.9
Net cash provided by (used in) Investing Activities	24.3	(4.9)	(6.9)	(101.2)	(80.1)
Net cash (used in) provided by Financing Activities	(55.2)	(42.9)	(64.1)	59.2	27.9
Balance sheet data (at period end)					
Total current assets	99.0	77.4	57.1	57.6	36.7
Total vessels in operation	1,112.8	586.5	707.3	838.4	826.2
Total assets	1,233.5	675.9	777.2	904.9	873.7
Debt (current and non-current portion)	877.2	398.5	419.9	478.1	401.9
Series B and C Preferred Shares	—	—	—	—	—
Class A and B common shares	0.1	0.1	0.1	0.1	0.1
Shareholders’ equity	316.4	251.6	328.9	395.8	438.1
Other data					
Number of vessels in operation at period end	38	18	18	18	18
Ownership days	7,675	6,570	6,588	6,893	6,270
Utilization	98.7%	98.4%	98.4%	99.6%	98.0%

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- (1) On November 15, 2018, we completed a strategic combination with Poseidon Containers, acquiring 20 containerships, one of which, the Argos, was contracted to be sold which sale was completed in December 2018 (the “Poseidon Transaction”). The consideration given for the acquisition of the net assets was 3,005,603 Class A common shares and 250,000 Series C perpetual convertible preferred shares of par value \$0.01 (the “Series C Preferred Shares”). Each Series C preferred share carries 38.75 votes and they are convertible in certain circumstances to a total of 13.0 million Class A common shares. References herein to “GSL Fleet” are to the 19 vessels that were owned by us prior to the consummation of the Poseidon Transaction, and references to “Poseidon Fleet” are to the 19 vessels that were acquired by us upon consummation of the Poseidon Transaction, excluding one additional vessel acquired but held for sale and delivered to the new owner in December 2018.
- (2) On January 2, 2019, as a consequence of the completion of the Poseidon Transaction, all of our issued and outstanding Class B common shares converted one-for-one into Class A common shares. On March 25, 2019, we effected a one-for-eight reverse stock split of our Class A common shares, which our shareholders authorized at our special meeting of shareholders held on March 20, 2019. There was no change to the trading symbol, number of authorized shares, or par value of our Class A common shares in connection with the reverse stock split. All share and per share amounts disclosed in this Annual Report give effect to the reverse stock split retroactively, for all periods presented, which resulted in the number of issued and outstanding Class A common shares reducing from 79,543,921 to 9,942,950.

B. Capitalization and Indebtedness

Not applicable.

C. Reasons for the Offer and Use of Proceeds

Not applicable.

D. Risk Factors

Risks Relating to Our Business

We may not realize all of the anticipated benefits of our recent strategic transaction with Poseidon Containers.

On November 15, 2018, we completed the Poseidon Transaction, a strategic combination with Poseidon Containers whereby we acquired Poseidon Containers, including its fleet of 20 containerships, one of which was contracted to be sold, the sale of which was completed in December 2018. On the closing of the Poseidon Transaction, we issued 3,005,603 Class A common shares and 250,000 Series C Preferred Shares, which are convertible into 12,955,187 Class A common shares upon the occurrence of certain events, to the unitholders of Poseidon Containers and assumed the debt of Poseidon Containers, which amounted to \$509.7 million as at November 15, 2018.

There is a risk that some or all of the expected benefits of the Poseidon Transaction may fail to materialize, or may not occur within the time periods anticipated. The realization of such benefits may be affected by a number of factors, many of which are beyond our control, including but not limited to the strength or weakness of the economy and competitive factors in the areas where we do business, the effects of competition in the markets in which we operate, and the impact of changes in the laws and regulations regulating the container shipping industry. The challenge of coordinating previously separate businesses makes evaluating our business and future financial prospects following the Poseidon Transaction difficult. Our ability to realize anticipated benefits and cost savings will depend, in part, on our ability to successfully integrate the operations of both us and Poseidon Containers in a manner that results in various benefits, including, among other things, an expanded market reach and operating efficiencies, and that does not materially disrupt existing relationships nor result in decreased revenues or dividends. The past financial performance of each of Global Ship Lease and Poseidon Containers may not be indicative of their future financial performance. Realization of the anticipated benefits of the Poseidon Transaction will depend, in part, on our ability to successfully integrate our business. We have devoted, and expect to continue to devote, significant management attention and resources to integrating business practices and support functions. The diversion of management’s attention and any delays or difficulties encountered relating to the Poseidon Transaction and the coordination of the two companies’ operations could have an adverse effect on our business, financial results, financial condition or our share price. The consummation of the Poseidon Transaction and the integration of Poseidon Containers with our business may also result in additional and unforeseen expenses. Failure to realize all of the anticipated benefits of the Poseidon Transaction may impact our business, results of operations and financial condition.

Significant demands have been, and will continue to be, placed on us as a result of the Poseidon Transaction.

As a result of the completion of the Poseidon Transaction, significant demands have been, and will continue to be, placed on our managerial, operational and financial personnel and systems. We cannot assure you that our systems, procedures and controls will be adequate to support the expansion of operations resulting from the Poseidon Transaction. Our future operating results will be affected by the ability of our officers and key employees to manage changing business conditions and to implement and expand our operational and financial controls and reporting systems as a result of the Poseidon Transaction.

We are dependent on our charterers, particularly CMA CGM, and other counterparties fulfilling their obligations under agreements with us, and their inability or unwillingness to honor these obligations could significantly reduce our revenues and cash flow.

Payments to us by our charterers under time charters are and will be our sole source of operating cash flow. Seventeen of our 38 vessels are chartered to CMA CGM and we have entered into charter agreements with CMA CGM to charter an additional five of our vessels, commencing in the first half of 2019. CMA CGM's payments to us under these charters are an important source of operating revenue. We are consequently highly dependent on the performance by CMA CGM of its obligations under these charters. The container shipping industry is cyclical, and has been suffering an extended cyclical downturn since mid-2008, and many container shipping companies have reported substantial losses. Financial performance of container shipping companies improved in 2012, 2013, 2014 and 2017. However, market conditions deteriorated in 2015 and 2016 with lower than expected growth in the demand for container shipping services and higher than expected growth in the containership fleet from the delivery of new buildings. Freight rates, charter rates and asset values were under pressure due to oversupply of container ship capacity. Industry conditions improved through 2017 and into the first half of 2018, with weakness in short term market charter rates being seen in the second half of 2018. If we lose a time charter because the charterer is unable to pay us or for any other reason, we may be unable to re-deploy the related vessel on similarly favorable terms or at all. Also, we will not receive any revenues from such a vessel while it is un-chartered, but we will be required to pay expenses necessary to maintain and insure the vessel and service any indebtedness on it.

Whilst there were no delays in receiving charterhire in 2017 or 2018, we have previously experienced, from time to time, delays in receiving charterhire payments from CMA CGM, which under the charter contracts are due to be paid two weeks in advance. As at December 31, 2018, no charterhire was outstanding from CMA CGM.

If CMA CGM, or any other of our charterers, ceases doing business or fails to perform its obligations under our charters, our business, financial position and results of operations would be materially adversely affected as it is probable that, even if we were able to find replacement charters, such replacement charters would be at significantly lower daily rates and for shorter durations. If such events occur, there would be significant uncertainty about our ability to continue as a going concern.

We are dependent on third parties, some of which are related parties, to manage our ships and substantial fees will be payable to our ship managers regardless of our profitability.

All of our vessels are technically managed by third-party ship managers under contracts whereby, for an annual management fee, the manager provides all day-to-day ship management, including crewing, purchasing stores, lubricating oils and spare parts, paying wages, pensions and insurance for the crew, and organizing other vessel operating necessities, including the arrangement and management of drydocking. As of the date of this report, the 19 vessels acquired in the Poseidon Transaction are technically managed by Technomar, a company in which our Executive Chairman is a significant shareholder, 11 vessels were technically managed by a ship manager based in Hong Kong, seven were technically managed by CMA Ships, a wholly-owned subsidiary of CMA CGM, and one by a ship manager based in Germany. It is anticipated that the technical management of all of our vessels will transfer to Technomar during 2019.

Additionally, as of the date of this report, 20 of our vessels are commercially managed by Conchart, a company in which our Executive Chairman is a significant shareholder. The services provided by Conchart, as our commercial manager, include chartering, sale and purchase and post-fixtured administration.

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The fees and expenses payable pursuant to our technical and commercial ship management agreements will be payable without regard to our business, results of operation and financial condition. Additionally, we have limited rights to terminate our management agreements. The payment of fees to our managers could adversely affect our results of operations and ability to pay dividends.

Our third-party ship managers are privately-held companies and there is little or no publicly available information about them.

The ability of Technomar, Conchart, CMA Ships and our other third-party ship managers, to render ship management services will depend in part on their own financial strength. Circumstances beyond our control could impair our third-party ship managers' financial strength, and because each is a privately-held company, information about the financial strength of our third-party ship managers is not available. As a result, we and our shareholders might have little advance warning of financial or other problems affecting our third-party ship managers even though their financial or other problems could have a material adverse effect on us.

Technomar, Conchart, CMA CGM and CMA Ships have conflicts of interest with us which may make them favor their own interests to our detriment.

Our Executive Chairman, who, through Management Investor Co., also controls approximately 10.0% of the votes on any matter submitted to the vote of our common shareholders, is a significant shareholder of and controls Technomar and Conchart. As of the date of this report, CMA CGM, the parent company of CMA Ships, holds approximately 15.6% of our voting power and has nominated two members of our Board of Directors. Accordingly, CMA CGM, our principal charterer, and affiliates of Technomar, Conchart and CMA Ships, our third-party ship managers, have the power to exert considerable influence over our actions. These relationships could create conflicts of interest between us and our third-party ship managers and principal charterer. Under our bylaws, in order for the approval of contracts or transactions involving a related party not to be voidable (1) any interested director's relationship or interest as to the contract or transaction must be disclosed to the board of directors, and such contract or transaction must be authorized by a majority of the disinterested directors (or, in certain cases, all of the disinterested directors) or (2) the contract or transaction must be specifically approved in good faith by vote of the shareholders. Furthermore, our corporate governance guidelines require a director with a personal interest in a matter being approved by the board of directors to disclose the interest, to recuse himself or herself from participation in the discussion and to not vote on the matter.

Such conflicts of interest may arise in connection with the chartering, purchase, sale and operations of the vessels in our fleet versus vessels managed or owned by other companies affiliated with our third-party ship managers or principal charterer. As a result of these conflicts, our third-party ship managers or our principal charterer may favor their own or their affiliates' interests over our interests. These conflicts may have unfavorable consequences for us. Although Technomar and Conchart have entered into a non-competition agreement with us, and although our ship management agreements expressly prohibit CMA Ships from giving preferential treatment when performing any of its ship management services to any other vessel that is affiliated with it, or otherwise controlled by CMA CGM, conflicts of interest may arise between us and our third-party ship managers and principal charterer, and such conflicts may have an adverse effect on our results of operations.

Our financial reporting is partly dependent on information provided by our third-party ship managers and on accounting and financial reporting services provided by Technomar.

Our ship managers are obliged to provide us with requisite financial information on a timely basis so that we can meet our own reporting obligations under U.S. securities laws. Furthermore, the accounting and financial reporting for Poseidon Containers is provided by Technomar, under an administrative support section of the ship management contracts. It is anticipated that all accounting and financial reporting for the legacy Global Ship Lease entities will transition to Technomar during 2019. Our ship managers, including Technomar, are privately-held corporations with financial reporting arrangements different from ours. If our ship managers are delayed in providing us with key financial information, or Technomar otherwise fails to meet its obligations under the administrative support section of the ship management agreements, we could fail to meet our financial reporting deadlines, which could lead to regulatory sanctions being imposed on us and cause us to default on reporting covenants under our financing agreements. Any such results may have a material adverse effect on our results of operation, financial condition and reputation.

Certain terms in our agreements with CMA CGM and its affiliates may be the result of negotiations that were not conducted at arms-length and may not reflect market standard terms. Accordingly, they may include terms that may not be obtained from future negotiations with unaffiliated third parties.

The initial charters, the ship management agreements and the other contractual agreements, including the terms of the Series A preferred shares and the subsequent agreement to redeem these in August 2014 were entered into when we were a wholly-owned subsidiary of CMA CGM in the context of a proposed public offering of our Class A common shares in 2007, and subsequently the 2008 merger of Marathon Acquisition Corp. ("Marathon") and Global Ship Lease, with and into GSL Holdings, Inc., Marathon's newly-formed wholly-owned Marshall Islands subsidiary, with GSL Holdings, Inc. (now renamed Global Ship Lease, Inc.) continuing as the surviving company incorporated in the Republic of the Marshall Islands (collectively, the "Marathon Merger"), and other related transactions. We have subsequently agreed amendments of and extensions to a number of the initial charters with CMA CGM. Our agreements with CMA CGM may include terms that could not have been obtained from arms-length negotiations with unaffiliated third parties for similar services and assets. As a result, our future operating results may be negatively affected if we do not receive terms as favorable in future negotiations with unaffiliated third parties.

Our growth depends on continued growth in the demand for containerships, our ability to purchase further vessels, obtain new charters and maintain our relationship with CMA CGM. We will require additional financing to be able to grow and will face substantial competition.

One of our objectives is to grow by acquiring additional vessels and chartering them out to container shipping companies potentially including CMA CGM. The opportunity to acquire additional containerships will in part depend on the state of and prospects for container shipping. The container shipping industry is both cyclical and volatile in terms of supply demand balance, freight rates and charter rates and overall profitability. By and large, the industry has been under pressure since 2008, with an excess of supply of containership capacity and mediocre demand growth. The factors affecting the supply and demand for containerships, and the nature, timing and degree of changes in industry conditions are unpredictable.

Acquisition of vessels will be challenging as, inter alia, we may need to obtain additional financing in order to complete vessel purchases. Due to the continuing effects of the economic downturn and the severe cyclical downturn in the container shipping industry, financing for investment in containerships, whether newbuildings or existing vessels, is severely limited. Further, the cost of any available financing has increased significantly. In addition, in recent years, the number of lenders for shipping companies has decreased and lenders have generally lowered their loan-to-value advance ratios, shortened loan terms and accelerated repayment schedules. The actual or perceived credit quality of our charterers and proposed charterers, and any defaults by them, may materially affect our ability to obtain the additional capital resources that we will require to purchase additional vessels or may significantly increase our costs of obtaining such capital. These factors may hinder our ability to access financing and we may be unable to obtain adequate funding for growth.

The process of obtaining further vessels and new charters is highly competitive. The purchase of vessels and gaining of new charters depends on a variety of factors relating to the vessel owner, including:

- competitiveness of overall price;
- availability of committed financing;
- containership leasing experience and quality of ship operations (including cost effectiveness);
- shipping industry relationships and reputation for reliability, customer service and safety;
- quality and experience of seafaring crew;
- ability to finance containerships at competitive rates and financial stability generally;
- relationships with shipyards and the ability to get suitable berths for newbuildings; and
- construction management experience, including the ability to obtain on-time delivery of new vessels according to customer specifications.

We will face substantial competition in expanding our business from a number of experienced companies. Many of these competitors may have greater financial resources and a lower cost of capital than us, may operate larger fleets, may have been established for longer and may be able to offer better charter rates. During any industry downturn there are an increased number of vessels available for charter, including many from owners with strong reputation and experience. Excess supply of vessels in the container shipping market results in greater price competition for charters. As a result of these factors, we may be unable to purchase additional containerships, expand our relationships with CMA CGM or obtain new charters on a profitable basis, if at all, which would have a material adverse effect on our business, results of operations and financial condition.

Certain shareholders may have the power to exert control over us, and their interests could conflict with the interests of our other shareholders.

According to information contained in public filings, KEP VI (Newco Marine) Ltd. and KIA VIII (Newco Marine) Ltd., both affiliates of Kelso & Company, a U.S. private equity firm, hereafter referred to as Kelso, controls approximately 50.1% of the vote on any matter submitted to the vote of our common shareholders, through its ownership of Series C Preferred Shares and by virtue of a voting agreement with certain other of our shareholders. In addition, a Managing Director of Kelso is a member of our Board of Directors. As a result, Kelso has the power to exert considerable influence over our actions and to effectively control the outcome of matters on which our shareholders are entitled to vote, including increasing or decreasing our authorized share capital, the election of directors, declaration of dividends, the appointment of management, and other policy decisions. In addition, according to public filings, CMA CGM, George Giouroukos (our Executive Chairman) through Management Investor Co., Michael S. Gross (our former Chairman and a director) and MAAS Capital respectively hold and/or control approximately 15.6%, 10.0%, 6.8% and 5.3% of our voting power. Conflicts of interest may also arise between us and these significant shareholders or their affiliates, which may result in the conclusion of transactions on terms not determined by market forces. Any such conflicts of interest could adversely affect our business, financial condition and results of operations, and the trading price of our common shares. Moreover, the concentration of ownership may delay, deter or prevent acts that would be favored by our other shareholders or deprive shareholders of an opportunity to receive a premium for their shares as part of a sale of our business. Similarly, this concentration of share ownership may adversely affect the trading price of our shares because investors may perceive disadvantages in owning shares in a company with concentrated ownership.

Due to our lack of diversification, adverse developments in our containership transportation business could harm our business, results of operations and financial condition.

Nearly all of our cash flow is generated from our charters of containerships. Due to our lack of diversification, an adverse development in the containership industry may more significantly harm our business, results of operations and financial condition than if we maintained more diverse assets or lines of business.

We may be unable to recharter our vessels at profitable rates, if at all, upon their time charter expiry.

As of February 1, 2019, the orderbook for newbuilding containerships represented an aggregate capacity of 2.75 million TEUs, approximately 12.3% of the total worldwide containership fleet capacity as of that date. The size of the orderbook will result in the increase in the size of the world containership fleet over the next few years. As of that date, 195 containerships were idle, with a capacity of 0.6 million TEUs, or 2.5% of the total cellular fleet. An over-supply of containership capacity, combined with lack of growth in the demand for containerships, may result in a continuation of low charter rates. The time charters for nine of our 38 containerships can be terminated before the end second quarter 2019 and a further ten vessels have charters that can be terminated during the second half of 2019. We cannot be assured that we will be able to obtain new time charters for our vessels on expiry of existing charters or that if we do, the new rates will be favorable. If we are unable to obtain new time charters for our containerships at favorable rates or are unable to secure new charters promptly, or at all, the vessels would be idle. We would continue to incur certain operating costs but earn no revenue, which would have a material adverse effect on our business, financings, results of operations and financial condition.

Our substantial indebtedness could adversely affect our ability to raise additional capital to fund our operations and limit our ability to react to changes in the economy or our industry.

We are highly leveraged. As at December 31, 2018, we had (i) \$340.0 million of secured indebtedness outstanding under our 9.875% First Priority Senior Secured Notes due 2022 (the “2022 notes”), (ii) \$34.8 million drawn and outstanding under a secured term loan, (iii) \$8.1 million drawn under a growth facility and (iv) \$506.3 million secured debt associated with the 19 Poseidon Fleet.

Our high degree of leverage could have important consequences, including:

- increasing our vulnerability to adverse economic, industry or competitive developments;
- requiring a substantial portion of our cash flows from operations to be dedicated to the payment of interest on our indebtedness, amortization payments for our 2022 notes and our credit facilities, and, under certain circumstances, principal payments through a cash sweep mechanism in certain of our credit facilities, therefore reducing our ability to use our cash flows to fund operations, capital expenditure and future business opportunities;
- increasing our vulnerability to refinancing risk as a substantial proportion of the debt assumed in the Poseidon Transaction falls due in 2020;
- making it more difficult for us to satisfy our obligations with respect to our indebtedness, including the 2022 notes and the secured term loan, and any failure to comply with the obligations of any of our debt instruments, including restrictive covenants and borrowing conditions, could result in an event of default under the indenture governing the 2022 notes and the agreements governing such other indebtedness;
- restricting us from making strategic acquisitions or causing us to make non-strategic divestitures;
- limiting our ability to obtain additional financing for working capital, capital expenditures, debt service requirements, acquisitions and general corporate or other purposes; and
- limiting our flexibility in planning for, or reacting to, changes in our business or market conditions and placing us at a competitive disadvantage compared to our competitors who are less highly leveraged and who, therefore, may be able to take advantage of opportunities that our leverage may prevent us from exploiting.

Despite our indebtedness levels, we may be able to incur substantially more indebtedness. This could further exacerbate the risks associated with our substantial indebtedness.

We may be able to incur substantial additional indebtedness in the future. Although the indenture governing the 2022 notes and our secured term loan contain restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of significant qualifications and exceptions, and under certain circumstances, the amount of indebtedness that could be incurred in compliance with these restrictions could be substantial. In addition, the indenture governing the 2022 notes and our secured term loan will not prevent us from incurring obligations that do not constitute indebtedness thereunder. Our covenants also permit us to incur substantial non-recourse indebtedness in subsidiaries that do not guarantee our obligations under our 2022 notes. If we incur substantially more indebtedness, the risks associated with our indebtedness as described above could be exacerbated.

Our debt agreements, including those assumed in the Poseidon Transaction, contain restrictions that limit our flexibility in operating our business.

Our debt agreements, including those assumed in the Poseidon Transaction, contain various covenants that limit our ability to engage in specified types of transactions. These covenants limit our ability and the ability of our restricted subsidiaries to, among other things:

- incur additional indebtedness or issue certain preferred stock;
- make any substantial change to the nature of our business;
- pay dividends on or repay or distribute any dividend or share premium reserve;
- redeem or repurchase capital stock or make other restricted payments and investments;
- create or impair certain securities interests, including liens;
- transfer or sell certain assets;
- enter into certain transactions with affiliates;
- acquire a company, shares or securities or a business or undertaking;
- enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction, or sell all or substantially all of our properties and assets;
- create or designate unrestricted subsidiaries; and
- change the flag, class or technical or commercial management of the vessel mortgaged under such facility or terminate or materially amend the management agreement relating to such vessel.

In addition, certain of our debt agreements require us to satisfy certain financial covenants, including a minimum liquidity covenant, minimum net worth covenant, a debt service coverage ratio test, loan to value covenant, and book leverage ratio and value adjusted leverage ratio tests. Our ability to meet those financial covenants and tests will depend on our ongoing financial and operating performance, which, in turn, will be subject to economic conditions and to financial, market, and competitive factors, many of which are beyond our control.

Due to restrictions in our debt agreements, we may need to seek consent from our noteholders and other lenders in order to engage in some corporate and commercial actions that we believe would be in the best interest of our business, and a denial of consent may make it difficult for us to successfully execute our business strategy or effectively compete with companies that are not similarly restricted. For example, our debt agreements restrict our entry into certain transactions or the termination or amendment of our third-party ship management agreements, and require that George Giouroukos remain our Executive Chairman. Our lenders' and/or noteholders' interests may be different from ours, and we cannot guarantee that we will be able to obtain their permission when needed. This may prevent us from taking actions that are in our best interest. Any future agreements governing our indebtedness may include similar or more restrictive restrictions.

A breach of any of the covenants could result in a default under one or more of these agreements, including as a result of cross default provisions, and, in the case of our secured term loan, permit the lenders to cease making loans to us. Upon the occurrence of an event of default under our credit facilities, the lenders could elect to declare all amounts outstanding under the loan to be immediately due and payable. Such actions by the lenders could cause cross defaults under our other credit facilities and the indenture governing our 2022 notes.

Substantially all of the assets currently owned by us serve as security under our secured debt agreements. If our operating performance declines, we may be required to obtain waivers from the holders of our 2022 notes and the lenders under our credit facilities to avoid default thereunder. If we are not able to obtain a waiver from the holders of our 2022 notes and the lenders under our credit facilities, the lenders could exercise their rights upon default and we could be forced into bankruptcy or liquidation.

The vessels' mortgagor or other maritime claimants could arrest our vessels, which could interrupt the charterer's or our cash flow.

If we default under our 2022 notes, or any other credit facility, holders of our 2022 notes and lenders under our other credit facilities who hold mortgages on our vessels could arrest some or all of our vessels and cause them to be sold. We would not receive any proceeds of such sale unless all amounts outstanding under such indebtedness had been repaid in full. Crew members, suppliers of goods and services to a vessel, shippers of cargo and other parties may be entitled to a maritime lien against that vessel for unsatisfied debts, claims or damages. In many jurisdictions, a maritime lien holder may enforce its lien by arresting a vessel through foreclosure proceedings. The arrest or attachment of one or more of our vessels, for valid or invalid reasons, could interrupt the charterer's or our cash flow and require the charterer or us or our insurance to pay a significant amount to have the arrest lifted. In addition, in some jurisdictions, such as South Africa, under the "sister ship" theory of liability, a claimant may arrest both the vessel that is subject to the claimant's maritime lien and any "associated" vessel, which is any vessel owned or controlled by the same owner. Claimants could try to assert "sister ship" liability against one vessel in our fleet for claims relating to another vessel in our fleet. In any event, any lien imposed may adversely affect our results of operations by delaying the revenue gained from ships.

Vessel values may fluctuate, which may adversely affect our financial condition, result in the incurrence of a loss upon disposal of a vessel or increase the cost of acquiring additional vessels.

Vessel values may fluctuate due to a number of different factors, including:

- general economic and market conditions affecting the shipping industry;
- the types, sizes and demand for available vessels;
- the availability of other modes of transportation;
- increases in the supply of vessel capacity;
- the cost of newbuildings;
- governmental or other regulations; and
- the need to upgrade second hand and previously owned vessels as a result of changes in regulations, charterer requirements, technological advances in vessel design or equipment, or otherwise.

In addition, as vessels grow older, they generally decline in value. If a charter terminates, we may be unable to re-deploy the vessel at attractive rates, or at all and, rather than continue to incur costs to maintain and finance the vessel, may seek to dispose of it. Our inability to dispose of the containership at a reasonable price, or at all, could result in a loss on its sale and harm our business, results of operations and financial condition. Additionally, under most of our time charter agreements with CMA CGM, the charterer has a right of first refusal should we decide to sell the vessel during or at the end of the charter period. If they do not exercise this right, we are entitled to sell the vessel, subject to their prior approval, which cannot be unreasonably withheld. We may be forced to sell our vessels for a lesser amount because of these constraints. Moreover, if the book value of a vessel is impaired due to unfavorable market conditions, we may incur a loss that could adversely affect our operating results.

Conversely, if vessel values are elevated at a time when we wish to acquire additional vessels, the cost of acquisition may increase and this could adversely affect our business, results of operations, cash flow and financial condition.

In addition, if we determine at any time that a vessel's value has been impaired, we may need to recognize a significant impairment charge that will reduce our earnings and net assets. We review our containership assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable, which occurs when the assets' carrying value is greater than the undiscounted future cash flows the asset is expected to generate over its remaining useful life. In our experience, certain assumptions relating to our estimates of future cash flows are more predictable by their nature, including, estimated revenue under existing contract terms and remaining vessel life. Certain assumptions relating to our estimates of future cash flows require more judgement and are inherently less predictable, such as future charter rates beyond the firm period of existing contracts, the amount of time a vessel is off-charter, ongoing operating costs and vessel residual values, due to factors such as the volatility in vessel charter rates and vessel values. We believe that the assumptions used to estimate future cash flows of our vessels are reasonable at the time they are made. We can provide no assurances, however, as to whether our estimates of future cash flows, particularly future vessel charter revenues or vessel values, will be accurate. Vessels that currently are not considered impaired may become impaired over time if the future estimated undiscounted cash flows decline at a rate that is faster than the depreciation of our vessels. Future fluctuations in charter rates and vessel values may trigger a possible impairment of our vessels as described in Item 5.A. "Operating and Financial Review and Prospects—Results of Operations—Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates."

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Declining containership values could affect our ability to raise cash by limiting our ability to refinance vessels or use unencumbered vessels as collateral for new loans or result in prepayments under certain of our credit facilities. This could harm our business, results of operations, financial condition or ability to raise capital.

If impairment testing is required and time charter rates do not improve meaningfully from current market rates, we may need to recognize further impairment charges. The determination of the fair value of vessels will depend on various market factors, including charter and discount rates, ship operating costs and vessel trading values, and our reasonable assumptions at that time. The amount, if any, and timing of any impairment charges we may recognize in the future will depend upon then current and expected future charter rates, vessel utilization, operating and dry-docking expenditures, vessel residual values, inflation and the remaining expected useful lives of our vessels, which may differ materially from those used in our estimates at December 31, 2018.

Our vessels may be subject to extended periods of off-hire, which could materially adversely affect our business, financial condition and results of operations.

Under the time charters for our vessels, when the vessel is not available for service, it will likely be “off-hire,” in which case the charterer is generally not required to pay hire, and we will be responsible for all costs unless the charterer is responsible for the circumstances giving rise to the lack of availability. A vessel generally will be deemed to be off-hire if there is an occurrence that affects the full working condition of the vessel, such as:

- any drydocking for repairs, maintenance or classification society inspection;
- any time out of service necessary for owner to upgrade vessels to meet new regulatory requirements, such as ballast water treatment or emission control;
- any damage, defect, breakdown or deficiency of the ship’s hull, machinery or equipment or repairs or maintenance thereto;
- any deficiency of the ship’s master, officers and/or crew, including the failure, refusal or inability of the ship’s master, officers and/or crew to perform the service immediately required, whether or not within its control;
- its deviation, other than to save life or property, which results in charterer’s lost time;
- crewing labor boycotts or certain vessel arrests;
- our failure to maintain the vessel in compliance with the charter’s requirements, such as maintaining operational certificates.
- the vessel’s declared performance speed is reduced or fuel consumption is increased by more than 5% over a specified period of time; or
- the vessel is requisitioned by any government or governmental authority.

Additionally, the charterer may have the right to terminate the charter agreement under a number of circumstances, such as, if:

- the vessel is off-hire for a specified number of days.
- the charterer informs us of a default under the charter, and the default is not rectified.
- there is a total (actual or constructive) loss of the vessel;
- the vessel is requisitioned by any government or governmental authority; or
- a vessel’s declared performance speed is reduced or fuel consumption increased in excess of a pre-agreed percentage over a continuous period of an agreed number of days, (for example, consumption in excess of 10% of that declared for a given speed over a continuous period of 30 days) and the reason is within our or the vessel’s control.

Our business, financial condition and results of operations may be materially adversely affected if our vessels are subject to extended periods of off-hire.

We may be unable to make or realize expected benefits from acquisitions of vessels or container shipping-related assets, and implementing our growth strategy through acquisitions which may harm our business, financial condition and operating results.

Our growth strategy includes, among other things, selectively acquiring secondhand and, potentially, newbuilding vessels and possibly seeking to diversify our asset base by acquiring containers and other container shipping-related assets if an attractive investment opportunity presents itself in the future. Growing any business through acquisition presents numerous risks, such as undisclosed liabilities and obligations, the possibility that indemnification agreements will be unenforceable or insufficient to cover potential losses and obtaining the necessary resources to manage an enlarged business. We cannot give any assurance that we will be successful in executing our growth plans, that we will be able to employ any acquired vessels under long-term charters, that we will be able to purchase secondhand vessels or newbuildings at satisfactory prices or obtain ship management agreements with similar or better terms than those we have obtained from our current ship managers, that we will be able to purchase containers and subsequently lease them out at satisfactory prices or that we will not incur significant expenses and losses in connection with our future growth.

Factors that may limit our ability to acquire additional vessels and container shipping-related assets include competition from other owners and lessors, availability of financing, shipyard capacity for newbuildings and the limited number of modern vessels with appropriate characteristics not already subject to existing long-term or other charters. Competition from other purchasers could reduce our acquisition opportunities or cause us to pay higher prices.

Any acquisition of a vessel or container shipping-related assets may not be profitable to us and may not generate cash flow sufficient to justify our investment. In addition, our acquisition growth strategy exposes us to risks that may harm our business, financial condition and operating results, including risks that we may:

- fail to obtain financing, ship management agreements and charters on acceptable terms;
- be unable, including through our ship managers, to hire, train or retain qualified shore and seafaring personnel to manage and operate our enlarged business and fleet;
- fail to realize anticipated benefits of cost savings or cash flow enhancements;
- decrease our liquidity by using a significant portion of our available cash or borrowing capacity to finance acquisitions or by additional repayments of debt;
- significantly increase our interest expense or financial leverage if we incur additional debt to finance acquisitions; or
- incur or assume unanticipated liabilities, losses or costs associated with the vessels acquired.

Should we expand our business or provide additional services to third parties, we may need to improve our operating and financial systems, expand our commercial and technical management staff, and recruit suitable employees and crew for our vessels.

Our current operating and financial systems may not be adequate if we expand the size of our fleet or begin to lease containers, and attempts to improve those systems may be ineffective. In addition, we may need to recruit suitable additional administrative and management personnel to manage any growth. We may not be able to continue to hire suitable employees in such circumstances. If a shortage of experienced labor exists or if we encounter business or financial difficulties, we may not be able to adequately staff our vessels. If we expand our fleet, or begin to lease containers, and we are unable to grow our financial and operating systems or to recruit suitable employees, our business, results of operations and financial condition may be harmed.

We are exposed to risks associated with the purchase and operation of secondhand vessels.

Secondhand vessels typically do not carry warranties as to their condition at the time of acquisition. While we would generally inspect secondhand containerships prior to purchase, such an inspection would normally not provide us with as much knowledge of the vessel's condition as if it had been built for and operated by us during its life. Future repairs and maintenance costs for secondhand vessels are difficult to predict and may be substantially higher than for equivalent vessels of which we have had direct experience. These additional costs could decrease our cash flow and reduce our liquidity. There can be no assurance that market conditions will justify such expenditures or enable us to operate our vessels profitably during the remainder of the economic lives of such vessels.

We may not perform underwater inspections of vessels prior to purchase.

Although we would perform physical inspections of any vessel prior to its purchase, it may not be possible for us to undertake any underwater inspections. As a result, we will not be aware of any damage to a vessel that may have existed at the time of purchase and which could only be discovered through an underwater inspection. However, if any damage is subsequently found, we could incur substantial costs to repair the damage which would not be recoverable from the sellers.

Our ability to grow may be reduced by the introduction of new accounting rules for leasing.

The U.S. accounting standard-setting organization has issued its new standard on leases which has the effect of bringing most off-balance sheet leases onto a lessee's balance sheet as a right-of-use asset and a lease liability for all leases, including operating leases, with a term greater than 12 months. This change could affect our customers and potential customers and may cause them to breach certain financial covenants. This may make them less likely to enter into time charters for our containerships, which could reduce our growth opportunities. This new standard has become effective for fiscal years which began after December 15, 2018.

We must make substantial expenditures to maintain our fleet, meet new regulatory requirements or to acquire vessels.

We must make substantial expenditures to maintain our fleet and we generally expect to finance these expenditures from operating cash flow. In addition, we will need to make substantial capital expenditures to acquire vessels in accordance with our growth strategy. Further, we may be obliged to incur substantial expenditure to become compliant with changes in the regulatory environment, particularly concerning emission control and ballast water treatment. Maintenance expenditures could increase as a result of, among other things, the cost of labor and materials, customer requirements and governmental regulations and maritime self-regulatory organization standards relating to safety, security or the environment. If we are unable to generate sufficient operating cash flow, we will need to fund these significant expenditures, including those required to maintain our fleet, with borrowings under our secured term loan or otherwise find alternative sources of financing. Such alternatives may not be available on economic terms or at all, which could have a material adverse effect on our business and results of operations.

As our fleet ages, we may incur increased operating costs beyond normal inflation, which would adversely affect our results of operations.

In general, the day-to-day cost of operating and maintaining a vessel increases with age. In addition, older vessels are typically less fuel efficient and may attract lower charter rates compared to modern, more fuel efficient vessels. Governmental regulations and safety or other equipment standards may also require expenditures for modifications or the addition of new equipment and may restrict the type of activities in which our vessels may engage. We cannot assure you that, as our vessels age, market conditions will justify any such expenditures or expenditures to otherwise improve their operating characteristics, such as fuel efficiency to enable us to operate our vessels profitably during the remainder of their useful lives, which could adversely affect our results of operations. Our fleet of 38 vessels as at December 31, 2018 had an average age weighted by TEU capacity of 11.0 years.

Unless we set aside reserves or are able to borrow funds for vessel replacement, at the end of the useful lives of our vessels our revenue will decline, which would adversely affect our business, results of operations and financial condition.

Our fleet of 38 containerships as at December 31, 2018 had an average age weighted by TEU capacity of 11.0 years. Unless we maintain reserves or are able to borrow or raise funds for vessel replacement, we will be unable to replace the older vessels in our fleet. Our cash flows and income are dependent on the revenues earned by the chartering of our containerships. The inability to replace the vessels in our fleet upon the expiration of their useful lives could have a material adverse effect on our business, results of operations and financial condition. Any reserves set aside by any of our subsidiaries for vessel replacement will not be available for servicing our indebtedness.

Our business depends upon certain individuals who may not necessarily continue to be affiliated with us.

Our current performance and future success depend to a significant extent upon our Executive Chairman, George Giouroukos, our Chief Executive Officer, Ian J. Webber, our Chief Commercial Officer, Thomas A. Lister, and our Chief Financial Officer, Anastasios Psaropoulos, who collectively have almost 100 years of cumulative experience in the shipping industry and have worked with several of the world's largest shipping, ship leasing and ship management companies. They and members of the board of directors are crucial to the execution of our business strategies and to the growth and development of our business. Mr. Giouroukos is committed to spend approximately 50% on his time on matters related to our affairs. If these individuals were no longer to be affiliated with us, or if we were to otherwise cease to receive advisory services from them, we may be unable to recruit other employees with equivalent talent and experience, and our business and financial condition may suffer as a result.

Rising crew and other vessel operating costs may adversely affect our profits.

Acquiring and renewing charters with leading liner companies depends on a number of factors, including our ability to man our containerships with suitably experienced, high quality masters, officers and crews. The limited supply of and increased demand for well-qualified crew, due to the increase in the size of the global shipping fleet, has from time to time created upward pressure on crewing costs, which we generally bear under our time charters. Increases in crew costs and other vessel operating costs such as insurance, repairs and maintenance, and lubricants may adversely affect our profitability. In addition, if we cannot retain a sufficient number of high quality onboard seafaring personnel, our fleet utilization will decrease, which could have a material adverse effect on our business, results of operations and financial condition.

Increased fuel prices may have a material adverse effect on our profits.

The cost of fuel is a significant factor in negotiating charter rates and can affect us both directly and indirectly. The cost of fuel will be borne by us when our vessels are being positioned for drydockings, between charters and when employed on voyage charters or contracts of affreightment. We currently have no voyage charters or contracts of affreightment, but we may enter into such arrangements in the future, and to the extent we do so, an increase in the price of fuel beyond our expectations may adversely affect our profitability. We also bear the cost of fuel associated with dry-dockings and when a vessel is off-hire. Even where the cost of fuel is borne by the charterer, which is the case with all of our existing time charters, that cost will affect the level of charter rates that charterers are prepared to pay, depending in part on the fuel efficiency of a particular vessel.

The price of fuel is unpredictable and fluctuates based on events outside our control, including but not limited to geo-political developments, supply and demand for oil, actions by members of the OPEC and other oil and gas producers, economic or other sanctions levied against oil and gas producing countries, war and unrest in oil producing countries and regions, regional production patterns and environmental concerns and regulations.

Volatility in the London Interbank Offered Rate, or LIBOR, could affect our profitability, earnings and cash flow.

LIBOR may be volatile, with the spread between LIBOR and the prime lending rate widening significantly at times. These conditions are the result of disruptions in the international markets. At times when we have loans outstanding which are based on LIBOR, the interest rates borne by such loan facilities fluctuate with changes in LIBOR, and this would affect the amount of interest payable on our debt, which, in turn, could have an adverse effect on our profitability, earnings and cash flow. Recently, however, there is uncertainty relating to the LIBOR calculation process which may result in the phasing out of LIBOR in the future, and lenders have insisted on provisions that entitle the lenders, in their discretion, to replace published LIBOR as the base for the interest calculation with their cost-of-funds rate. If we are required to agree to such a provision in future loan agreements, our lending costs could increase significantly, which would also have an adverse effect on our profitability, earnings and cash flow.

In addition, the banks currently reporting information used to set LIBOR will likely stop such reporting after 2021, when their commitment to reporting information ends. The Alternative Reference Rate Committee, or "Committee," a committee convened by the U.S. Federal Reserve that includes major market participants, has proposed an alternative rate to replace U.S. Dollar LIBOR: the Secured Overnight Financing Rate, or "SOFR." The impact of such a transition away from LIBOR would be significant for us because of our substantial indebtedness.

We are a holding company and we depend on the ability of our subsidiaries to distribute funds to us in order to satisfy our financial and other obligations.

We are a holding company and have no significant assets other than the equity interests in our subsidiaries. Our subsidiaries own all of the vessels and payments under charters are made to them. As a result, our ability to pay dividends and meet any debt service obligations and other liabilities depends on the performance of our subsidiaries and their ability to distribute funds to us. The ability of our subsidiaries to pay dividends or make other distributions or payments to us will be subject to the availability of profits or funds for such purpose which, in turn, will depend on the future performance of the subsidiary concerned which, to a certain extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors that may be beyond its control. Additionally, the ability of our subsidiaries to make these distributions could be affected by the provisions of our financing arrangements or a claim or other action by a third party, including a creditor, or by English, Marshall Islands, Cypriot or Hong Kong law or the laws of any jurisdiction which regulates the payment of dividends by companies. Applicable tax laws may also subject such payments to further taxation. Applicable law may also limit the amounts that some of our subsidiaries will be permitted to pay as dividends or distributions on their equity interests, or even prevent such payments. Limitations on our ability to transfer cash among and within our group may mean that even though we, in aggregate, may have sufficient resources to meet our obligations, we may not be permitted to make the necessary transfers from one entity in our group to another entity in our group in order to make payments on our obligations. Therefore, if we are unable to obtain funds from our subsidiaries, we may not be able to pay dividends, including on our preferred shares, or meet our debt service obligations or our other liabilities.

Because we generate all of our revenues in U.S. dollars but incur a portion of our expenses in other currencies, exchange rate fluctuations could hurt our results of operations.

We generate all of our revenues in U.S. dollars and some of our expenses are denominated in currencies other than U.S. dollars. This currency mismatch could lead to fluctuations in net income due to changes in the value of the U.S. dollar relative to other currencies. Expenses incurred in foreign currencies against which the U.S. dollar falls in value could increase, thereby decreasing our net income. We have not hedged any of this exposure and our U.S. dollar denominated results of operations and financial condition and ability to pay dividends could suffer from adverse currency exchange rate movements. Future declines in the U.S. dollar versus other currencies could have a material adverse effect on our operating expenses and net income.

Our insurance may be insufficient to cover losses that may occur to our property or result from our operations.

The shipping industry has inherent operational risks. Although we carry hull and machinery insurance, war risks insurance and protection and indemnity insurance (which includes coverage for environmental damage and pollution) and other insurances commonly held by vessel owners, we may not be adequately insured against all risks or our insurers may not pay every claim. Even if our insurance coverage is adequate to cover our losses, we may not be able to obtain a replacement vessel in the event of a total or constructive total loss in a timely manner. Further, under our financings, we are subject to restrictions on the use of any proceeds we may receive under claims in the event of a total or constructive total loss. Furthermore, in the future, we may not be able to obtain adequate insurance coverage at reasonable rates for our fleet. We may also be subject to calls, or premiums, in amounts based not only on our own claim records but also the claim records of all other members of the protection and indemnity associations through which we receive indemnity insurance coverage for tort liability. In addition, insurers typically charge additional premiums if vessels transit certain “excluded areas,” which may be subject to higher risk of piracy, war or terrorism. We cannot be certain that our insurers will continue to provide such cover, or that we will be able to recover these increased costs from our charterers. Our insurance policies also contain deductibles, limitations and exclusions which, although we believe are standard in the shipping industry, may nevertheless increase our costs.

In addition, we do not presently carry loss-of-hire insurance, which covers the loss of revenue during extended vessel off-hire periods, such as those that might occur during an unscheduled drydocking due to damage to the vessel from a major accident. Accordingly, any vessel that is off-hire for an extended period of time, due to an accident or otherwise, could have a material adverse effect on our business, results of operations and financial condition.

We are incorporated in the Republic of the Marshall Islands, which does not have a well-developed body of corporate law.

Our corporate affairs are governed by our articles of incorporation and bylaws and by the Business Corporations Act of the Republic of the Marshall Islands, or BCA. The provisions of the BCA resemble provisions of the corporation laws of a number of states in the United States. However, there have been very few judicial cases in the Republic of the Marshall Islands interpreting the BCA. The rights and fiduciary responsibilities of directors under the law of the Republic of the Marshall Islands are not as clearly established as the rights and fiduciary responsibilities of directors under statutes or judicial precedent in existence in certain U.S. jurisdictions. Shareholder rights may differ as well. While the BCA does specifically incorporate the non-statutory law, or judicial case law, of the State of Delaware and other states with substantially similar legislative provisions, our shareholders may have more difficulty in protecting their interests in the face of actions by the management, directors or controlling shareholders than would shareholders of a corporation incorporated in a U.S. jurisdiction.

A cyber-attack could materially disrupt our business.

We rely on information technology systems and networks in our operations and administration of our business. Information systems are vulnerable to security breaches by computer hackers and cyber terrorists. We rely on industry accepted security measures and technology to securely maintain confidential and proprietary information maintained on our information systems. However, these measures and technology may not adequately prevent security breaches. Our business operations could be targeted by individuals or groups seeking to sabotage or disrupt our information technology systems and networks, or to steal data. A successful cyber-attack could materially disrupt our operations, including the safety of our operations, or lead to unauthorized release of information or alteration of information in our systems. Any such attack or other breach of our information technology systems could have a material adverse effect on our business and results of operations. In addition, the unavailability of the information systems or the failure of these systems to perform as anticipated for any reason could disrupt our business and could result in decreased performance and increased operating costs, causing our business and results of operations to suffer. Any significant interruption or failure of our information systems or any significant breach of security could adversely affect our business and results of operations.

Risks Relating to Our Industry

Our growth and long-term profitability depend mainly upon growth in demand for containerships, the condition of the charter market and the availability of capital. The container shipping industry is cyclical and volatile.

Container shipping industry is both seasonal and cyclical, but has shown positive demand growth in every year of its history except 2009. Between 2000 and 2007, during a period of super-cyclical growth partly fueled by a significant increase in trade with China, containerized trade exhibited annual growth averaging almost 11%. The global financial crisis, from late 2008, prompted a contraction of demand, with 2009 volumes falling by over 8%. In 2010, demand rebounded, with volume growth of approximately 15%. From 2011 through 2017, containerized trade grew, year-on-year, by between 1.7% and 7.4%. In 2018, containerized trade is estimated to have grown approximately 3.9%, notwithstanding negative sentiment, including from increased trade tensions between the US and China, particularly in the second half of the year. On the supply side, cellular containership capacity grew annually by between 1.3% and 8.6% in the years 2011 through 2017. With much reduced levels of scrapping, net supply growth in 2018 is estimated at 5.1%.

Weak conditions in the containership sector may affect our ability to generate cash flows and maintain liquidity, as well as adversely affect our ability to obtain financing.

The factors affecting the supply and demand for containerships and container shipping services are outside our control, and the nature, timing and degree of changes in industry conditions are unpredictable.

The factors that influence demand for containership capacity include:

- supply and demand for products suitable for shipping in containers;
- changes in the pattern of global production of products transported by containerships;
- the globalization of manufacturing;
- global and regional economic and political conditions;
- developments in international trade;
- changes in seaborne and other transportation patterns, including changes in the distances over which container cargoes are transported, the size of containerships, the extent of trans-shipments and the competitiveness of other forms of marine transportation including dry bulk and refrigerated vessels;
- environmental and other legal and regulatory developments;
- the price of oil and economics of slow steaming;
- the availability of trade finance and currency exchange rates; and
- port and canal congestion.

The factors that influence the supply of containership capacity include:

- the containership newbuilding orderbook;
- the availability of financing;
- the scrapping rate of containerships;
- the number of containerships off-hire or otherwise idle including laid-up;
- the price of steel and other raw materials;
- changes in environmental and other laws and regulations that may limit the useful life of containerships;
- the availability of shipyard capacity;
- port and canal congestion; and
- the extent of slow steaming.

Our ability to recharter our containerships upon the expiration or termination of their current charters; the time charters for nine of our 38 containerships can be terminated before the end second quarter 2019 and a further ten vessels have charters that can be terminated during the second half of 2019. Charter rates receivable under any renewal or replacement charters will depend upon, among other things, the prevailing state of the containership charter market. If the charter market is depressed when our charters expire, we may be forced to recharter our containerships at reduced or even unprofitable rates, or we may not be able to recharter them at all, which may reduce or eliminate our results of operations or make our results of operations volatile. The same issues will exist in respect of any additional vessels we may acquire either when obtaining the initial charters or on rechartering at their expiry.

Seasonal fluctuations could affect our operating results and available cash from quarter to quarter.

We operate our vessels in markets that have historically exhibited seasonal, as well as cyclical, variations in demand and, as a result, in charter hire rates. This seasonality may result in quarter-to-quarter volatility in our operating results, which could affect the amount of our cash flow.

A decrease in the level of export of goods or an increase in trade protectionism will harm our customers' business and, in turn, harm our business, results of operations and financial condition.

Much of our customers' containership business revenue is derived from the shipment of goods from the Asia Pacific region, primarily China, to various overseas export markets, including the United States and Europe. Any reduction in or hindrance to the output of China-based exporters could negatively affect the growth rate of China's exports and our customers' business. For instance, the government of China has implemented economic policies aimed at increasing domestic consumption of Chinese-made goods. This may reduce the supply of goods available for export and may, in turn, result in a decrease in shipping demand. Additionally, though in China there is an increasing level of autonomy and a gradual shift in emphasis to a "market economy" and enterprise reform, many of the reforms, particularly some limited price reforms that result in the prices for certain commodities being principally determined by market forces, are unprecedented or experimental and may be subject to revision, change or abolition. The level of imports to and exports from China could be adversely affected by changes to these economic reforms by the Chinese government, as well as by changes in political, economic and social conditions or other relevant policies of the Chinese government. Changes in laws and regulations in China, including with regards to tax matters, and their implementation by local authorities could affect our charterers' business and have a material adverse impact on our business, results of operations and financial condition.

Our international operations expose us to the risk that increased trade protectionism will harm our business. If global economic challenges exist, governments may turn to trade barriers to protect their domestic industries against foreign imports, thereby depressing shipping demand. In particular, the leaders of the United States have indicated the United States may seek to implement more protective trade measures. Increasing trade protectionism in the markets that our customers serve has caused and may continue to cause an increase in the cost of goods exported from Asia Pacific, the length of time required to deliver goods from the region and the risks associated with exporting goods from the region. Such increases may also affect the quantity of goods to be shipped, shipping time schedules, voyage costs and other associated costs.

Any increased trade barriers or restrictions on global trade, especially trade with China, would harm our customers' business, results of operations and financial condition and could thereby affect their ability to make timely charter hire payments to us and to renew and increase the number of their time charters with us. This could harm our business, results of operations and financial condition.

Adverse economic conditions, especially in the Asia Pacific region, the European Union or the United States, could harm our business, results of operations and financial condition.

Because a significant number of the port calls made by our vessels involves the loading or discharging of containerships in ports in the Asia Pacific region, economic turmoil in that region may exacerbate the effect of any economic slowdown on us. China has been one of the world's fastest growing economies in terms of gross domestic product, or GDP, which has increased the demand for shipping. However, China's rate of real GDP growth is fallen from its highs. The United States have also indicated they may seek to implement more protectionist trade measures to protect and enhance its domestic economy. Additionally, the European Union, or the EU, and certain of its member states are facing significant economic and political challenges, including a risk of increased protectionist policies and the withdrawal of the United Kingdom from the European Union. Our business, results of operations and financial condition will likely be harmed by any significant economic downturn in the Asia Pacific region, including China, or in the EU or the United States.

The global economy experienced disruption and volatility following adverse changes in global capital markets commencing in 2007 and 2008. The deterioration in the global economy caused, and any renewed deterioration may cause, a decrease in worldwide demand for certain goods and shipping. Economic instability could harm our business, results of operations and financial condition.

Disruptions in world financial markets and the resulting governmental action in the United States and in other parts of the world could have a material adverse impact on our results of operations, financial condition and cash flows.

Global financial markets and economic conditions have been severely disrupted and volatile at times in recent years and remain subject to significant vulnerabilities, such as the deterioration of fiscal balances and the rapid accumulation of public debt, continued deleveraging in the banking sector and limited supply of credit. Credit markets and the debt and equity capital markets have been exceedingly distressed and volatile. The sovereign debt crisis in countries such as Cyprus and Greece, for example, and concerns over debt levels of certain other European Union member states and other countries around the world, as well as concerns about some international banks, has increased volatility in global credit and equity markets. These issues, along with the re-pricing of credit risk and the difficulties currently experienced by financial institutions have made, and will likely continue to make, it difficult to obtain financing. As a result of the disruptions in the credit markets, many lenders have increased margins, enacted tighter lending standards, required more restrictive terms (including higher collateral ratios for advances, shorter maturities and smaller loan amounts), or refused to refinance existing debt at all or on terms similar to our current debt. Furthermore, certain banks that have historically been significant lenders to the shipping industry have announced an intention to reduce or cease lending activities in the shipping industry. New banking regulations, including larger capital requirements and the resulting policies adopted by lenders, could reduce lending activities. We may experience difficulties obtaining financing commitments in the future if current or future lenders are unwilling to extend financing to us or unable to meet their funding obligations due to their own liquidity, capital or solvency issues.

We cannot be certain that financing or refinancing will be available on acceptable terms or at all. If financing or refinancing is not available when needed, or is available only on unfavorable terms, we may be unable to meet our future obligations as they come due. Our failure to obtain such funds could have a material adverse effect on our business, results of operations and financial condition, as well as our cash flows, including cash available for dividends to our shareholders. In the absence of available financing, we also may be unable to take advantage of business opportunities or respond to competitive pressures.

We may have more difficulty entering into long-term charters if a more active and cheaper short-term or spot container shipping market develops.

At the expiration of our charters or if a charter terminates early for any reason or if we acquire vessels charter-free, we will need to charter or recharter our vessels. If an excess of vessels is available on the spot or short-term market at the time we are seeking to fix new longer-term charters, we may have difficulty entering into such charters at all or at profitable rates and for any term other than short term and, as a result, our cash flow may be subject to instability in the mid to long-term. In addition, it would be more difficult to fix relatively older vessels should there be an oversupply of younger vessels on the market. A depressed spot market may require us to enter into short-term spot charters based on prevailing market rates, which could result in a decrease in our cash flow.

An over-supply of containership capacity may lead to reductions in charter hire rates and profitability.

While the size of the containership orderbook has declined substantially since the peak of 2008/2009, the containership newbuilding orderbook as at January 1, 2019 represented approximately 12.3% of the total on the water fleet capacity. Further containerships are likely to be ordered. Delivery of newly built containerships will result in an increase in the size of the world containership fleet over the next few years. An over-supply of containership capacity, combined with any decline in the rate of growth in demand for containerships, would be likely to result in a reduction of charter hire rates. If such a reduction occurs when we seek to charter newbuilding vessels, our growth opportunities may be diminished. If such a reduction occurs upon the expiration or termination of our containerships' current time charters, we may only be able to recharter our containerships for reduced rates or unprofitable rates or we may not be able to recharter our containerships at all, which would have a material adverse effect on our business, financial condition and results of operation.

Increased competition in technology and innovation could reduce our charter hire income and the value of our vessels.

The charter rates and the value and operational life of a vessel are determined by a number of factors, including the vessel's efficiency, operational flexibility and physical life. Efficiency includes speed and fuel economy. Flexibility includes the ability to enter harbors, utilize related docking facilities and pass through canals and straits together with other vessel specifications such as the capacity to carry temperature controlled containers (reefers). Physical life is related to the original design and construction, maintenance and the impact of the stress of operations. If new ship designs currently promoted by shipyards as being more fuel efficient perform, or if new containerships built in future that are more efficient or flexible or have longer physical lives than our vessels, competition from these more technologically advanced containerships could adversely affect our ability to re-charter, the amount of charter-hire payments that we receive for our containerships once their current time charters expire and the resale value of our containerships. This could adversely affect our ability to service our debt or pay dividends to our shareholders.

Acts of piracy on ocean-going vessels have increased in frequency, which could adversely affect our business.

Piracy is an inherent risk in the operation of ocean-going vessels and particularly affects vessels operating in specific regions of the world such as the South China Sea, the Gulf of Aden, the Arabian Sea, off the coast of West Africa and off the coast of Somalia. Generally, we do not control the routing of our vessels, which is determined by the charterer. Pirate attacks on any of our vessels could result in loss of life, the kidnapping of crew or the theft, damage or destruction of vessels or of containers or cargo being transported thereon. In addition, while we believe the charterer remains liable for charter payments when a vessel is seized by pirates, the charterer may dispute this and withhold charter hire until the vessel is released. A charterer may also claim that a vessel seized by pirates was not "on-hire" for a certain number of days and it is therefore entitled to cancel the charter party, a claim that we would dispute.

We may not be adequately insured to cover losses from these incidents, which could have a material adverse effect on our business, results of operations and financial condition. In addition, insurance premiums and costs such as onboard security guards, should we decide to employ them, could increase in such circumstances. Further, acts of piracy may materially adversely affect our charterer's business, impairing its ability to make payments to us under our charters.

Terrorist attacks and international hostilities could affect our results of operations and financial condition.

Terrorist attacks and the continuing response of the United States and other countries to these attacks, as well as the threat of future terrorist attacks, continue to cause uncertainty in the world financial markets and may affect our business, results of operations and financial condition from increased security costs and more rigorous inspection procedures at borders and ports. From time to time, acts of terrorism, regional conflict and other armed conflict around the world may contribute to further economic instability in the global financial markets. These uncertainties could also adversely affect our ability to obtain additional financing on terms acceptable to us or at all.

Terrorist attacks targeted at oceangoing vessels may also negatively affect our future operations and financial condition from, for example, increased insurance costs, and directly impact our containerships or our charterer. Future terrorist attacks could result in increased market volatility or even a recession in the United States or elsewhere or negatively affect global financial markets, and could further increase inspection and security requirements and regulation that could slow our operations and negatively affect our profitability. Any of these occurrences could have a material adverse impact on our operating results, revenue and costs.

Our vessels may call on ports located in countries that are subject to restrictions imposed by the United States government, which could have a material adverse effect on our results of operations and financial condition.

From time to time, on charterers' instructions, our vessels may call on ports located in countries subject to sanctions and embargoes imposed by the U.S. government and in countries identified by the U.S. government as state sponsors of terrorism. In addition, as a result of actions taken by our charterers, we may be deemed to have engaged in financial transactions that are prohibited by such sanctions or embargoes. The U.S. sanctions and embargo laws and regulations vary in their application, as they do not all apply to the same covered persons or proscribe the same activities, and such sanctions and embargo laws and regulations may be amended or strengthened over time.

To the best of our knowledge, none of our vessels have called at ports in Iran, Syria, Sudan or Cuba since January 1, 2014, nor have we provided any services or products to Iran, Syria, Sudan and Cuba, or entered into any agreements, commercial arrangements or had any contact with the governments of, or entities controlled by the governments of, the aforementioned countries, during this time period. Additionally, to the best of our knowledge, we have not, since January 1, 2014, directly provided any services or products to Iran, or entered into any agreements, commercial arrangements or had any contact with the government of, or entities controlled by the government of Iran.

Although we believe that we are in compliance with all applicable sanctions and embargo laws and regulations, and intend to maintain such compliance, there can be no assurance that we will be in compliance in the future, particularly as the scope of certain laws may be unclear and may be subject to changing interpretations. Any such violation could result in fines or other penalties and could result in some investors deciding, or being required, to divest their interest, or not to invest, in us. Moreover, our charterers may violate applicable sanctions and embargo laws and regulations as a result of actions that do not involve us or our vessels, and those violations could in turn negatively affect our reputation. Investor perception of the value of our common stock may also be adversely affected by the consequences of war, the effects of terrorism, civil unrest and governmental actions in these and surrounding countries.

It may not be possible for some of our vessels to call on Turkish ports due to the Turkish embargo on Cypriot flag vessels and vessels owned by Cypriot companies.

In 1987, the Turkish Government introduced certain restrictive measures against Cypriot owned or flagged vessels prohibiting such vessels to call on Turkish ports. In 1997, the restrictive measures were extended and since then they apply not only against Cypriot flag vessels but also against vessels registered under a foreign flag (of any nationality) sailing to Turkish ports directly from any Cypriot port under the effective control of the Republic of Cyprus or against vessels of any flag related to the Republic of Cyprus in terms of ownership or ship management. Cypriot vessels will be allowed passage through the Turkish Straits (Bosphorus) with or without pilot but no other services or provisions will be given, including bunker supply. Currently, 13 of our 18 vessels are owned by Cypriot companies and of these eight are Cyprus flagged. Whilst the restrictive measures remain in place, our vessels which are either Cypriot flagged or owned by a Cypriot company may not call on Turkish ports. This may restrict the use of Cypriot ports by our charterers and may have an adverse effect on the possible operation of our vessels by them in the Eastern Mediterranean and the Black Sea or give rise to costs to change the ownership and flag of relevant vessels to permit trading to Turkey.

The smuggling of drugs, weapons or other contraband and stowaways on our vessels may lead to governmental claims against us.

We expect that our vessels will call in areas where smugglers attempt to hide drugs, weapons and other contraband on vessels or stowaways attempt to board, with or without the knowledge of crew members. To the extent our vessels are found with contraband or stowaways, whether with or without the knowledge of any of our crew or charterers, we may face governmental or other regulatory claims, which could have a material adverse effect on our business, results of operations, cash flows and financial condition.

We are exposed to significant risks in relation to compliance with anti-corruption laws and regulations.

Our business entails numerous interactions with government authorities, including port authorities, health, safety, and environment authorities, labor and tax authorities and customs and immigration authorities. Furthermore, at our charterer's direction, our vessels call at ports throughout the world, including in some countries where corruption is endemic. Although we have strict and adequate procedures prohibiting our employees or persons associated with us from making unlawful payments to government officials, we cannot guarantee that such payments may not be made despite our procedures and without our approval. In such case, such payments may be deemed to have violated anti-corruption laws potentially applicable to us, including the UK Bribery Act 2010 (the "Bribery Act") and the U.S. Foreign Corrupt Practices Act (the "FCPA"). Both civil and criminal penalties may be imposed on us as a result of violations of anti-corruption laws, and such penalties could have a material adverse impact on our reputation, business and financial condition.

Risks inherent in the operation of containerships could impair the ability of the charterer to make payments to us, increase our costs or reduce the value of our assets.

Our containerships and their cargoes are at risk of being damaged or lost because of events such as marine accidents, bad weather, mechanical failures, human error, war, terrorism, piracy, environmental accidents and other circumstances or events. Any of these events connected to our vessels or other vessels under the charterer's control, or any other factor which negatively affects the charterer's business such as economic downturn and significant cyclical depression in the container shipping industry, could impair the ability of the charterer to make payments to us pursuant to our charters. Although the charterer is obligated to pay us charterhire regardless of the amount of cargo being carried on board, it is possible that generally low cargo volumes and low freight rates or events noted above may render the charterer financially unable to pay us its hire. Furthermore, there is a risk that a vessel may become damaged, lost or destroyed during normal operations and any such occurrence may cause us additional expenses to repair or substitute the vessel or may render us unable to provide the vessel for chartering, which will cause us to lose charter revenue.

These occurrences could also result in death or injury to persons, loss of property or environmental damage, loss of revenues from or termination of charter contracts, governmental fines, penalties or restrictions on conducting business, higher insurance rates, and damage to our reputation and customer relationships generally. Any of these circumstances or events could increase our costs or lower our revenues, which could result in reduction in the market price of our common shares.

Governments could requisition our vessels during a period of war or emergency without adequate compensation, which under most of our time charter agreements would permit the customer to terminate the charter agreement for that vessel.

A government could requisition one or more of our vessels for title or for hire. Requisition for title occurs when a government takes control of a vessel and becomes its owner, while requisition for hire occurs when a government takes control of a vessel and effectively becomes its charterer at dictated charter rates. Generally, requisitions occur during periods of war or emergency, although governments may elect to requisition vessels in other circumstances. Although we would likely be entitled to compensation in the event of a requisition of one or more of our vessels, the amount and timing of payment would be uncertain. Additionally, under most of our time charter agreements, if a vessel is requisitioned, our customer has the option to terminate the charter agreement within 14 days of receipt of notice of the requisition. Government requisition of one or more of our vessels may negatively impact our revenues and cash flow.

If labor or other interruptions are not resolved in a timely manner, they could have an adverse effect on our business, results of operations, cash flows, financial condition and available cash.

In addition to providing services to us our technical managers are responsible for recruiting the senior officers and other crew members for our vessels. If not resolved in a timely and cost-effective manner, industrial action or other labor unrest or any other labor interruption, could prevent or hinder our operations from being carried out as we expect and could have an adverse effect on our business, financial condition, operating results, distribution of dividends or the trading price of our common shares.

Reliability of suppliers may limit our ability to obtain supplies and services when needed.

We rely, and will in the future rely, on a significant supply of consumables, spare parts and equipment to operate, maintain, repair and upgrade our fleet of ships. Delays in delivery or unavailability of supplies could result in off-hire days due to consequent delays in the repair and maintenance of our fleet. This would negatively impact our revenues and cash flows. Cost increases could also negatively impact our future operations.

Compliance with safety and other vessel requirements imposed by classification societies may be costly and may adversely affect our business and operating results.

The hull and machinery of every commercial vessel must conform to the rules and standards of a classification society approved by the vessel's country of registry. Such societies set the rules and standards for the design, construction, classification, and surveys of vessels and conduct surveys to determine whether vessels are in compliance with such rules and standards. A certification by a society is an attestation that the vessel is in compliance with the society's rules and standards. A vessel involved in international trade must also conform to national and international regulations on safety, environment and security, including (but not limited to) the Safety of Life at Sea Convention, or SOLAS, and the International Convention for the Prevention of Pollution from Ships. A vessel conforms to such regulations by obtaining certificates from its country of registry and/or a classification society authorized by the country of registry.

A vessel must undergo annual surveys, intermediate surveys and special surveys. In lieu of a special or class renewal survey, a vessel's machinery may be reviewed on a continuous survey cycle, under which the machinery would be surveyed over a five-year period. See Item 4.B. "Information on the Company—Business Overview—Inspection by Classification Societies" for more information regarding annual surveys, intermediate surveys and special surveys. Bureau Veritas, Lloyd's Register, DNV-GL & RINA and American Bureau of Shipping, the classification societies for the vessels in our fleet, may approve and carry out in-water inspections of the underwater parts of our vessels once every three to five years, in lieu of drydocking inspections. In-water inspections are typically less expensive than drydocking inspections and we intend to conduct in-water inspections when that option is available to us.

If a vessel does not maintain its "in class" certification or fails any annual survey, intermediate survey or special survey, port authorities may detain the vessel, refuse her entry into port or refuse to allow her to trade resulting in the vessel being unable to trade and therefore rendering her unemployable. In the event that a vessel becomes unemployable, we could also be in violation of provisions in our charters, insurance coverage, covenants in our loan agreements and ship registration requirements and our revenues and future profitability would be negatively affected.

We are subject to regulation and liability under environmental laws that could require significant expenditures and affect our cash flows and net income.

Our business and the operation of our containerships are materially affected by environmental regulation in the form of international conventions, national, state and local laws and regulations in force in the jurisdictions in which our containerships operate, as well as in the countries of their registration, including those governing the management and disposal of hazardous substances and wastes, the cleanup of oil spills and other contamination, air emissions, water discharges, ballast water management and vessel recycling. Because such conventions, laws and regulations are often revised, we cannot predict the ultimate cost or effect of complying with such requirements or the effect of such compliance on the current market value, resale price or useful life of our containerships. Additional conventions, laws and regulations may be adopted that could limit our ability to do business or increase the cost of our doing business, which may negatively impact our business, results of operations and financial condition.

Environmental requirements may also require a reduction in cargo capacity, ship modifications or operational changes or restrictions, lead to decreased availability of insurance coverage for environmental matters or result in substantial penalties, fines or other sanctions, including the denial of access to certain jurisdictional waters or ports or detention in certain ports. Under local, national and foreign laws, as well as international treaties and conventions, we could incur material liabilities, including cleanup obligations and natural resource damages, if there is a release of petroleum or other hazardous materials from our vessels or otherwise in connection with our operations. We could also become subject to personal injury or property damage claims relating to the release of hazardous materials associated with our operations, even if not carried as cargo.

In addition, in complying with existing environmental laws and regulations and those that may be adopted, we may incur significant costs in meeting new maintenance and inspection requirements and new restrictions on air emissions from our containerships, in managing ballast water, in developing contingency arrangements for potential spills and in obtaining insurance coverage. Government regulation of vessels, particularly in the areas of safety, security and environmental requirements, can be expected to become stricter in the future and require us to incur significant capital expenditures on our vessels to keep them in compliance, or even to scrap or sell certain vessels altogether. Substantial violations of applicable requirements or a catastrophic release of bunker fuel from one or more of our containerships could harm our business, results of operations and financial condition. For additional information about the environmental regulations to which we are subject, please read Item 4.B. "Information on the Company—Business Overview—Environmental and Other Regulations."

Increased inspection procedures, tighter import and export controls and new security regulations could increase costs and cause disruption of our containership business.

International container shipping is subject to security and customs inspection and related procedures in countries of origin, destination, and certain trans-shipment points. These inspection procedures can result in cargo seizure, delays in the loading, offloading, trans-shipment, or delivery of containers, and the levying of customs duties, fines and other penalties against us.

Since the events of September 11, 2001, U.S. authorities have substantially increased container inspections. Government investment in non-intrusive container scanning technology has grown and there is interest in electronic monitoring technology, including so-called “e-seals” and “smart” containers, which would enable remote, centralized monitoring of containers during shipment to identify tampering with or opening of the containers, along with potentially measuring other characteristics such as temperature, air pressure, motion, chemicals, biological agents and radiation. Also, as a response to the events of September 11, 2001, additional vessel security requirements have been imposed, including the installation of security alert and automatic identification systems on board vessels.

It is unclear what additional changes, if any, to the existing inspection and security procedures may ultimately be proposed or implemented in the future, or how any such changes will affect the industry. It is possible that such changes could impose additional financial and legal obligations on us. Furthermore, changes to inspection and security procedures could also impose additional costs and obligations on our customers and may, in certain cases, render the shipment of certain types of goods in containers uneconomical or impractical. Any such changes or developments could have a material adverse effect on our business, results of operations and financial condition and our ability to pay dividends to our shareholders.

The operation of our vessels is also affected by the requirements set forth in the International Ship and Port Facilities Security Code, or the ISPS Code. The ISPS Code requires vessels to develop and maintain a ship security plan that provides security measures to address potential threats to the security of ships or port facilities. Although each of our containerships is ISPS Code certified, any failure to comply with the ISPS Code or maintain such certifications may subject us to increased liability and may result in denial of access to, or detention in, certain ports. Furthermore, compliance with the ISPS Code requires us to incur certain costs. Although such costs have not been material to date, if new or more stringent regulations relating to the ISPS Code are adopted by the International Maritime Organisation, the United Nations agency for maritime safety and the prevention of pollution by vessels (the “IMO”) and the flag states, these requirements could require significant additional capital expenditures or otherwise increase the costs of our operations.

Sulfur regulations to reduce air pollution from ships are likely to require retrofitting of vessels and may cause us to incur significant costs.

In October 2016, the IMO set January 1, 2020 as the implementation date for vessels to comply with its sulfur emission limit of 0.5% m/m. These regulations may be complied with by (i) using low sulfur fuel which will likely be at a higher cost than existing heavy fuel oil, (ii) installing scrubbers for cleaning of exhaust gas; or (iii) by retrofitting vessels to be powered by, for example, liquefied natural gas, which is not likely to be a viable option for smaller older vessels due to the high costs involved. The higher cost of low sulfur fuel will in the first instance be borne by the vessel operator, our charterer, whereas the installation of scrubbers or retrofitting for an alternative fuel source, would in the first instance be borne by us as the vessel owner. Costs of compliance with these regulatory changes may be significant and may have a material adverse effect on our future performance, results of operations, cash flows and financial position.

Regulations relating to ballast water discharge coming into effect in September 2019 may adversely affect our revenues and profitability.

The IMO has imposed updated guidelines for ballast water management systems specifying the maximum amount of viable organisms allowed to be discharged from a vessel's ballast water. Existing vessels constructed before September 8, 2017, must comply with updated standards on or after September 8, 2019, with the exact date depending on the date of the next International Oil Pollution Prevention ("IOPP") renewal survey. In some cases, such as where vessels are due to trade to U.S. ports, the implementation date may be before the IMO deadline. For most vessels, compliance with the standard will involve installing on-board systems to treat ballast water to eliminate unwanted organisms. Ships constructed on or after September 8, 2017 have been obligated to comply with the standards on or after September 8, 2017. We currently have nine vessels which have a ballast water management system fitted and 29 vessels that do not. The costs of compliance may be substantial and adversely affect our revenues and profitability.

Furthermore, United States regulations are currently changing. Although the 2013 Vessel General Permit ("VGP") program and U.S. National Invasive Species Act ("NISA") are currently in effect to regulate ballast discharge, exchange and installation, the Vessel Incidental Discharge Act ("VIDA"), which was signed into law on December 4, 2018, requires that the U.S. Coast Guard develop implementation, compliance, and enforcement regulations regarding ballast water within two years. The new regulations could require the installation of new equipment, which may cause us to incur substantial costs.

Depending on the outcome of an ongoing EU investigation of container liner companies related to potential antitrust violations, our growth, results of operations and our ability to charter our vessels may be reduced.

In July 2016, the European Commission completed its investigations of certain major container liner companies, including some of our existing customers, related to potential violations of EU competition (antitrust) rules. The liner companies under investigation offered to enter into the following binding commitments regarding their future conduct for a period of three years, starting December 7, 2016;

- the carriers will stop publishing and communicating General Rate Increase announcements, i.e., changes to prices expressed solely as an amount or percentage of the change;
- in order for any future price announcements to be useful for customers, the carriers will announce figures that include at least the five main elements of the total price (base rate, bunker charges, security charges, terminal handling charges and peak season charges if applicable);
- price announcements will be binding on the carriers as maximum prices for the announced period of validity (but carriers will remain free to offer prices below these ceilings);
- price announcements will not be made more than 31 days before their entry into force, which corresponds to the period when customers usually start booking in significant volumes (typically, customers plan their shipments between four weeks and one week before they need to move their consignments).

Although we have no basis for assessing the effect of these commitments, it is possible that additional financial and legal obligations may be imposed on one or more of these liner companies. Such obligations may make these customers or similarly situated potential customers less likely to enter into or renew time charters for our containerships, which could reduce our growth opportunities and harm our business, results of operations and financial condition.

Risks Relating to our Common Stock and Depositary Shares Representing Series B Preferred Shares

We cannot assure you if and when we will pay dividends on our common shares.

We are not currently paying dividends on our common shares. Subject to the limitations contained in our secured term loan, the indenture governing our 2022 notes and other contractual obligations, we may resume the distribution of a portion of our cash flow to our shareholders, while retaining the remaining cash flow for costs such as drydockings, reinvestment in our business, funding vessel or fleet acquisitions, making debt repayments and for other purposes, as determined by our board of directors. The timing and amount of any dividends declared will depend on, among other things (a) our results of operations, financial condition, cash flow and cash requirements, (b) our liquidity, including our ability to obtain debt and equity financing on acceptable terms as contemplated by our vessel acquisition strategy, (c) restrictive covenants in our existing and future debt instruments and (d) provisions of Marshall Islands law. The declaration and payment of dividends is also subject at all times to the discretion of our board of directors.

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The international containership and containership leasing industry is highly volatile, and we cannot predict with certainty the amount of cash, if any, that will be available for distribution as dividends in any period. Also, there may be a high degree of variability from period to period in the amount of cash, if any, that is available for the payment of dividends. The amount of cash we generate from operations and the actual amount of cash we will have available for dividends in each quarter will vary based upon, among other things:

- the charter-hire payments we obtain from our charters as well as the rates obtained upon the expiration of our existing charters;
- acquisition of additional vessels;
- the timing of scheduled drydockings;
- the timing of interest payments, scheduled debt amortization payments and other payments that might be due under our debt facilities;
- delays in the delivery of newbuilding vessels, if any, and the beginning of payments under charters relating to those vessels;
- the level of our operating costs, such as the costs of crews, lubricants and insurance;
- the number of unscheduled off-hire days for our fleet and the timing of, and number of days required for, scheduled dry-docking of our containerships;
- any idle time after one charter expires until a new charter is agreed or the vessel is disposed of, should a new charter not be agreed;
- unexpected repairs to, or required expenditures on, vessels or dry-docking costs in excess of those anticipated;
- the loss of a vessel;
- prevailing global and regional economic and political conditions;
- changes in interest rates;
- the effect of governmental regulations and maritime self-regulatory organization standards on the conduct of our business;
- changes in the basis of taxation of our activities in various jurisdictions;
- modification or revocation of our dividend policy by our board of directors; and
- the amount of any cash reserves established by our board of directors.

The amount of cash we generate from our operations may differ materially from our net income or loss for the period, which will be affected by non-cash items. We may incur other expenses or liabilities that could reduce or eliminate the cash available for distribution as dividends.

In addition, Marshall Islands law generally prohibits the payment of dividends other than from surplus (retained earnings and the excess of consideration received from the sale of shares above the par value of the shares) or if there is no surplus, from the net profits for the current and prior fiscal years, or while a company is insolvent or if it would be rendered insolvent by the payment of such a dividend. We may not have sufficient surplus or net profits in the future to pay dividends, and our subsidiaries may not have sufficient funds, surplus or net profits to make distributions to us. As a result of these and other factors, we may not be able to pay dividends during periods when we record losses and may not pay dividends during periods when we record net income. We can give no assurance that dividends will be paid in the future.

There may be a substantial number of our common shares available for sale in the future that may adversely affect the market price of our Class A common shares.

On the closing of the Poseidon Transaction, we issued 3,005,603 Class A common shares and 250,000 Series C Preferred Shares, which are convertible into 12,955,187 Class A common shares upon the occurrence of certain events. Further, in connection with the Poseidon Transaction, we entered into an Amended and Restated Registration Rights Agreement with affiliates of Kelso, CMA CGM, George Giouroukos (our Executive Chairman) through Management Investor Co., Michael S. Gross (our former Chairman and a director) and MAAS Capital with respect to all Class A common shares, including those issuable on conversion of the Series C Preferred Shares, held by such shareholders as of the closing of the Poseidon Transaction. The registration and availability of such a significant number of securities for trading in the public market may have a material adverse effect on the market price of our Class A common shares.

The price of our securities may be volatile.

The price of our common shares and depositary shares representing Series B Preferred Shares may be volatile and may fluctuate due to factors such as:

- actual or anticipated fluctuations in our quarterly revenues and results of operations and those of publicly held containership owners or operators;
- market conditions in the industry;
- perceived counterparty risk;
- shortfalls in our operating results from levels forecasted by securities analysts;
- announcements concerning us or other containership owners or operators;
- mergers and strategic alliances in the shipping industry;
- changes in government regulation including taxation; and
- the general state of the securities markets.

The international containership industry has been highly unpredictable and volatile. The market for common shares and depositary shares representing Series B preferred shares in companies operating in this industry may be equally volatile.

The market price of our Class A common shares has recently declined significantly, and our Class A common shares could be delisted from the NYSE or trading could be suspended.

On November 13, 2018, we announced that we had been notified by the NYSE that the average closing price of the Company's common shares over a period of 30 consecutive trading days had fallen below the minimum required level of \$1.00 per share. This notification initiated a six-month period during which we can cure the deficiency, and we intend to do so within the prescribed period. See "Item 4. Information on the Company—A. History and Development of the Company."

A decline in the closing price of our Class A common shares could result in a breach of the requirements for listing on the NYSE. Although we undertook a one-for-eight reverse stock split effective March 25, 2019 in order to cure the deficiency, if we do not succeed, the NYSE could commence suspension or delisting procedures in respect of our Class A common shares. The commencement of suspension or delisting procedures by an exchange remains, at all times, at the discretion of such exchange and would be publicly announced by the exchange. If a suspension or delisting were to occur, there would be significantly less liquidity in the suspended or delisted securities. In addition, our ability to raise additional necessary capital through equity or debt financing would be greatly impaired. Furthermore, with respect to any suspended or delisted common shares, we would expect decreases in institutional and other investor demand, analyst coverage, market making activity and information available concerning trading prices and volume, and. Additionally, fewer broker-dealers would be willing to execute trades with respect to such common shares. A suspension or delisting would likely decrease the attractiveness of our Class A common shares to investors, may constitute a breach under certain of our credit facilities, constitute an event of default under certain classes of our preferred stock and cause the trading volume of our Class A common shares to decline, which could result in a further decline in the market price of our Class A common shares.

We have anti-takeover provisions in our organizational documents that may discourage a change of control.

Certain provisions of our articles of incorporation and bylaws may have an anti-takeover effect and may delay, defer or prevent a tender offer or takeover attempt that a shareholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by shareholders.

Certain of these provisions provide for:

- a classified board of directors with staggered three-year terms;
- restrictions on business combinations with certain interested shareholders;
- directors only to be removed for cause and only with the affirmative vote of holders of at least a majority of the common shares entitled to vote in the election of directors;
- advance notice for nominations of directors by shareholders and for shareholders to include matters to be considered at annual meetings; and

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- a limited ability for shareholders to call special shareholder meetings.

These anti-takeover provisions could make it more difficult for a third party to acquire us, even if the third party's offer may be considered beneficial by many shareholders. As a result, shareholders may be limited in their ability to obtain a premium for their shares.

Our management is required to devote substantial time to complying with public company regulations.

As a public company, we incur significant legal, accounting and other expenses. In addition, the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") as well as rules subsequently adopted by the SEC and the New York Stock Exchange ("NYSE"), including the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, have imposed various requirements on public companies, including changes in corporate governance practices. Our directors, management and other personnel devote a substantial amount of time to comply with these requirements. Moreover, these rules and regulations relating to public companies increase our legal and financial compliance costs and make some activities more time-consuming and costly.

Sarbanes-Oxley requires, among other things, that we maintain and periodically evaluate our internal control over financial reporting and disclosure controls and procedures. In particular, under Section 404 of the Sarbanes-Oxley Act of 2002, we are required to include in each of our annual reports on Form 20-F a report containing our management's assessment of the effectiveness of our internal control over financial reporting and, if we are an accelerated filer or a large accelerated filer, a related attestation of our independent registered public accounting firm. While we did not identify any material weaknesses or significant deficiencies in our internal controls under the current assessment, we cannot be certain at this time that our internal controls will be considered effective in future assessments and that our independent registered public accounting firm would reach a similar conclusion. Therefore, we can give no assurances that our internal control over financial reporting will satisfy regulatory requirements in the future.

We are a "foreign private issuer" under the NYSE rules, and as such we are entitled to exemption from certain NYSE corporate governance standards, and you may not have the same protections afforded to shareholders of companies that are subject to all of the NYSE corporate governance requirements.

We are a "foreign private issuer" under the securities laws of the United States and the rules of the NYSE. Under the securities laws of the United States, "foreign private issuers" are subject to different disclosure requirements than U.S. domiciled registrants, as well as different financial reporting requirements. Under the NYSE rules, a "foreign private issuer" is subject to less stringent corporate governance requirements. Subject to certain exceptions, the rules of the NYSE permit a "foreign private issuer" to follow its home country practice in lieu of the listing requirements of the NYSE.

Accordingly, you may not have the same protections afforded to shareholders of companies that are subject to all of the NYSE corporate governance requirements.

Future sales of our common stock could cause the market price of our common stock to decline.

Sales of a substantial number of shares of our common stock in the public market, or the perception that these sales could occur, may depress the market price for our common stock. These sales could also impair our ability to raise additional capital through the sale of our equity securities in the future.

Subject to the rules of the NYSE, in the future, we may issue additional shares of common stock, and other equity securities of equal or senior rank, without shareholder approval, in a number of circumstances. The issuance by us of additional shares of common stock or other equity securities of equal or senior rank would have the following effects:

- our existing shareholders' proportionate ownership interest in us may decrease;
- the dividend amount payable per share on our common stock may be lower;
- the relative voting strength of each previously outstanding share may be diminished; and
- the market price of our common stock may decline.

Our shareholders also may elect to sell large numbers of shares held by them from time to time. The number of shares of common stock available for sale in the public market will be limited by restrictions applicable under securities laws, and agreements that we and our executive officers, directors and existing shareholders may enter into with the underwriters at the time of an offering. Subject to certain exceptions, these agreements generally restrict us and our executive officers, directors and existing shareholders from directly or indirectly offering, selling, pledging, hedging or otherwise disposing of our equity securities or any security that is convertible into or exercisable or exchangeable for our equity securities and from engaging in certain other transactions relating to such securities for a period of 180 days after the date of an offering prospectus without the prior written consent of the underwriter(s).

We may not have sufficient cash from our operations to enable us to pay dividends on or to redeem our Series B Preferred Shares, and accordingly the depositary shares, as the case may be, and our ability to pay dividends on or redeem our Series B Preferred Shares is limited by Marshall Islands law and our contractual obligations.

We pay quarterly dividends on the Series B Preferred Shares, and accordingly the depositary shares, only from funds legally available for such purpose when, as and if declared by our board of directors. We may not have sufficient cash available each quarter to pay dividends. In addition, if our board of directors does not authorize and declare a dividend for any dividend period prior to the relevant dividend payment date, holders of the Series B Preferred Shares and accordingly the depositary shares would not be entitled to receive a dividend for that dividend period. However, any unpaid dividends will accumulate. In addition, on or after August 20, 2019, we will have the option to redeem the Series B Preferred Shares, and accordingly the depositary shares, although we may have insufficient cash available to do so or may otherwise elect not to do so.

The amount of cash we can use to pay dividends or redeem our Series B Preferred Shares and the depositary shares depends upon the amount of cash we generate from our operations, which may fluctuate significantly, and other factors, including the following:

- changes in our operating cash flow, capital expenditure requirements, working capital requirements and other cash needs;
- the amount of any cash reserves established by our board of directors;
- restrictions under Marshall Islands law as described below;
- restrictions under our 2022 notes and our secured term loan and other instruments and agreements governing our existing and future debt as described below; and
- our overall financial and operating performance, which, in turn, is subject to prevailing economic and competitive conditions and to the risks associated with the shipping industry and the other factors (see Item “Risks Related to our Business” above), many of which are beyond our control.

The amount of cash we generate from our operations may differ materially from our net income or loss for the period, which will be affected by noncash items, and our board of directors in its discretion may elect not to declare any dividends. We may incur other expenses or liabilities that could reduce or eliminate the cash available for distribution as dividends. As a result of these and the other factors mentioned above, we may pay dividends during periods when we record losses and may not pay dividends during periods when we record net income.

Marshall Islands law provides that we may pay dividends on and redeem the Series B Preferred Shares only to the extent that assets are legally available for such purposes. Legally available assets generally are limited to our surplus, which essentially represents our retained earnings and the excess of consideration received by us for the sale of shares above the par value of the shares. In addition, under Marshall Islands law we may not pay dividends on or redeem Series B Preferred Shares if we are insolvent or would be rendered insolvent by the payment of such a dividend or the making of such redemption.

Further, the terms of our outstanding 2022 notes and our secured term loan prohibit us from declaring or paying any dividends or distributions on preferred stock, including the Series B Preferred Shares, or redeeming, purchasing, acquiring or making a liquidation payment on preferred stock in certain circumstances.

Risks Related to Tax Matters

Our operating income could fail to qualify for an exemption from U.S. federal income taxation, which would reduce our cash flow.

We do not expect to be engaged in a U.S. trade or business. In the case of a foreign corporation that is not so engaged, the Internal Revenue Code of 1986, as amended (the “Code”), imposes a 4% U.S. federal income tax (without allowance of any deductions) on 50% of the corporation’s gross transportation income that is attributable to transportation that begins or ends, but that does not both begin and end, in the United States, unless the corporation qualifies for the exemption provided in Section 883 of the Code or an applicable income tax treaty. The imposition of this tax could have a negative effect on our business, financial condition and results of operations. Under the charter agreements, the charterer has agreed to provide reimbursement for any such taxes as the charterer determines where each vessel trades.

We will qualify for the exemption under Section 883 if, among other things, our stock is treated as primarily and regularly traded on an established securities market in the United States. However, under the Treasury regulations, a class of stock will not be treated as primarily and regularly traded on an established securities market if, during more than half the number of days during the taxable year, one or more shareholders who actually or constructively own at least 5% of the vote and value of the outstanding shares of such class of stock (“5% Shareholders”), own, in the aggregate, 50% or more of the vote and value of the outstanding shares of such class of stock, unless a sufficient amount of stock is owned by 5% Shareholders that are considered to be “qualified shareholders” to preclude non-qualifying 5% Shareholders from owning 50% or more of the total value of the stock held by the 5% Shareholders group.

Generally, a 5% Shareholder is a qualified 5% Shareholder if the 5% Shareholder is an individual who is a resident of a qualified foreign country, the government of a qualified foreign country, a foreign corporation organized in a qualified foreign country that meets the “publicly-traded” test discussed herein, a non-profit organization organized in a qualified foreign country or an individual beneficiary (resident in a qualified foreign country) of a pension plan administered in or by a qualified foreign country. Generally, a foreign country is a qualified foreign country if it grants an equivalent exemption from tax to corporations organized in the United States.

Based on information that we have as to our shareholders and other matters, we believe that we qualified for the Section 883 exemption for 2009 through 2018 under the “publicly-traded” test. However, it is likely that our ownership may change such that nonqualified 5% Shareholders may own, in the aggregate, 50% or more of the total value of the our Class A common stock.

Such an ownership change, and certain other requirements for our stock to be treated as primarily and regularly traded on an established securities market, will be outside of our control and, as a result, no assurances can be provided that our stock will be so treated for any year. Moreover, since the availability of the Section 883 exemption depends on other matters over which we have no control, we can give no assurances that we will, or will continue to, qualify for the Section 883 exemption. See Item 10.E. “Additional Information—Taxation—Taxation of Global Ship Lease—The Section 883 exemption” for a more comprehensive discussion of the U.S. federal income tax rules related to Section 883.

We could be taxed as a U.S. corporation.

Section 7874 of the Code provides that a foreign corporation which acquires substantially all the properties of a U.S. corporation is generally treated as though it were a U.S. corporation for U.S. federal income tax purposes if, after the acquisition, at least 80% (by vote or value) of the stock of the foreign corporation is owned by former shareholders of the U.S. corporation by reason of owning stock in the U.S. corporation. Although we believe that this rule should not apply to us in the context of the Marathon Merger, there is no definitive legal authority applying the principles of Section 7874 of the Code and therefore there can be no assurance that the Internal Revenue Service (the “IRS”) would not seek to challenge such position, or that such a challenge would not be successful. If we were to be treated as a U.S. corporation, our net income would be subject to U.S. federal corporate income tax, currently imposed at a rate of 21%. The imposition of this tax would likely have a negative effect on our business, financial condition and results of operations.

Certain adverse U.S. federal income tax consequences could arise for U.S. holders.

Shareholders of a “passive foreign investment company,” or PFIC, that are U.S. persons within the meaning of the Code (“U.S. shareholders”) are subject to a disadvantageous U.S. federal income tax regime with respect to the distributions they receive from a PFIC and the gain, if any, they derive from the sale or other disposition of their shares in a PFIC (as discussed below). In addition, dividends paid by a PFIC do not constitute qualified dividend income and, hence, are ineligible for the preferential rate of tax that applies to qualified dividend income.

A foreign corporation is treated as a PFIC if either (1) 75% or more of its gross income for any taxable year consists of certain types of “passive income” or (2) 50% or more of the average value of the corporation’s assets produce or are held for the production of those types of “passive income.” For purposes of these tests, “passive income” includes dividends, interest and gains from the sale or exchange of investment property and rents and royalties other than rents and royalties which are received from unrelated parties in connection with the active conduct of a trade or business; income derived from the performance of services does not, however, constitute “passive income.”

Based on the projected composition of our income and valuation of our assets, we do not expect that we will constitute a PFIC with respect to the current or any future taxable year, although there can be no assurance in this regard. Our expectation is based principally on the position that, for purposes of determining whether we are a PFIC, the majority, if not all, of the gross income we derive from our chartering activities should constitute services income rather than rental income.

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In this regard, we have been advised by our tax advisor that the income from our chartering activities is, more likely than not, services income. There is, however, no direct legal authority under the PFIC rules addressing our current and projected future operations or supporting our position. Accordingly, no assurance can be given that the IRS will not assert that we are a PFIC with respect to any taxable year, nor that a court would not uphold any such assertion and we have not obtained advice from our tax advisor on whether we are a PFIC.

Further, in a case not concerning PFICs, *Tidewater Inc. v. U.S.*, 2009-1 USTC ¶ 50,337, the Fifth Circuit held that a vessel time charter at issue generated rental, rather than services, income. However, the court's ruling was contrary to the position of the IRS that the time charter income should be treated as services income. Subsequently, the IRS has stated that it disagrees with and will not acquiesce to the rental versus services distinction in the *Tidewater* decision, and in its discussion stated that the time charters at issue in *Tidewater* would be treated as producing services income for PFIC purposes. The IRS's statement with respect to *Tidewater* cannot be relied upon or otherwise cited as precedent by taxpayers. Further, the facts in *Tidewater* are not directly analogous to our facts. No assurance can be given that the IRS or a court of law would accept our position, and there is a risk that the IRS or a court of law could determine that the company is a PFIC.

If the IRS were to determine that we are or have been a PFIC for any taxable year, our U.S. shareholders will face adverse U.S. tax consequences. Distributions paid by us with respect to our shares will not constitute qualified dividend income if we were a PFIC in the year we pay a dividend or in the prior taxable year and, hence, will not be eligible for the preferential rate of tax that applies to qualified dividend income. In addition, our U.S. shareholders (other than shareholders who have made a "qualified electing fund" or "mark-to-market" election) will be subject to special rules relating to the taxation of "excess distributions"—with excess distributions being defined to include certain distributions we may make on our Class A common shares as well as gain recognized by a U.S. holder on a disposition of our Class A common shares. In general, the amount of any "excess distribution" will be allocated ratably to each day of the U.S. holder's holding period for our Class A common shares. The amount allocated to the current year and any taxable year prior to the first taxable year for which we were a PFIC will be included in the U.S. holder's gross income for the current year as ordinary income. With respect to amounts allocated to prior years for which we were a PFIC, the tax imposed for the current year will be increased by the "deferred tax amount," which is an amount calculated with respect to each prior year by multiplying the amount allocated to such year by the highest rate of tax in effect for such year, together with an interest charge as though the amounts of tax were overdue. See Item 10.E. "Additional Information—Taxation—Tax Consequences of Holding Class A common shares—Consequences of possible passive foreign investment company classification" for a more comprehensive discussion of the U.S. federal income tax consequences to U.S. shareholders if we were treated as a PFIC (including those applicable to U.S. shareholders who make a qualified electing fund or mark-to-market election).

We may be subject to taxation on all or part of our income in the United Kingdom, which could have a material adverse effect on our results of operations.

If we or our vessel owning subsidiaries were considered to be a resident of the United Kingdom (or "UK") or to have a permanent establishment in the United Kingdom, all or a part of our profits could be subject to UK corporate tax, which had a maximum rate of 24%, 23% and 21% for the years ended March 31, 2013, 2014 and 2015, respectively, and 20% thereafter. We and our vessel owning subsidiaries are strategically managed and controlled from outside the United Kingdom and have restricted activities within the United Kingdom. Certain intra-group services are provided from within the United Kingdom and UK corporate tax will be payable on the arms-length price for those services. The appropriate arms-length price in these circumstances is likely to be a matter of negotiation with the UK taxing authorities.

We do not believe that we or our vessel owning subsidiaries are residents of the United Kingdom, or that we or our vessel owning subsidiaries have permanent establishments in the United Kingdom. However, because some administrative and executive services are provided to us or our vessel owning subsidiaries by a subsidiary company located in the United Kingdom and certain of our directors reside in the United Kingdom, and because UK statutory and case law fail to definitively identify the activities that constitute a trade being carried on in the United Kingdom through a permanent establishment, the UK taxing authorities may contend that we or our vessel owning subsidiaries are subject to UK corporate tax on all of our income, or on a greater portion of our income than we currently expect to be taxed. If the UK taxing authorities made such a contention, we could incur substantial legal costs defending our position, and, if we were unsuccessful in our defense, our results of operations would be materially adversely affected.]

We may be subject to taxes which will reduce our cash flow.

We and our vessel owning subsidiaries are subject to tax in certain jurisdictions in which we are organized, own assets or have operations, which reduces the amount of our cash available for distribution. In computing our tax obligations in these jurisdictions, we are required to take various tax accounting and reporting positions on matters that are not entirely free from doubt and for which we have not received rulings from the governing authorities. We cannot assure you that upon review of these positions, the applicable authorities will agree with our positions. A successful challenge by a tax authority, or a change in law in a jurisdiction in which we operate (including Cyprus and Hong Kong, where a number of our vessel owning subsidiaries are entered in the local tonnage tax regime), could result in additional tax imposed on us, further reducing the cash available for distribution.

Item 4. Information on the Company

A. History and Development of the Company

Our legal and commercial name is Global Ship Lease, Inc. We are a Republic of the Marshall Islands corporation that owns a fleet of mid-sized and smaller containerships which we charter out under fixed-rate charters to reputable container shipping companies.

We were formed in 2007 to purchase and charter back 17 containerships then owned or to be purchased by CMA CGM, the third largest containership operator in the world by number of vessels. We acquired our initial fleet from CMA CGM between December 2007 and August 2009. All of the vessels were time chartered back to CMA CGM for terms between five and 17 years.

Between October 2014 and September 2015, we purchased three 8,063 TEU vessels from Orient Overseas Container Lines Limited (“OOCL”), chartering each back to OOCL for a period between 36 and 39 months. Two 4,113 TEU vessels, originally acquired from CMA CGM, were sold in November and December 2015.

We acquired a 2005-built, 2,800 TEU containership in June 2018, chartering the vessel to CMA CGM for a period of 12 months at a fixed rate of \$9,000 per day.

On November 15, 2018, we completed the Poseidon Transaction, acquiring 20 containerships, one of which, the Argos, was contracted to be sold, which sale was completed in December 2018. References herein to “GSL Fleet” are to the 19 vessels that were owned by us prior to the consummation of the Poseidon Transaction, and references to “Poseidon Fleet” are to the 19 vessels that were acquired by the Company from Poseidon Containers upon consummation of the Poseidon Transaction, excluding one additional vessel acquired but held for sale and delivered to its new owners in December 2018.

As of December 31, 2018, we owned 38 mid-sized and smaller containerships with a TEU weighted average age of 11.0 years, all of which were chartered out with a TEU weighted average remaining charter term of 2.5 years.

On January 2, 2019, as a consequence of the completion of the Poseidon Transaction, all of our issued and outstanding Class B common shares converted one-for-one into Class A common shares. On March 25, 2019, we effected a one-for-eight reverse stock split of our Class A common shares, which our shareholders authorized at our special meeting of shareholders held on March 20, 2019. There was no change to the trading symbol, number of authorized shares, or par value of our Class A common shares in connection with the reverse stock split. All share and per share amounts disclosed in this Annual Report give effect to the reverse stock split retroactively, for all periods presented, which resulted in the number of issued and outstanding Class A common shares reducing from 79,543,921 to 9,942,950.

Our management team undertakes all management of our fleet including the supervision of the day-to-day technical ship management of our vessels which is provided by third-party ship managers. As at December 31, 2018, the 19 legacy Poseidon Containers’ vessels were managed by Technomar, a company in which our Executive Chairman is a significant shareholder, 11 vessels were managed by a ship manager based in Hong Kong, seven were managed by CMA Ships, a wholly-owned subsidiary of CMA CGM, and one by a ship manager based in Germany. It is anticipated that the management of all vessels will transfer to Technomar during 2019. Additionally, as at December 31, 2018, 20 vessels were commercially managed by Conchart, a company in which our Executive Chairman is a significant shareholder.

The mailing address of our principal executive office is c/o Global Ship Lease Services Limited, Portland House, Stag Place, London SW1E 5RS, United Kingdom, and our telephone number is 44 (0) 20 7869 8006. Our agent in the United States is Puglisi & Associates, 850 Library Avenue, Suite 204, Newark, Delaware 19711, their telephone number is +1(302) 738-6680 and their facsimile number is +1(302) 738-7210.

Our website address is www.globalshiplease.com. The information included on our website is not incorporated herein by reference. From time to time, we may use our website and social media outlets as channels of distribution of material company information.

B. Business Overview

Our Fleet

Our fleet, as of December 31, 2018, consisted of 38 containerships with an aggregate capacity of 200,615 TEU and a TEU weighted average age of approximately 11.0 years and a non-weighted average age of 12.7 years.

The table below provides information about our fleet of 38 containerships as at December 31, 2018:

Vessel Name	Capacity in TEUs	Lightweight (tons)	Year Built	Charterer	Earliest Charter Expiry Date	Latest Charter Expiry Date	Daily Charter Rate—Gross \$
CMA CGM Thalassa	11,040	38,577	2008	CMA CGM	4Q25	1Q26	47,200
UASC Al Khor ⁽¹⁾⁽¹²⁾	9,115	31,764	2015	Hapag-Lloyd	1Q19	2Q19	40,000
Anthea Y ⁽¹⁾	9,115	31,890	2015	COSCO	2Q20	3Q20	39,200
Maira XL ⁽¹⁾	9,115	31,820	2015	COSCO	2Q20	3Q20	39,200
GSL Tianjin	8,667	34,243	2005	CMA CGM	2Q19	3Q19	11,900 ⁽²⁾
OOCL Qingdao	8,667	34,305	2004	OOCL	1Q19	2Q19	14,000
GSL Ningbo	8,667	34,243	2004	Maersk	2Q19	4Q20	12,100 ⁽³⁾
Mary ⁽¹⁾	6,927	23,424	2013	CMA CGM	3Q23	4Q23	25,910
Kristina ⁽¹⁾	6,927	23,424	2013	Wan Hai	2Q19	3Q19 ⁽⁴⁾	19,500 ⁽⁴⁾
Katherine ⁽¹⁾	6,927	23,424	2013	CMA CGM	1Q24	2Q24	25,910
Alexandra ⁽¹⁾	6,927	23,424	2013	ONE	1Q19	2Q19 ⁽⁴⁾	20,750 ⁽⁴⁾
UASC Bubiyan ⁽¹⁾	6,882	23,919	2015	Hapag-Lloyd	1Q19	2Q19 ⁽⁴⁾	20,000 ⁽⁴⁾
UASC Yas ⁽¹⁾⁽¹¹⁾	6,882	23,864	2015	CMA CGM	1Q24	2Q24	25,910
CMA CGM Berlioz	6,621	26,776	2001	CMA CGM	2Q21	4Q21	34,000
Agios Dimitrios	6,572	24,746	2011	MSC	3Q19	4Q19 ⁽⁵⁾	12,500 ⁽⁵⁾
Tasman ⁽¹³⁾	5,936	25,010	2000	ZIM	1Q19	3Q19 ⁽⁶⁾	16,350 ⁽⁶⁾
Dimitris Y ⁽¹³⁾	5,936	25,010	2000	ZIM	2Q19	3Q19	16,750
Ian H ⁽¹³⁾	5,936	25,128	2000	ZIM	2Q19	3Q19	17,000
Dolphin II	5,095	20,596	2007	HMM	2Q19	4Q19 ⁽⁷⁾	7,700 ⁽⁷⁾
Orca I	5,095	20,696	2006	ZIM	2Q19	3Q19	11,750
CMA CGM Alcazar	5,089	20,087	2007	CMA CGM	4Q20	2Q21	33,750
CMA CGM Château d'If	5,089	20,100	2007	CMA CGM	4Q20	2Q21	33,750
CMA CGM Jamaica	4,298	17,272	2006	CMA CGM	3Q22	1Q23	25,350
CMA CGM Sambhar	4,045	17,355	2006	CMA CGM	3Q22	1Q23	25,350
CMA CGM America	4,045	17,355	2006	CMA CGM	3Q22	1Q23	25,350
GSL Valerie	2,824	11,971	2005	CMA CGM	2Q19	3Q19	9,000
Athena	2,762	13,538	2003	MSC	1Q19	2Q19	9,000
Maira	2,506	11,453	2000	MSC	1Q19	1Q19 ⁽⁸⁾	9,000 ⁽⁸⁾
Nikolas	2,506	11,370	2000	MSC	1Q19	2Q19	9,000
Newyorker	2,506	11,463	2001	MSC	1Q19	2Q19	9,000
CMA CGM La Tour	2,272	11,742	2001	CMA CGM	3Q19	1Q20	15,300
CMA CGM Manet	2,272	11,742	2001	CMA CGM	3Q19	1Q20	15,300
CMA CGM Matisse	2,262	11,676	1999	CMA CGM	3Q19	1Q20	15,300
CMA CGM Utrillo	2,262	11,676	1999	CMA CGM	3Q19	1Q20	15,300
GSL Keta	2,207	11,731	2003	ANL	2Q19	3Q19	8,450
GSL Julie	2,207	11,731	2002	CMA CGM	1Q19	1Q19 ⁽⁹⁾	7,800 ⁽⁹⁾
Kumasi	2,207	11,731	2002	CMA CGM	4Q19	1Q21 ⁽¹⁰⁾	9,800 ⁽¹⁰⁾
Marie Delmas	2,207	11,731	2002	CMA CGM	4Q19	1Q21 ⁽¹⁰⁾	9,800 ⁽¹⁰⁾

(1) Modern design, high reefer capacity, fuel efficient vessels.

(2) Rate increased to \$13,000 per day from January 26, 2019.

(3) Rate increased to \$12,400 per day from March 21, 2019 and further increases to \$18,000 per day from September 21, 2019.

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- (4) *Thereafter, five years to CMA CGM at \$25,910 per day.*
- (5) *Thereafter, option for four years at \$20,000 per day, callable by us.*
- (6) *Extended after December 31, 2018 at \$11,500 per day to July 17, 2019 plus or minus 30 days.*
- (7) *Rate increases to \$11,500 per day from August 15, 2019.*
- (8) *Extended after December 31, 2018 at \$8,500 per day to August 17, 2020 plus or minus 30 days.*
- (9) *Rate \$7,800 per day and, agreed after December 31, 2018, \$7,200 per day from March 16, 2019 to between August 16, 2019 and October 16, 2019, at charterer's option, with an option in favour of charterer to extend from October 16, 2019 at \$8,500 per day for six months plus or minus 30 days.*
- (10) *Option at \$9,800 per day to December 31, 2020 plus or minus 90 days, callable by us.*
- (11) *Renamed Olivia I effective March 19, 2019.*
- (12) *Thereafter, on a three-year time charter with Hapag-Lloyd expected to commence in the second quarter of 2019.*
- (13) *Optimized for fuel-efficient performance at lower operating speeds.*

Time Charters

A time charter is a contract for the use of a vessel for a fixed period of time at a specified daily rate. Under a time charter, the vessel owner provides crew, lubricating oil, all maintenance and other services related to the vessel's operation, the cost of which is included in the daily rate. The vessel owner is also responsible for insuring its interests in the vessel and liabilities as owner arising from its use. The charterer is responsible for substantially all of the vessel's voyage costs, such as fuel (bunker) costs, canal fees, port expenses, extra war risk insurance costs if the vessel is deployed outside normal insurance limits and for entering areas which are specified by the insurance underwriters as being subject to additional premiums and cargo handling charges.

The initial term for a time charter commences on the vessel's delivery to the charterer. Time charter agreements may include options, in favor of the owner or the charterer, to extend the charter on pre-agreed terms. At the end of a charter, the vessel may be re-delivered by the charterer within a pre-agreed time window, to allow for operational flexibility. Charters may be extended on mutually agreed terms, or the vessel is re-delivered, in which case we would seek alternate employment with another charterer.

Our charters expire on different dates and over a period of time. We believe the staggered expirations of our charters reduces our exposure to rechartering risk and may mitigate the impact of the cyclical nature of the container shipping industry.

Daily Charter Rate

Daily charter rate refers to the gross amount per day payable by the charterer to the owner for the use of the vessel. It may be reduced by chartering commission payable to a broker or other party. Under our time charters, hire is payable to us typically every 15 days in advance and in U.S. dollars. The daily charter rate is a fixed daily amount that will remain the same for the duration of the charter, although the charter rate can be reduced in certain circumstances where there are added costs to the charterer due to vessel performance deficiencies in speed or fuel consumption. Hire can also be reduced, pro-rata for any cost savings that we may realize, if the vessel is laid up or idled at the charterers' request.

Operations and Expenses

As owners, we are required to maintain each vessel in class and in an efficient state of hull and machinery and are responsible for vessel costs such as crewing, lubricating oil, maintenance, insurance and drydocking. The charterer is responsible for the voyage costs, which includes bunker fuel, stevedoring, port charges and towage. As described below, we have entered into ship management agreements to sub-contract the day-to-day technical management of our vessels.

Right of First Refusal

Pursuant to the terms of the initial time charters with CMA CGM, of which 11 were in place at December 31, 2018, CMA CGM has a right of first refusal to purchase the vessel at matching terms to any offer of any third party if we decide to sell it during, or at the end of, the charter period. Should CMA CGM decline to exercise its right of first refusal in case of a sale during the charter period, we will be entitled to sell the vessel, subject to CMA CGM's prior approval, which shall not be unreasonably withheld. CMA CGM has the right to reject a sale of a vessel to owners whose business or shareholding is determined to be detrimental or contrary to its interest.

Off-hire

Under a time charter, when the vessel is not available for service, and is "off-hire," the charterer generally is not required to pay charter hire (unless the charterer is responsible for the circumstances giving rise to the ship's unavailability), and we are responsible for costs during any off-hire period, and possible additional costs of fuel to regain lost time. A vessel generally will be deemed to be off-hire if there is an occurrence that affects the full working condition of the vessel, including:

- any drydocking for repairs, maintenance or classification society inspection;
- any damage, defect, breakdown or deficiency of the ship's hull, machinery or equipment or repairs or maintenance thereto;
- any deficiency of the ship's master, officers and/or crew, including the failure, refusal or inability of the ship's master, officers and/or crew to perform the service immediately required, whether or not within its control;
- its deviation, other than to save life or property, which results in the charterer's lost time;
- crewing labor boycotts or certain vessel arrests; or
- our failure to maintain the vessel in compliance with the charter's requirements, such as maintaining operational certificates.

Ship Management and Maintenance

Under each of our time charters, we are responsible for the operation and technical management of each vessel, which includes crewing, provision of lubricating oils, maintaining the vessel, periodic drydocking and performing work required by regulations. The day-to-day crewing and technical management of our vessels are provided by our ship managers pursuant to the terms of ship management agreements.

Termination and Withdrawal

Generally, if a vessel is off-hire for a significant number of consecutive days, then the charterer may cancel the charter without any further consequential claims provided the vessel is free of cargo. The number of these days varies from 20 to 90 days and depends on the relevant charter agreement. Some of our charters provide that we can in some circumstances provide a substitute vessel during an anticipated extended period of off-hire.

For a number of vessels chartered to CMA CGM, if a vessel's fuel consumption exceeds a level specified in the charter over a continuous period of 30 days, and the reason is within our or the vessel's control, CMA CGM may request that we cure the deficiency. If the deficiency is not cured within 30 days after we receive notice, then CMA CGM may terminate the charter. OOCL does not have a similar right.

Generally, if either party informs the other party of a default under the charter, and the default is not rectified within 60 days of such notice, then the party giving the notice has the right to terminate the time charter with respect to that vessel.

The charter will terminate in the event of a total (actual or constructive) loss of the vessel or if the vessel is requisitioned.

We may suspend the performance of our obligations under the charter if the charterer defaults on its payment obligations under the charter.

Ship Management

As at December 31, 2018, Technomar provided day-to-day technical ship management services on 19 of our vessels, a third-party ship manager based in Hong Kong provided such services for 11 vessels, CMA Ships, a subsidiary of CMA CGM, provided such services for seven of our vessels and one vessel was managed by a third-party ship manager based in Germany. We anticipate that Technomar will assume all technical ship management services during 2019.

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Under the ship management agreements, our ship managers are responsible for all day-to-day ship management, including crewing, purchasing stores, lubricating oils and spare parts, paying wages, pensions and insurance for the crew, and organizing other vessel operating necessities, including the arrangement and management of drydocking. We reimburse the ship managers for the costs they incur on our behalf. Each ship management agreement provides that we have the right to audit the accounts of our ship manager to verify the costs incurred. The ship managers have agreed to maintain our vessels so that they remain in class with valid certification. In addition, they are responsible for our current fleet's compliance with all applicable government and other regulations, and compliance with class certifications.

We pay Technomar a daily management fee of Euro 685, payable in U.S. dollars at an agreed rate of exchange, which, in addition to the technical ship management services noted above, includes administrative support services provided to the GSL group including accounting and financial reporting, treasury management services and legal services. We pay CMA Ships an annual management fee of \$123,000 per vessel; a similar annual fee is paid to the other managers of our vessels.

The ship managers are required to use their best endeavors to provide the services specified in the ship management agreements. Pursuant to the terms of the ship management agreements, we provide customary indemnification to the manager and its employees, agents and sub-contractors.

The ship management agreements with Technomar are for a minimum term of 36 months. The management agreements may be terminated by either party by giving six months' written notice with termination to be effective no sooner than the expiry of the minimum term. A termination payment of 50% of the annual fee is payable if the management agreement is terminated by the managers and a termination fee of two times the annual fee is payable if the management agreement is terminated by the owners. Our other ship management agreements may generally be terminated by either party on two months written notice. The Technomar ship management agreements may also be terminated by one party on change of control in the other party.

Either party may terminate a ship management agreement in the event of default, which has not been cured, an order being made or a resolution being passed for the winding up, dissolution or bankruptcy of either party, or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes a special arrangement with its creditors. The ship management agreement will also terminate if the vessel becomes a total loss, is declared as a constructive or compromised or arranged total loss, is requisitioned or sold.

Commercial Management

Commercial management of vessels includes evaluating possible daily rate and duration of future employment, marketing a vessel for such employment, agreeing the detailed terms of a new charter or extension of an existing charter, administering the conduct of the charter including collection of charter-hire where necessary. Commercial management also includes negotiating sale and purchase transactions.

Global Ship Lease Services Limited ("GSL"), a wholly owned subsidiary of the company, is the commercial manager for the 18 vessels provided as security under the 2022 notes and one of our credit facilities. It has entered into a Commercial Advisory Services and Exclusive Brokerage Services Agreement ("EBSA") with Conchart, whereby Conchart is appointed to provide commercial advisory and exclusive brokerage services.

GSL has agreed to pay Conchart a commission of 1.25% on all monies earned under each charter fixture, other than charters with CMA CGM, and 1.00% commission on any sale and purchase transaction. No commission is payable on any charter of a vessel in the GSL Fleet to CMA CGM in place as of November 15, 2018, or extension thereof. Also, no commission is payable to Conchart in cases when not more than 30 days have elapsed between the conclusion of a new charter to CMA CGM and the end of a preexisting CMA CGM charter which was in place on November 15, 2018, provided that the relevant vessel has not been chartered to any non-CMA CGM charterer in the period between the two CMA CGM charters. For any other new charters to CMA CGM or its affiliates, the rate of commission is 0.75%. However, no commission is payable for such charters if CMA CGM or its affiliates waive their own address commission.

The EBSA has a minimum term of three years and can thereafter be terminated on six months' notice in which case a termination payment of six times the average monthly commission paid in the previous six months is due if the EBSA is terminated by Conchart and 12 times the average monthly commission paid in the previous six months is due if the EBSA is terminated by GSL. The EBSA may also be terminated by one party on change of control in the other party. Either party may terminate the EBSA in the event of default, which has not been cured, an order being made or a resolution being passed for the winding up, dissolution or bankruptcy of either party, or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes a special arrangement with its creditors.

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The remaining 20 vessels are or will be subject to a Commercial Management Agreement directly with Conchart, on terms substantially similar to those of the EBSA.

Insurance

We arrange for insurance coverage for each of our vessels, including hull and machinery insurance, protection and indemnity insurance and war risk insurance. We are responsible for the payment of all premiums. See “—Risk of Loss and Liability Insurance.”

Global Expense Agreement

Under our ship management agreements with CMA Ships, we have agreed to reimburse CMA Ships for ship operating expenses incurred by it on our behalf in the operation of our vessels.

Pursuant to the global expense agreement that we entered into with CMA Ships and CMA CGM, this reimbursement is subject to a cap. CMA CGM has agreed to compensate us, for any vessel in our fleet which remains on its initial charter, by the amount (not to exceed \$500 per day per vessel) by which actual operating costs per day (excluding any exceptional repair costs, drydock costs and insurance premiums) are greater than \$500 over a specified amount, which specified amount is reset annually at a predetermined and increasing amount as set out in the global expense agreement, provided that more than 50% of such increase is attributable to crew and lubricating oil costs. This arrangement is designed to provide some protection from unexpected and significant increases in operating costs, particularly for crew and lubricating oil costs, which are driven mainly by global markets over which we have no control.

Our remaining ship management agreements with CMA Ships are expected to be terminated in 2019 as all technical ship management transfers to Technomar. As a consequence, the global expense agreement will no longer apply.

Inspection by Classification Societies

The hull and machinery of every commercial vessel must be classed by a classification society authorized by the vessel’s country of registry. The classification society certifies that a vessel is safe and seaworthy in accordance with the applicable rules and regulations of the country of registry of the vessel and the International Convention for the Safety of Life at Sea of 1974, or SOLAS Convention. Most insurance underwriters make it a condition for insurance coverage that a vessel be certified “in class” by a classification society which is a member of the International Association of Classification Societies, the IACS. All of our vessels are certified as being “in class” by all the applicable Classification Societies.

For maintenance of the class, regular and extraordinary surveys of hull and machinery, including the electrical plant and any special equipment classed, are required to be performed as follows:

Annual Surveys

For seagoing ships, annual surveys are conducted for the hull and the machinery, including the electrical plant, and where applicable, on special equipment classed at intervals of 12 months from the date of commencement of the class period indicated in the certificate.

Intermediate Surveys

Extended annual surveys are referred to as intermediate surveys and typically are conducted two and one-half years after commissioning and each class renewal. Intermediate surveys may be carried out on the occasion of the second or third annual survey.

Class Renewal Surveys

Class renewal surveys, also known as special surveys, are carried out on the ship’s hull and machinery, including the electrical plant, and on any special equipment classed at the intervals indicated by the character of classification for the hull. During the special survey, the vessel is thoroughly examined, including audio-gauging to determine the thickness of the steel structures. Should the thickness be found to be less than class requirements, the classification society would prescribe steel renewals. Substantial amounts of funds may have to be spent for steel renewals to pass a special survey if the vessel experiences excessive wear and tear. In lieu of the special survey which is generally every five years, a shipowner has the option of arranging with the classification society for the vessel’s hull or machinery to be on a continuous survey cycle, in which every part of the vessel would be surveyed within a five-year cycle. At a ship-owner’s application, the surveys required for class renewal may be split according to an agreed schedule to

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extend over the entire period of class. This process is referred to as continuous class renewal. All areas subject to surveys as defined by the classification society are required to be surveyed at least once per class period, unless shorter intervals between surveys are otherwise prescribed. The period between two consecutive surveys of each area must not exceed five years.

All vessels are also dry-docked at least once every five years for inspection of their underwater parts and for repairs related to such inspections. If any defects are found, the classification surveyor will issue a “recommendation” which must be rectified by the ship-owner within prescribed time limits.

If any vessel does not maintain its class and/or fails any annual survey, intermediate survey, drydocking or special survey, the vessel will be unable to carry cargo between ports and will be unemployable and uninsurable which could cause us to be in violation of certain covenants in our loan agreements. Any such inability to carry cargo or be employed, or any such violation of covenants, could have a material adverse impact on our financial condition and results of operations.

The following table shows the classification societies for our vessels and lists the month by which they need to have completed their next drydocking:

<u>Vessel Name</u>	<u>Classification Society</u>	<u>Drydocking Month(1)</u>
CMA CGM Thalassa	Bureau Veritas	Jun-22
UASC Al Khor	DNV-GL & RINA	Jun-20
Anthea Y	DNV-GL & RINA	Aug-20
Maira XL	DNV-GL & RINA	Aug-20
OOCL Tianjin	American Bureau of Shipping	Mar-20
OOCL Qingdao	American Bureau of Shipping	Apr-19
OOCL Ningbo	American Bureau of Shipping	May-19
Mary	RINA	Jan-23
Kristina	DNV-GL	Sep-20
Katherine	RINA	Oct-20
Alexandra	RINA	Jan-23
UASC Bubiyan	DNV-GL & RINA	Jan-20
UASC Yas (2)	DNV-GL & RINA	Feb-20
CMA CGM Berlioz	Bureau Veritas	Jul-21
Agios Dimitrios	Bureau Veritas	Jan-21
Tasman	Bureau Veritas	Jan-20
Dimitris Y	Bureau Veritas	May-20
Ian H	Bureau Veritas	Jul-20
Dolphin II	Bureau Veritas	Jan-22
Orca I	Bureau Veritas	Nov-21
CMA CGM Alcazar	Bureau Veritas	Oct-22
CMA CGM Château d’If	Bureau Veritas	May-22
CMA CGM Jamaica	DNV-GL	June-21
CMA CGM Sambhar	Lloyd’s Register	Jul-21
CMA CGM America	Lloyd’s Register	Sep-21
GSL Valerie	DNV-GL	Jun-20
Athena	RINA	Feb-23
Maira	RINA	Aug-20
Nikolas	RINA	Aug-20
Newyorker	RINA	Jan-21
CMA CGM La Tour	Bureau Veritas	Jun-21
CMA CGM Manet	Bureau Veritas	Dec-21
CMA CGM Matisse	Bureau Veritas	Nov-19
CMA CGM Utrillo	Bureau Veritas	Dec-19
GSL Keta	Bureau Veritas	Mar-23
GSL Julie	Bureau Veritas	Nov-22
Kumasi	Bureau Veritas	Mar-22
Marie Delmas	Bureau Veritas	Jan-22

(1) Expected month of drydocking assumes that the vessel qualifies for in-water inspections at the intermediate survey.

(2) Renamed Olivia I effective March 19, 2019.

The table does not take account of discretionary drydockings which might be planned to effect upgrades, or in response to proposed or actual regulatory changes such as for ballast water treatment.

Competition

We operate in markets that are highly competitive. We expect to compete for vessel purchases and charters based upon price, customer relationships, operating expertise, professional reputation and size, age and condition of the vessel. We also expect to compete with many other companies, both other owners and operators including CMA CGM and its subsidiaries, to, among other things, purchase newbuildings and secondhand vessels to grow our fleet.

We expect substantial competition in obtaining new containership charters from a number of experienced and substantial companies. Many of these competitors may have greater financial resources than us, may operate larger fleets, may have been established for longer and may be able to offer better charter rates. Due to the recent industry downturn, there have been an increased number of vessels available for charter, including many from owners with strong reputations and experience. Excess supply of vessels in the container shipping market results in a more active short-term charter market and greater price competition for charters. As a result of these factors, we may be unable to purchase additional containerships, expand our relationships with existing customers or obtain new charterers on a profitable basis, if at all, which would have a material adverse effect on our business, results of operations and financial condition.

Permits and Authorizations

We are required by various governmental and other agencies to obtain certain permits, licenses and certificates with respect to our vessels. The kinds of permits, licenses and certificates required depend upon several factors, including the commodities transported, the waters in which the vessel operates, the nationality of the vessel's crew and the age of a vessel. Not all of the permits, licenses and certificates currently required to operate the vessels globally have been obtained by us or our ship managers. For example, the Delmas Keta, GSL Julie, Kumasi and Marie Delmas have not been certified to comply with all U.S., Canadian and Panama Canal regulations, as CMA CGM does not intend to operate them in these waters.

Environmental and Other Regulations

Government regulation significantly affects our business and the operation of our vessels. We are subject to international conventions and codes, and national, state, and local laws and regulations in the jurisdictions in which our vessels operate or are registered, including, among others, those governing the generation, management and disposal of hazardous substances and wastes, the cleanup of oil spills and other contamination, air emissions and water discharges. Because such laws and regulations frequently change, we cannot predict the ultimate cost of complying with these requirements or the impact of these requirements on the resale or current market value or useful lives of our vessels.

A variety of government, quasi-government and private entities require us to obtain permits, licenses or certificates for the operation of our vessels. Failure to maintain necessary permits or approvals could require us to incur substantial costs or temporarily suspend the operation of one or more of our vessels in one or more ports.

Increasing environmental concerns have created a demand for vessels that conform to the strictest environmental standards. We are required to maintain operating standards for all of our vessels that emphasize operational safety, quality maintenance, continuous training of our officers and crews and compliance with United States and international regulations and with flag state administrations.

The following is an overview of certain material governmental regulations that affect our business and the operation of our vessels.

International Maritime Organization

The IMO is the United Nations' agency for maritime safety. The IMO has adopted international conventions that impose liability for pollution in international waters and a signatory's territorial waters. For example, the IMO's International Convention for the Prevention of Pollution from Ships, or MARPOL, imposes environmental standards on the shipping industry relating to, among other things, pollution prevention and procedures, technical standards, oil spills management, transportation of marine pollutants and air emissions. Annex VI of MARPOL, which regulates air pollution from vessels, sets limits on sulfur oxide, nitrogen oxide and particulate matter emissions from vessel exhausts and prohibits deliberate emissions of ozone depleting substances, such as chlorofluorocarbons. We believe all of our vessels currently are Annex VI compliant. Annex VI also includes a global cap on the sulfur content of fuel oil with a lower cap (currently 0.1%) on the sulfur content applicable inside Emission Control Areas, or ECAs. Existing ECAs include the Baltic Sea, the North Sea, including the English Channel, the North American area and the U.S. Caribbean Sea area. Other areas in China are subject to local regulations that impose stricter emission controls. Additional geographical areas may be designated as ECAs in the future.

Annex VI calls for incremental reductions in sulfur in fuel between 2012 and 2020 (or 2015 in the case of ECAs), and the use of advanced technology engines designed to reduce emissions of nitrogen oxide, with a "Tier II" emission limit applicable to engines installed on or after January 1, 2011, and a more stringent "Tier III" emission limit applicable to engines installed on or after 2016 operating in the North American and U.S. Caribbean Sea nitrogen oxide ECAs and for engines installed on or after 2021 for vessels operating in the Baltic and North Sea. For future nitrogen oxide ECA designations, Tier III standards will apply to engines installed on ships constructed on or after the date of ECA designation, or a later date as determined by the country applying for the ECA designation. Additional ECAs could be established in the future. The IMO has undertaken a study for a new 0.1% m/m low sulphur ECA in the Mediterranean.

In 2016, the IMO confirmed its decision to implement a global sulfur cap of 0.5% m/m in 2020. This represents a significant cut from the 3.5% m/m global limit currently in place and demonstrates a clear commitment by IMO to ensuring shipping meets its environmental obligations. Effective from January 1, 2020, vessels should either be fitted with exhaust gas scrubbers, allowing the vessel to use the existing, less expensive, high sulfur content fuel or should have undertaken fuel system modification and tank cleaning, allowing the use of more expensive, low sulfur fuel. From March 1, 2020, vessels not fitted with exhaust gas scrubbers cannot have high sulfur content fuel on board.

Our existing time charters call for our customers to supply fuel that complies with Annex VI. It may be that charterers of certain of our vessels will seek to comply with Annex VI by agreeing with us to have exhaust gas cleaning systems installed. The technology for exhaust gas cleaning systems is under development, and the cost estimates for the supply and operation of these systems vary.

These amendments or other changes could require modifications to our vessels to achieve compliance, and the cost of compliance may be significant to our operations.

The IMO has also adopted technical and operational measures aimed at reducing greenhouse gas emissions from vessels. These include the "Energy Efficiency Design Index," which is mandatory for newbuilding vessels, and the "Ship Energy Efficiency Management Plan," which is mandatory for all vessels. The IMO now requires ships of 5,000 gross tonnage, or grt, or more to record and report their fuel consumption to their flag state at the end of each calendar year. The IMO plans to use this data to adopt an initial greenhouse gas emissions reduction strategy.

The IMO's International Convention on Civil Liability for Bunker Oil Pollution Damage, or the Bunker Convention, imposes, subject to limited exceptions, strict liability on vessel owners for pollution damage in jurisdictional waters of ratifying states, which does not include the United States, caused by discharges of "bunker oil." The Bunker Convention also requires owners of registered vessels over a certain size to maintain insurance for pollution damage in an amount generally equal to the limits of liability under the applicable national or international limitation regime. With respect to non-ratifying states, liability for spills or releases of oil carried as fuel in a ship's bunkers typically is determined by the national or other domestic laws in the jurisdiction where the events or damages occur on a fault or strict-liability basis. We believe our vessels comply with the Bunker Convention.

The IMO's International Convention for the Control and Management of Ships' Ballast Water and Sediments, or the BWM Convention, requires the installation of ballast water treatment systems on certain newbuilding vessels for which the keel is laid after September 8, 2017 and for existing vessels at the renewal of their International Oil Pollution Prevention Certificate after September 8, 2019. The BWM Convention also requires ships to carry an approved ballast water management plan, record books and statement of compliance. We will be required to incur significant costs to install these ballast water treatment systems on all our vessels before the applicable due dates.

The IMO's International Convention on the Control of Harmful Anti-fouling Systems on Ships, or the Anti-fouling Convention," prohibits the use of organotin compound coatings to prevent the attachment of mollusks and other sea life to the hulls of vessels and requires vessels over 400 grt engaged in international voyages to undergo an initial survey before the vessel is put into service or before an International Anti fouling System Certificate is issued for the first time, or subsequent surveys when the anti fouling systems are altered or replaced. We have obtained Anti-fouling System Certificates for all of our vessels that are subject to the Anti-fouling Convention.

Amendments to MARPOL Annex V (regulation for the prevention of pollution by garbage from ships) adopted at MEPC 70 entered into force on March 1, 2018. The changes include criteria for determining whether cargo residues are harmful to the marine environment, and a new Garbage Record Book format with a new garbage category for e-waste. As all our existing containerships are compliant with MARPOL Annex V requirements, the amendments could cause us to incur additional operational costs for the handling of garbage produced on our fleet.

The IMO also regulates vessel safety. The International Safety Management Code, or the ISM Code, provides an international standard for the safe management and operation of ships and for pollution prevention. The ISM Code requires our vessels to develop and maintain an extensive “Safety Management System” that includes the adoption of a safety and environmental protection policy and implementation procedures. A Safety Management Certificate is issued under the provisions of the SOLAS Convention to each vessel with a Safety Management System verified to be in compliance with the ISM Code. Failure to comply with the ISM Code may subject a party to increased liability, may decrease available insurance coverage for the affected vessels, and may result in a denial of access to, or detention in, certain ports. All of the vessels in our fleet are ISM Code-certified. Furthermore, all seafarers are required to meet the standards of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, or STCW, and be in possession of a valid STCW certificate. Flag states that have ratified the SOLAS Convention and STCW generally employ the classification societies to undertake surveys to confirm compliance.

Furthermore, recent action by the IMO’s Maritime Safety Committee and United States agencies indicate that cybersecurity regulations for the maritime industry are likely to be further developed in the near future in an attempt to combat cybersecurity threats. For example, cyber-risk management systems must be incorporated by ship-owners and managers by 2021. This might cause companies to create additional procedures for monitoring cybersecurity, which could require additional expenses and/or capital expenditures.

Increasingly, various regions are adopting additional, unilateral requirements on the operation of vessels in their territorial waters. These regulations, such as those described below, apply to our vessels when they operate in the relevant regions’ waters and can add to operational and maintenance costs, as well as increase the potential liability that applies to violations of the applicable requirements.

United States

The United States Oil Pollution Act of 1990 and CERCLA

The United States Oil Pollution Act of 1990, (“OPA”), establishes an extensive regulatory and liability regime for the protection and cleanup of the environment from oil spills. The Comprehensive Environmental Response, Compensation and Liability Act, (“CERCLA”), governs spills or releases of hazardous substances other than petroleum or petroleum products. Under OPA and CERCLA, vessel owners, operators and bareboat charterers whose vessels trade or operate within the U.S., its territories and possessions, or whose vessels operate in U.S. waters, which includes the U.S.’s territorial sea and its 200 nautical mile exclusive economic zone around the U.S., are jointly and, subject to limited exceptions, strictly liable for all containment and clean-up costs and other damages arising from discharges or threatened discharges of oil or hazardous substances, as applicable, from their vessels. OPA and CERCLA define these damages broadly to include certain direct and indirect damages and losses, including but not limited to assessment of damages, remediation, damages to natural resources such as fish and wildlife habitat, and agency oversight costs. Although our vessels do not carry oil as cargo, they do carry oil as bunkers, or fuel.

Under OPA and CERCLA, the liability of responsible parties is limited to a specified amount, which is periodically updated. Under both OPA and CERCLA, liability is unlimited if the incident is caused by gross negligence, wilful misconduct or a violation of certain regulations. Similarly, liability limits do not apply (i) under OPA if the responsible party fails or refuses to report the incident where the responsible party knows or has reason to know of the incident or reasonably cooperate and assist as requested in connection with oil removal activities, or (ii) under CERCLA if the responsible person fails or refused to provide all reasonable cooperation and assistance as requested in connection with response activities where the vessel is subject to OPA.

We maintain pollution liability coverage insurance in the amount of \$1 billion per incident for each of our vessels. If the damages from a catastrophic spill were to exceed our insurance coverage it could harm our business, financial condition and results of operation. Vessel owners and operators must establish and maintain with the U.S. Coast Guard evidence of financial responsibility sufficient to meet their potential aggregate liabilities under OPA and CERCLA. Evidence of financial responsibility may be demonstrated by showing proof of insurance, surety bonds, self-insurance or guarantees. We have obtained the necessary U.S. Coast Guard financial assurance certificates, or COFRs, for each of our vessels currently in service and trading to the United States. Owners or operators of certain vessels operating in U.S. waters also must prepare and submit to the U.S. Coast Guard a response plan for each vessel, which plan, among other things, must address a “worst case” scenario environmental discharge and describe crew training and drills to address any discharge. Each of our vessels has the necessary response plans in place.

OPA and CERCLA do not prohibit individual states from imposing their own liability regimes with regard to oil pollution or hazardous substance incidents occurring within their boundaries, and some states have enacted legislation providing for unlimited liability for spills. In some cases, states that have enacted such legislation have not yet issued implementing regulations defining vessel owners’ responsibilities under these laws. We intend to comply with all applicable state regulations in the ports where our vessels call. Nevertheless, future changes to OPA, CERCLA and other United States environmental regulations could adversely affect our operations.

Clean Water Act

The Clean Water Act, or CWA, establishes the basic structure for regulating discharges of pollutants into the “waters of the United States” and regulating quality standards for surface waters. The CWA authorizes civil and criminal penalties for discharging pollutants without a permit, failure to meet any requirement of a permit, and also allows for citizen suits against violators. The CWA imposes strict liability in the form of penalties for any unauthorized discharges, and substantial liability for the costs of removal, remediation and damages and complements the remedies available under OPA and CERCLA. In 2015, the EPA expanded the definition of “waters of the United States,” thereby expanding federal authority under the CWA, but following litigation, the EPA and Department of the Army proposed a limited definition of “waters of the United States” in December 2018. The effect of this proposal is still unknown. The CWA does not prohibit individual states from imposing more stringent conditions, which many states have done.

The U.S. Environmental Protection Agency, or the EPA, requires certain vessels to comply with a Vessel General Permit, or VGP, before the vessel can legally operate and discharge wastewaters, including ballast water, in U.S. waters. The 2013 VGP, which expired on December 19, 2018, was written to include existing U.S. Coast Guard management and ballast water exchange requirements. The EPA will now regulate these ballast water discharges and other discharges incidental to the normal operation of certain vessels within United States waters pursuant to the Vessel Incidental Discharge Act (“VIDA”), which was signed into law on December 4, 2018 and will replace the 2013 VGP program (which authorizes discharges incidental to operations of commercial vessels and contains numeric ballast water discharge limits for most vessels to reduce the risk of invasive species in U.S. waters, stringent requirements for exhaust gas scrubbers, and requirements for the use of environmentally acceptable lubricants) and current Coast Guard ballast water management regulations adopted under the U.S. National Invasive Species Act, or NISA, such as mid-ocean ballast exchange programs and installation of approved USCG technology for all vessels equipped with ballast water tanks bound for U.S. ports or entering U.S. waters. Under NISA, newbuilding vessels constructed after December 1, 2013 are required to have a U.S. Coast Guard-approved ballast water treatment system installed, and existing vessels, are required to have a ballast water treatment system installed on the first scheduled dry-dock after January 1, 2016

VIDA establishes a new framework for the regulation of vessel incidental discharges under the CWA, requires the EPA to develop performance standards for those discharges within two years of enactment, and requires the U.S. Coast Guard to develop implementation, compliance, and enforcement regulations within two years of EPA’s promulgation of standards. Under VIDA, all provisions of the 2013 VGP and USCG regulations regarding ballast water treatment remain in force and effect until the EPA and U.S. Coast Guard regulations are finalized. Non-military, non-recreational vessels greater than 79 feet in length must continue to comply with the requirements of the VGP, including submission of a Notice of Intent, or NOI, or retention of a Permit Authorization and Record of Inspection form and submission of annual reports. We have submitted NOIs for our vessels where required. Compliance with the EPA, U.S. Coast Guard and state regulations could require the installation of ballast water treatment equipment on our vessels or the implementation of other port facility disposal procedures at potentially substantial cost, or may otherwise restrict our vessels from entering U.S. waters.

In addition, the Act to Prevent Pollution from Ships, or APPS, implements various provisions of MARPOL and applies to larger foreign-flag ships when operating in U.S. waters. The regulatory mechanisms established in APPS to implement MARPOL are separate and distinct from the CWA and other federal environmental laws. Civil and criminal penalties may be assessed under APPS for non-compliance.

Additional Ballast Water Regulations

The U.S. Coast Guard regulations also require vessels to maintain a vessel-specific ballast water management plan that addresses training and safety procedures, fouling maintenance and sediment removal procedures. Individual U.S. states have also enacted laws to address invasive species through ballast water and hull cleaning management and permitting requirements.

Clean Air Act

The Clean Air Act, or the CAA, and its implementing regulations subject our vessels to vapor control and recovery requirements when cleaning fuel tanks and conducting other operations in regulated port areas and to air emissions standards for our engines while operating in U.S. waters. The EPA has adopted standards that apply to certain engines installed on U.S. vessels and to marine diesel fuels produced and distributed in the United States. These standards are consistent with Annex VI of MARPOL and establish significant reductions for vessel emissions of particulate matter, sulfur oxides and nitrogen oxides.

The CAA also requires states to draft State Implementation Plans, or SIPs, designed to attain national health-based air quality standards in primarily major metropolitan and industrial areas. Several SIPs regulate emissions from degassing operations by requiring the installation of vapor control equipment on vessels. California has enacted regulations which apply to ocean-going vessels’ engines when operating within 24 miles of the California coast and require operators to use low sulfur fuels. California also approved regulations to reduce emissions from diesel auxiliary engines on certain ocean-going vessels while in California ports, including container ship fleets that make 25 or more annual visits to California ports. These federal and state requirements may increase our capital expenditures and operating costs while in applicable ports. As with other U.S. environmental laws, failure to comply with the Clean Air Act may subject us to enforcement action, including payment of civil or criminal penalties and citizen suits.

European Union Requirements

In waters of the EU, our vessels are subject to regulation by EU-level legislation, including directives implemented by the various member states through laws and regulations of these requirements. These laws and regulations prescribe measures, among others, to prevent pollution, protect the environment and support maritime safety. For instance, the EU has adopted directives that require member states to refuse access to their ports to certain sub-standard vessels, according to various factors, such as the vessel's condition, flag, and number of previous detentions (Directive 2009/16/EC on Port State Control as amended and supplemented from time to time). Member states must, among other things, inspect minimum percentages of vessels using their ports annually (based on an inspection "share" of the relevant member state of the total number of inspections to be carried out within the EU and the Paris Memorandum of Understanding on Port State Control region), inspect all vessels which are due for a mandatory inspection (based, among other things, on their type, age, risk profile and the time of their last inspection) and carry out more frequent inspections of vessels with a high risk profile. If deficiencies are found that are clearly hazardous to safety, health or the environment, the state is required to detain the vessel or stop loading or unloading until the deficiencies are addressed. Member states are also required to implement their own separate systems of proportionate penalties for breaches of these standards.

Our vessels are also subject to inspection by appropriate classification societies. Classification societies typically establish and maintain standards for the construction and classification of vessels, supervise that construction in accordance with such standards, and carry out regular surveys of ships in service to ensure compliance with such standards. The EU has adopted legislation (Regulation (EC) No 391/2009 and Directive 2009/15/EC, as amended and supplemented from time to time) that provides member states with greater authority and control over classification societies, including the ability to seek to suspend or revoke the authority of classification societies that are negligent in their duties. The EU requires member states to monitor these organizations' compliance with EU inspection requirements and to suspend any organization whose safety and pollution prevention performance becomes unsatisfactory.

The EU's directive on the sulfur content of fuels (Directive (EU) 2016/802, which consolidates Directive 1999/32/EC and its various amendments) restricts the maximum sulfur content of marine fuels used in vessels operating in EU member states' territorial seas, exclusive economic zones and pollution control zones. The directive provides for more stringent rules on maximum sulfur content of marine fuels applicable in specific Sulfur Emission Control Areas, or SECAs, such as the Baltic Sea and the North Sea, including the English Channel. Further sea areas may be designated as SECAs in the future by the IMO in accordance with Annex VI of MARPOL. Under this directive, we may be required to make expenditures to comply with the sulfur fuel content limits in the marine fuel our vessels use in order to avoid delays or other obstructions to their operations, as well as any enforcement measures which may be imposed by the relevant member states for non-compliance with the provisions of the directive. We also may need to make other expenditures (such as expenditures related to washing or filtering exhaust gases) to comply with relevant sulfur oxide emissions levels. The directive has been amended to bring the above requirements in line with Annex VI of MARPOL. It also makes certain of these requirements more stringent. These and other related requirements may require additional capital expenditures and increase our operating costs.

Through Directive 2005/35/EC (as amended by Directive 2009/123/EC and as further amended and supplemented from time to time), the EU requires member states to cooperate to detect pollution discharges and impose criminal sanctions for certain pollution discharges committed intentionally, recklessly or by serious negligence and to initiate proceedings against ships at their next port of call following the discharge. Penalties may include fines and civil and criminal penalties. Directive 2000/59/EC (as amended and supplemented from time to time) requires all ships (except for warships, naval auxiliary or other state-owned or state-operated ships on non-commercial service), irrespective of flag, calling at, or operating within, ports of member states to deliver all ship-generated waste and cargo residues to port reception facilities. Under the directive, a fee is payable by the ships for the use of the port reception facilities, including the treatment and disposal of the waste. The ships may be subject to an inspection for verification of their compliance with the requirements of the directive and penalties may be imposed for their breach.

The EU also authorizes member states to adopt the IMO's Bunker Convention, discussed above, that imposes strict liability on shipowners for pollution damage caused by spills of oil carried as fuel in vessels' bunkers and requires vessels of a certain size to maintain financial security to cover any liability for such damage. Most EU member states have ratified the Bunker Convention.

The EU has adopted a regulation (EU Ship Recycling Regulation (1257/2013)) which sets forth rules relating to vessel recycling and management of hazardous materials on vessels. The regulation contains requirements for the recycling of vessels at approved recycling facilities that must meet certain requirements, so as to minimize the adverse effects of recycling on human health and the environment. The regulation also contains rules for the control and proper management of hazardous materials on vessels and prohibits or restricts the installation or use of certain hazardous materials on vessels. The regulation seeks to facilitate the ratification of the IMO's Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009. The regulation applies to vessels flying the flag of a member state and certain of its provisions apply to vessels flying the flag of a third country calling at a port or anchorage of a member state. For example, when calling at a port or anchorage of a member state, a vessel flying the flag of a third country will be required, among other things, to have on board an inventory of hazardous materials which complies with the requirements of the new regulation and the vessel must be able to submit to the relevant authorities of that member state a copy of a statement of compliance issued by the relevant authorities of the country of the vessel's flag verifying the inventory.

The regulation entered into force on December 30, 2013, although certain of its provisions are to apply at different stages, with certain of them applicable from December 31, 2020. Pursuant to this regulation, the EU Commission adopted the first version of a European List of approved ship recycling facilities meeting the requirements of the regulation, as well as four further implementing decisions dealing with certification and other administrative requirements set out in the regulation.

The EU is considering other proposals to further regulate vessel operations. The EU has adopted an Integrated Maritime Policy for the purposes of achieving a more coherent approach to maritime issues through coordination between different maritime sectors and integration of maritime policies. The Integrated Maritime Policy has sought to promote the sustainable development of the European maritime economy and to protect the marine environment through cross-sector and cross-border cooperation of maritime participants. The EU Commission's proposals included, among other items, the development of environmentally sound end-of-life ship dismantling requirements (as described above in respect of the EU Ship Recycling Regulation (1257/2013)), promotion of the use of shore-side electricity by ships at berth in EU ports to reduce air emissions, and consideration of options for EU legislation to reduce greenhouse gas emissions from maritime transport. The European Maritime Safety Agency has been established to provide technical support to the EU Commission and member states in respect of EU legislation pertaining to maritime safety, pollution and security. The EU, any individual country or other competent authority may adopt additional legislation or regulations applicable to us and our operations.

Other Greenhouse Gas Legislation

In February 2005, the Kyoto Protocol to the United Nations Framework Convention on Climate Change, or the Kyoto Protocol, became effective. Pursuant to the Kyoto Protocol, adopting countries are required to implement national programs to reduce emissions of greenhouse gases. More than 27 nations, including the United States, have entered into the Copenhagen Accord, which is non-binding but is intended to pave the way for a comprehensive, international treaty on climate change. The Paris Agreement, which was adopted in 2015 by a large number of countries and entered into force in November 2016, deals with greenhouse gas emission reduction measures and targets from 2020 to limit the global average temperature increase to well below 2° Celsius above pre-industrial levels. International shipping was not included in this agreement, but it is expected that its adoption may lead to regulatory changes in relation to curbing greenhouse gas emissions from shipping.

The IMO, EU, the United States and other individual countries, states and provinces are evaluating various measures to reduce greenhouse gas emissions from international shipping, which may include some combination of market-based instruments, a carbon tax or other mandatory reduction measures. The EU adopted Regulation (EU) 2015/757 concerning the monitoring, reporting and verification of carbon dioxide emissions from vessels, or the MRV Regulation, which entered into force in July 2015 (as amended by Regulation (EU) 2016/2071). The MRV Regulation applies to all vessels over 5,000 gross tonnage (except for a few types, including, but not limited to, warships and fish-catching or fish-processing vessels), irrespective of flag, in respect of carbon dioxide emissions released during voyages within the EU as well as EU incoming and outgoing voyages. The first reporting period commenced on January 1, 2018. The monitoring, reporting and verification system adopted by the MRV Regulation may be the precursor to a market-based mechanism to be adopted in the future. The EU is currently considering a proposal for the inclusion of shipping in the EU Emissions Trading System as from 2021 in the absence of a comparable system operating under the IMO.

At MEPC 70 and MEPC 71, a draft outline of the structure of the initial strategy for developing a comprehensive IMO strategy on reduction of greenhouse gas emissions from ships was approved. In accordance with this roadmap, in April 2018, nations at the MEPC 72 adopted an initial strategy to reduce greenhouse gas emissions from ships. The initial strategy identifies "levels of ambition" to reducing greenhouse gas emissions, including (1) decreasing the carbon intensity from ships through implementation of further phases of the EEDI for new ships; (2) reducing carbon dioxide emissions per transport work, as an average across international shipping, by at least 40% by 2030, pursuing efforts towards 70% by 2050, compared to 2008 emission levels; and (3) reducing the total annual greenhouse emissions by at least 50% by 2050 compared to 2008 while pursuing efforts towards phasing them out entirely. The initial strategy notes that technological innovation, alternative fuels and/or energy sources for international shipping will be integral to achieve the overall ambition. These regulations could cause us to incur additional substantial expenses.

The EU made a unilateral commitment to reduce overall greenhouse gas emissions from its member states to 20% below 1990 levels by 2020. The EU also committed to reduce its emissions by 20% under the Kyoto Protocol's second period from 2013 to 2020. Starting in January 2018, large ships calling at EU ports are required to collect and publish data on carbon dioxide emissions and other information.

In the United States, the EPA issued a finding that greenhouse gases endanger the public health and safety, adopted regulations to limit greenhouse gas emissions from certain mobile sources, and proposed regulations to limit greenhouse gas emissions from large stationary sources. However, in March 2017, the U.S. President signed an executive order to review and possibly eliminate the EPA's plan to cut greenhouse gas emissions. The EPA or individual U.S. states could enact environmental regulations that would affect our operations.

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Any passage of climate control legislation or other regulatory initiatives by the IMO, EU, Canada, the United States or other individual jurisdictions where we operate, that restrict emissions of greenhouse gases from vessels, could require us to make significant capital expenditures and may materially increase our operating costs.

Other Regions

We may be subject to environmental and other regulations that have been or may become adopted in other regions of the world that may impose obligations on our vessels and may increase our costs to own and operate them. Compliance with these requirements may require significant expenditures on our part and may materially increase our operating costs.

Of particular importance, due to the trade intensity in these areas, are four ECAs created in Hong Kong and in China (Pearl River Delta, the Yangtze River Delta and Bohai Sea), aiming to reduce the levels of ship-generated air pollution and focus on the sulfur content of fuels. As of January 1, 2017, vessels at berth in a core port within an emission control area are required to use fuel with a maximum sulfur content of 0.5% m/m—except one hour after arrival and one hour before departure. Since January 1, 2018, all ports within Chinese emission control areas have implemented this standard. As of January 1, 2019, vessels must switch to fuel with a sulfur content not exceeding 0.5% m/m prior to entering China's territorial sea, in defined areas. Vessels capable of receiving shore power must use shore power if they berth for more than three hours in ports in the coastal ECA that have shore power capabilities (or more than two hours in ports with such capabilities in the Inland ECAs). Furthermore, ships of 400 gross tonnage or over, or ships powered by main propulsion machinery greater than 750 kW of propulsion power, calling at a port in China should report energy consumption data of their last voyage to China MSA before leaving port (China Regulation on Data Collection for Energy Consumption of Ships). Hong Kong's current Fuel at Berth Regulation requiring ships to burn fuel with a sulfur content not exceeding 0.5% m/m while at berth are expected to be replaced by a regulation extending the standard to ships operating in Hong Kong waters. Ships not fitted with scrubbers will be required to burn fuel with a sulfur content not exceeding 0.5% m/m within Hong Kong waters, irrespective of whether they are sailing or at berth. In Taiwan, ships not fitted with exhaust gas scrubbers must burn fuel with a sulfur content not exceeding 0.5% m/m when entering its international commercial port areas.

In connection with the introduction of the ban of high sulfur fuel for vessels not fitted with exhaust gas scrubbers, a number of countries are introducing rules as to the type of exhaust gas scrubber that may be acceptable to be operated on vessels, in effect prohibiting the operation in their waters of hybrid or open loop type exhaust gas scrubbers and forcing vessels to use more expensive closed loop systems or to burn low sulfur fuel when sailing in their waters.

International Labor Organization

The International Labor Organization is a specialized agency of the UN that has adopted the Maritime Labor Convention 2006 ("MLC 2006"). A Maritime Labor Certificate and a Declaration of Maritime Labor Compliance is required to ensure compliance with the MLC 2006 for all ships above 500 gross tons in international trade. We believe that all our vessels are in substantial compliance with and are certified to meet MLC 2006.

Vessel Security Regulations

Since September 2001, there have been a variety of initiatives intended to enhance vessel security. In November 2002, the U.S Maritime Transportation Security Act of 2002, or the MTSA, came into effect. To implement certain portions of the MTSA, the U.S. Coast Guard has issued regulations requiring the implementation of certain security requirements aboard vessels operating in U.S. waters. Similarly, amendments to the SOLAS Convention created a new chapter of the convention dealing specifically with maritime security, which came into effect in July 2004. To trade internationally, a vessel must attain an International Ship Security Certificate, or ISSC, from a recognized security organization approved by the vessel's flag state. Ships operating without a valid certificate may be detained, expelled from, or refused entry at port until they obtain an ISSC. The new chapter imposes various detailed security obligations on vessels and port authorities, most of which are contained in the International Ship and Port Facilities Security Code, or ISPS Code. Among the various requirements are:

- on-board installation of automatic information systems, to enhance vessel-to-vessel and vessel-to-shore communications;
- on-board installation of ship security alert systems;
- the development of vessel security plans; and
- compliance with flag state security certification requirements.

The United States Coast Guard regulations, intended to align with international maritime security standards, exempt non-U.S. vessels from MTSA vessel security measures if such vessels have on board a valid International Ship Security Certificate, that attests to the vessel's compliance with the SOLAS Convention security requirements and the ISPS Code. Our existing vessels have implemented the various security measures addressed by the MTSA, the SOLAS Convention and the ISPS Code.

Risk of Loss and Liability Insurance

General

The operation of any cargo vessel includes risks such as mechanical failure, physical damage, collision, property loss, cargo loss or damage and business interruption due to political circumstances in foreign countries, piracy incidents, hostilities and labor strikes. In addition, there is always an inherent possibility of marine disaster, including oil spills and other environmental mishaps, and the liabilities arising from owning and operating vessels in international trade. OPA, which imposes virtually unlimited liability upon shipowners, operators and bareboat charterers of any vessel trading in the exclusive economic zone of the United States for certain oil pollution accidents in the United States, has made liability insurance more expensive for shipowners and operators trading in the United States market. We carry insurance coverage as customary in the shipping industry. However, not all risks can be insured, specific claims may be rejected, and we might not be always able to obtain adequate insurance coverage at reasonable rates.

Hull & Machinery, Loss of Hire and War Risks Insurance

We maintain marine hull and machinery and war risks insurances, which cover the risk of actual or constructive total loss, for all of our vessels. Our vessels are each covered up to at least fair market value, which we expect to assess at least annually, with certain deductibles per vessel per incident. We also maintain increased value coverage for each of our vessels under which in the event of total loss or constructive total loss of a vessel, we will be entitled to recover amounts otherwise not recoverable under our basic hull and machinery or war policies due to under-insurance. As required by the terms of the secured term loan and the indenture governing the 2022 notes, we have assigned certain of our insurance policies to our lenders under the secured term loan and the holders of the 2022 notes and will be subject to restrictions on our use of any proceeds therefrom.

We do not have loss-of-hire insurance covering the loss of revenue during extended off-hire periods. We evaluate obtaining such coverage on an ongoing basis, taking into account insurance market conditions and the employment of our vessels.

Protection and Indemnity Insurance

Protection and indemnity insurance is provided by mutual protection and indemnity associations, or P&I associations, which insure our third-party and crew liabilities in connection with our shipping activities. Coverage includes third-party liability, crew liability and other related expenses resulting from the abandonment, injury or death of crew, and other third parties, the loss or damage to cargo, claims arising from collisions with other vessels, damage to other third-party property, pollution arising from oil or other substances and salvage, towing and other related costs, including wreck removal. Protection and indemnity insurance is a form of mutual indemnity insurance, extended by P&I associations. Subject to the limit for pollution discussed below, our coverage is virtually unlimited, but subject to the rules of the particular protection and indemnity insurer.

Our protection and indemnity insurance coverage for pollution is up to \$1.0 billion per vessel per incident. The 13 P&I associations that comprise the International Group insure approximately 90% of the world's commercial blue-water tonnage and have entered into a pooling agreement to reinsure each association's liabilities. We are members of a number of P&I associations, all of which are included in the International Group. As such, we are subject to calls payable to the associations based on the International Group's claim records as well as the claim records of all other members of the individual associations.

C. Organizational Structure

Our holding company, Global Ship Lease, Inc., is a Marshall Islands corporation. Each vessel is owned by a separate wholly-owned subsidiary. Twenty vessels are owned by companies incorporated in Marshall Islands; thirteen vessels are owned by companies incorporated in Cyprus and five by companies incorporated in Hong Kong. In addition, GSLS, a company incorporated in England and Wales and which is directly wholly owned by the holding company, provides certain administrative services to the group.

A list of our subsidiaries and the country of incorporation of each one is provided as Exhibit 8.1 to this Annual Report on Form 20-F.

D. Property, Plants and Equipment

Our only material properties are the vessels in our fleet, which are described in Item 4.B. “Information on the Company—Business Overview.” The vessels are affected by environmental and other regulations. See Item 4.B “Information on the Company – Environmental and Other Regulations”. Our vessels serve as security under our debt agreements. See item 5.B “Operating and Financial Review—Liquidity and Financial Resources – *Indebtedness*”. We do not own any real property.

Item 4A. Unresolved Staff Comments

Not applicable.

Item 5. Operating and Financial Review and Prospects

A. Operating Results

Management’s Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the related notes and the financial and other information included elsewhere in this Annual Report. The term consolidated financial statements refers to the consolidated financial statements of Global Ship Lease, Inc. and its subsidiaries. This discussion contains forward-looking statements based on assumptions about our future business. Our actual results will likely differ materially from those contained in the forward-looking statements. See Part I. “Special Note Regarding Forward-Looking Statements.”

Overview

We are a containership vessel owner, incorporated in the Marshall Islands. We commenced operations in December 2007 with a business of owning and chartering out containerships under fixed rate charters to container liner companies.

At December 31, 2018, we owned 38 vessels with a total capacity of 200,615 TEU with an average age, weighted by TEU capacity, of 11.0 years.

We have entered into ship management agreements with third-party ship managers for the day-to-day technical management of our current fleet of vessels. See Item 4.B. “Information on the Company—Business Overview—Ship Management Agreements” for a more detailed description of our ship management agreements.

Our financial results are largely driven by the following factors:

- the continued performance of the charter agreements;
- the number of vessels in our fleet and their charter rates;
- the terms under which we recharter our vessels once the existing time charters have expired;
- the number of days that our vessels are utilized and not subject to drydocking, special surveys or otherwise are off-hire;
- our ability to control our costs, including ship operating costs, ship management fees, insurance costs, drydock costs, general, administrative and other expenses and interest and financing costs. Ship operating costs may vary from month to month depending on a number of factors, including the timing of purchases of spares and stores and of crew changes;
- impairment of our vessels and other non-current assets; and
- access to, and the pricing and other terms of, our secured term loan and other financing.

All of the vessels are fixed on charters, with a balanced range of short term to long term, and an average remaining term of 2.5 years on a weighted by capacity basis. The time charters for nine of our 38 containerships can be terminated before the end second quarter 2019 and a further ten vessels have charters that can be terminated during the second half of 2019. The charter rate that we will be able to achieve on renewal will be affected by market conditions at that time. As discussed further below, operational matters such as off-hire days for planned maintenance or for unexpected accidents and incidents affect the actual amount of revenues we receive.

CMA CGM is our main customer and holds 15.6% of our voting rights. Charter payments from CMA CGM are a major source of operating cash flow. At any given time in the future, the cash resources of CMA CGM may be diminished or exhausted, and we cannot assure you that CMA CGM will be able to make charter payments to us.

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The container shipping industry suffered a cyclical downturn in 2011 and many container shipping companies reported substantial losses. Financial performance of container shipping companies improved in 2012; however, the industry remains under pressure due to oversupply of container ship capacity. Charter payments have been received on a timely basis from 2014 and charterhire was received on a timely basis in 2018 and, as of December 31, 2018, charterhire was up-to-date. If our charterers are unable to make charter payments to us, our results of operations and financial condition will be materially adversely affected. If our existing charters with our charterers were terminated and we were required to recharter at lower rates or if we were unable to find new charters due to market conditions, our results of operations and financial condition would be materially adversely affected.

Recent Developments

Poseidon Transaction

On November 15, 2018, we completed the Poseidon Transaction, a strategic combination with Poseidon Containers whereby we acquired Poseidon Containers, including its fleet of 20 containerships, one of which was contracted to be sold, the sale of which was completed in December 2018. On the closing of the Poseidon Transaction, we issued 3,005,603 Class A common shares and 250,000 Series C Preferred Shares, which are convertible into 12,955,187 Class A common shares upon the occurrence of certain events, to the unitholders of Poseidon Containers and assumed the debt of Poseidon Containers, which amounted to \$509.7 million as at November 15, 2018.

Critical Accounting Policies and Estimates

The consolidated financial statements have been prepared in accordance with U.S. GAAP, which requires us to make estimates in the application of certain accounting policies based on our best assumptions, judgments and opinions. We base these estimates on the information available to us at the time and on various other assumptions we believe are reasonable under the circumstances. The following is a discussion of our principal accounting policies, some of which involve a high degree of judgment, and the methods of their application.

For a further description of our material accounting policies, please see note 3 to the consolidated financial statements included at Item 18. "Financial Statements."

Revenue Recognition

Our revenue is generated from long-term time charters for each vessel. The charters are regarded as operating leases and provide for a per vessel fixed daily charter rate. Revenue is recorded on a straight-line basis. Assuming our vessels are not off-hire, our charter revenues are fixed for the period of the current charters and, accordingly, little judgment is required to be applied to the amount of revenue recognition. Operating revenue is stated net of address commissions, which represent a discount provided directly to the charterer based on a fixed percentage of the agreed upon charter rate.

Vessels in Operation

Vessels are generally recorded at their historical cost, which consists of the acquisition price and any material expenses incurred upon acquisition. Vessels acquired in a corporate transaction accounted for as an asset acquisition are stated at the acquisition price, which consists of consideration paid, plus transaction costs less any negative goodwill, if applicable. Vessels acquired in a corporate transaction accounted for as a business combination are recorded at fair value. Vessels acquired as part of the Marathon Merger in 2008 were accounted for under ASC 805, which required that the vessels be recorded at fair value, less the negative goodwill arising as a result of the accounting for the merger.

Subsequent expenditures for major improvements and upgrades are capitalized, provided they appreciably extend the life, increase the earnings capacity or improve the efficiency or safety of the vessels.

Borrowing costs incurred during the construction of vessels or as part of the prefinancing of the acquisition of vessels are capitalized. There was no capitalized interest for the years ended December 31, 2018 or 2017. Other borrowing costs are expensed as incurred.

Vessels are stated less accumulated depreciation and impairment, if applicable. Vessels are depreciated to their estimated residual value using the straight-line method over their estimated useful lives which are reviewed on an ongoing basis to ensure they reflect current technology, service potential and vessel structure. The useful lives are estimated to be 30 years from original delivery by the shipyard.

For any vessel group which is impaired, the impairment charge is recorded against the cost of the vessel and the accumulated depreciation as at the date of impairment is removed from the accounts.

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The cost and related accumulated depreciation of assets retired or sold are removed from the accounts at the time of sale or retirement and any gain or loss is included in the Consolidated Statements of Income.

Vessels acquisitions

The Poseidon Transaction has been accounted for under ASU 2017-01 as an asset acquisition. The vessels acquired on November 15, 2018, described in note 1, were recorded at their fair value, based on valuations obtained from third party independent ship brokers, less negative goodwill arising as a result of the accounting for the overall Poseidon Transaction, allocated pro-rata.

Drydocking

Our vessels are drydocked approximately every five years for their special survey and for major repairs and maintenance that cannot be performed while the vessels are operating. Costs associated with the drydocks are capitalized as a component of the cost of the relevant vessel as they occur and are amortized on a straight line basis over the period to the next anticipated drydock, which are typically at five year intervals. Other expenditures relating to maintenance and repairs are expensed when incurred.

Prior to the completion of the Poseidon Transaction on November 15, 2018, the Company allocated an element of the purchase price of a vessel to a drydocking component which was amortized on a straight-line basis to the next anticipated drydocking date.

Costs capitalized as part of the drydock include costs directly associated with the special survey of the ship, its hull and its machinery and for the defouling and repainting of the hull. Any cost of repair to hull or machinery that extends useful life is capitalized. Other repair costs are expensed. Two drydockings were completed in 2018 for regulatory reasons the total cost of which, excluding the effect of the associated 34 days of offhire, was \$2.5 million. Four drydockings were completed in 2017, the total cost of which, excluding the effect of the associated 62 days of offhire, was \$4.0 million. Six drydockings were completed in 2016 for regulatory reasons, the total cost of which, excluding the effect of the associated 100 days of offhire, was \$7.9 million. One such drydocking was completed in 2015, the total cost of which, excluding the effect of nine days offhire, was \$1.5 million.

Impairment of Long-lived Assets

Tangible fixed assets, such as vessels, are reviewed individually for impairment when events or changes in circumstances indicate that their carrying amounts may not be recoverable. Undiscounted projected operating cash flows are determined for each vessel group, which comprises of the vessel, the unamortized portion of deferred drydocking related to the vessel and the related carrying value of the intangible asset or liability (if any) with respect to the time charter attached to the vessel at its purchase, if applicable (together the "vessel group") and compared to the carrying value of the vessel group (step one). Within the shipping industry, vessels can be purchased with a charter attached. The value of the charter may be favorable or unfavorable when comparing the contracted charter rate to then current market rates. An impairment charge is recognized when the sum of the expected undiscounted future cash flows from the vessel group over its estimated remaining useful life is less than its carrying amount (step one) and is recorded equal to the amount by which the vessel group's carrying amount exceeds its fair value, including any applicable charter. Fair value is determined with the assistance from valuations obtained from third party independent ship brokers (step two).

The assumptions used involve a considerable degree of estimation. Actual conditions may differ significantly from the assumptions and thus actual cash flows may be significantly different to those estimated with a material effect on the recoverability of each vessel's carrying amount. The most significant assumptions made for the determination of expected cash flows are:

- charter rates on expiry of existing charters, net of address commissions, which are based on forecast charter rates, where relevant, in the four years from the date of the impairment test and a reversion to the historical mean for each vessel thereafter;
- off-hire days, which are based on actual off-hire statistics for our fleet;
- operating costs, based on current levels escalated over time based on long term trends;
- dry docking frequency, duration and cost;
- the cost of fitting ballast water treatment systems;
- estimated useful life, which is assessed as a total of 30 years from original delivery by the shipyard; and
- scrap values.

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Whilst charter rates in the spot market and asset values saw overall improvements through 2018, taking into account the seasonal as well as cyclical nature of the container shipping industry, the recovery was not considered to have been sufficiently sustained not to undertake a fleet-wide review for impairment as at December 31, 2018 for the 19 vessels in the GSL Fleet.

As a result, we performed step one of the impairment assessment of each of the vessel groups in the GSL Fleet by comparing the undiscounted projected net operating cash flows for each vessel group to the carrying value of the vessel group.

During the three months ended December 31, 2018, our assessment concluded that step two of the impairment analysis was required for three of our vessels groups that were held and used, as the undiscounted projected net operating cash flows did not exceed the carrying value. As a result, an impairment loss of \$71,834 was recorded for three vessels, shown as "Impairment of vessels" in the Consolidated Statements of Income, being the difference between the fair value of the vessel group (which included the charter attached) and the vessel group's carrying value.

No impairment test was performed for the vessels comprising the Poseidon Fleet as at December 31, 2018, as no events or circumstances existed indicating that their carrying value may not be recoverable. The carrying value of the vessels at December 31, 2018 was significantly lower than their fair value, mainly as a result of the allocation of negative goodwill arising from the accounting for the Poseidon Transaction.

In September 2018, we agreed with CMA CGM to extend the charter on GSL Julie and entered a new charter with Maersk Line for GSL Ningbo (formerly OOCL Ningbo). These extensions triggered the performance of an impairment test on the two vessels; no impairment was identified.

In January 2018, we agreed with CMA CGM to extend the charter on GSL Tianjin by eight to 12 months (at the charterer's option) at a fixed rate of \$11,900 per day, commencing January 26, 2018. In February 2018, we agreed with OOCL to extend the charter of OOCL Qingdao to between January 1, 2019 and March 15, 2019 (at the charterer's option) at a fixed rate of \$14,000 per day, commencing March 11, 2018. These extensions triggered the performance of an impairment test on the two vessels; no impairment was identified.

The impairment assessment performed for 2017 and 2016 resulted in impairment charges of \$87.6 million and \$92.4 million, respectively.

Although we currently intend to continue to hold and operate all of our vessels, the following table presents information with respect to the carrying value of our vessels, which are after the impairment charges noted above, and indicates whether their estimated market values, based on charter attached valuations as at December 31, 2018 with the assistance of an independent ship broking firm and totaling \$1,331.0 million, are below their carrying values as at December 31, 2018. The carrying value of each of the vessels does not necessarily represent its fair market value or the amount that could be obtained if the vessel were sold. We would not record an impairment for any of the vessels for which the market value based on charter attached valuations is below its carrying value unless and until we either determine to sell the vessel for a loss or determine that the vessel's carrying amount is not recoverable. We believe that the undiscounted cash flows over the estimated remaining useful lives for those vessels that show estimated market values below their carrying values exceed such vessels' carrying values as at December 31, 2018, and accordingly have not recorded any further impairment charge.

As noted above, for impairment testing we assume that charter rates will revert to historic averages after four years, where relevant. Over the last few years, historic average rates have declined as stronger earlier years are replaced with weaker later years. If time charter rates do not show material and sustained improvement, we expect that our average estimated daily time charter rates used in future impairment analyses will decline, resulting in reduced estimated undiscounted future net cash flows to an amount which is less than the carrying value of certain vessels. In accordance with our accounting policy, if this occurs and we are required to perform any impairment tests, we may be required to recognize a non-cash impairment charge equal to the excess of the impacted vessels' carrying value over their fair value. Sensitivity analysis as at December 31, 2018 suggests that a reduction of 10.0% in the charter rates assumed after expiry of the existing charter contracts under the current methodology would trigger an increase in the theoretical impairment charge of approximately \$4.7 million. A reduction of 5.0% in the assumed charter rates would trigger an increase in the impairment charge of approximately \$1.2 million.

The amount, if any, and timing of any impairment charges we may recognize in the future will depend upon then current and expected future charter rates and vessel values, which may differ materially from those used in our estimates at December 31, 2018. In addition, vessel values are highly volatile; as such, the estimated market values may not be indicative of the current or future market value of our vessels or prices that we could achieve if we were to sell them, with or without charters attached.

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The table below sets out the purchase price and carrying value of each of our vessels as of December 31, 2018:

Vessel Name	Capacity in TEU	Year Built	Purchase Price ⁽¹⁾ (in millions of U.S. dollars)	Carrying Value ⁽²⁾ (in millions of U.S. dollars)
CMA CGM Thalassa*	11,040	2008	154.0	107.7
UASC Al Khor	9,115	2015	69.9	69.6
Anthea Y	9,115	2015	69.9	69.6
Maira XL	9,115	2015	69.9	69.6
OOCL Tianjin*	8,667	2005	55.0	46.0
OOCL Qingdao*	8,667	2004	53.6	44.1
OOCL Ningbo*	8,667	2004	53.6	45.3
Mary	6,927	2013	48.3	48.1
Kristina	6,927	2013	48.3	48.2
Katherine	6,927	2013	48.3	48.1
Alexandra	6,927	2013	48.3	48.2
UASC Bubiyan	6,882	2015	54.0	53.8
UASC Yas (3)	6,882	2015	54.0	53.8
CMA CGM Berlioz	6,621	2001	82.0	33.8
Agios Dimitrios	6,572	2011	22.8	22.7
Tasman	5,936	2000	11.4	11.3
Dimitris Y	5,936	2000	11.4	11.3
Ian H	5,936	2000	11.4	11.4
Dolphin II	5,095	2007	12.2	12.2
Orca I	5,095	2006	11.4	11.3
CMA CGM Alcazar*	5,089	2007	94.0	35.0
CMA CGM Château d'If	5,089	2007	94.0	32.3
CMA CGM Jamaica	4,298	2006	67.0	30.3
CMA CGM Sambhar	4,045	2006	67.0	29.0
CMA CGM America	4,045	2006	67.0	28.4
GSL Valerie	2,824	2005	11.5	11.2
Athena	2,762	2003	8.5	8.5
Maira(G)	2,506	2000	5.7	5.7
Nikolas(G)	2,506	2000	5.7	5.7
Newyorker(G)	2,506	2001	6.1	6.1
CMA CGM La Tour(G)*	2,272	2001	37.0	10.3
CMA CGM Manet(G)*	2,272	2001	37.0	10.9
CMA CGM Matisse(G)*	2,262	1999	34.0	8.5
CMA CGM Utrillo(G)*	2,262	1999	34.0	8.4
Delmas Keta(G)	2,207	2003	38.0	4.8
GSL Julie(G)	2,207	2002	38.0	5.2
Kumasi(G)	2,207	2002	38.0	7.9
Marie Delmas(G)	2,207	2002	38.0	8.0
Total			\$ 1,710.2	\$ 1,122.3

(1) Purchase price for the GSL Fleet consists of the contract price and any material expenses incurred upon acquisition, initial repairs, improvements and delivery expenses, interest and on-site supervision costs incurred during the construction periods, where relevant. Purchase price includes any element allocated to a drydock component. Purchase price for the vessels in the Poseidon Fleet, 2018 are recorded at fair value, based on valuations assessed by independent ship brokers, less negative goodwill arising as a result of the accounting for the Poseidon Transaction, allocated pro-rata to each vessel based on fair value.

(2) As at December 31, 2018, including unamortized drydocking costs.

(3) Renamed to M/V Olivia I effective March 19, 2019.

(G) Indicates geared vessel

* Indicates vessels for which we believe the market value based on charter attached valuations was lower than the vessel's carrying value as at December 31, 2018. We believe that the aggregate carrying value of these vessels at December 31, 2018 exceeded their aggregate market value based on charter attached valuations as at December 31, 2018 by approximately \$63.1 million.

Share-Based Compensation

We have awarded restricted stock units to certain of our employees. For 2016 and 2017, 20% of the base compensation paid to our directors was in the form of stock issued under the 2015 Equity Incentive Plan, with the number of stock units issued based on a value of \$32.00 per unit. The accounting fair value of restricted stock unit grants is determined by reference to the quoted stock price on the date of grant, as adjusted for estimated dividends forgone until the restricted stock units vest. Compensation expense is recognized based on a graded expense model over the expected vesting period.

Recent Accounting Pronouncements

In February 2016, the FASB issued Accounting Standards Update No. 2016-02, “Leases (Topic 842)” (“ASU 2016-02”). ASU 2016-02 will apply to both types of leases – capital (or finance) leases and operating leases. According to the new Accounting Standard, lessees will be required to recognize assets and liabilities on the balance sheet for the rights and obligations created by all leases with terms of more than 12 months. ASU 2016 – 02 is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. Early application is permitted. This guidance requires companies to identify lease and non-lease components of a lease agreement. Lease components relate to the right to use the leased asset and non-lease components relate to payments for goods or services that are transferred separately from the right to use the underlying asset. Total lease consideration is allocated to lease and non-lease components on a relative standalone basis. The recognition of revenues related to lease components will be governed by ASC 842 while revenue related to non-lease components will be subject to ASC 606. In March 2018, the FASB tentatively approved a proposed amendment to ASU 842, that would provide an entity the optional transition method to initially account for the impact of the adoption with a cumulative adjustment to retained earnings on the effective date of the ASU, January 1, 2019 rather than January 1, 2017, which would eliminate the need to restate amounts presented prior to January 1, 2019. In addition, lessors can elect, as a practical expedient, not to allocate the total consideration to lease and non-lease components based on their relative standalone selling prices. As adopted by the Accounting Standards Update No. 2018-11 in July 2018, this practical expedient will allow lessors to elect and account for the combined component based on its predominant characteristic.

ASC 842 provides practical expedients that allow entities to not (i) reassess whether any expired or existing contracts are considered or contain leases; (ii) reassess the lease classification for any expired or existing leases; and (iii) reassess initial direct costs for any existing leases. In July 2018, the FASB issued Accounting Standards Update No. 2018-10, “Codification Improvements to Topic 842, Leases” and in December 2018 the Accounting Standards Update No. 2018-20 “Narrow-scope improvements for lessors”, which further improve and clarify ASU 2016-02. The Company plans to adopt the standard on January 1, 2019 and expects to elect the use of all practical expedients. Based on a preliminary assessment, the Company is expecting that the adoption will not have a material effect on its consolidated financial statements since the Company is primarily a lessor and the changes to the lessor model are minor.

The Company is continuing its assessment of other miscellaneous leases and may identify additional impacts this guidance will have on its consolidated financial statements and disclosures. The Company currently does not have any other miscellaneous leases that are greater than 12 months and the Company is the lessee that would be impacted by the adoption of this standard.

In June 2016, the FASB issued ASU 2016-13, “Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments” (“ASU 2016-13”), which amends the impairment model by requiring entities to use a forward-looking approach based on expected losses to estimate credit losses on certain types of financial instruments, including trade receivables. In December 2018, the FASB issued Accounting Standards Update No. 2018-19 “Codification improvements to Topic 326”, which clarifies that impairment of receivables arising from operating leases should be accounted for in accordance with Topic 842, Leases. The ASU 2016-13 is effective for public entities for fiscal years beginning after December 15, 2019, with early adoption permitted. The Company is currently evaluating the impact of the new standard on the Company’s consolidated financial statements.

The Company does not believe that any other recently issued, but not yet effective, accounting pronouncements would have a material impact on its interim unaudited consolidated financial statements.

Results of Operations*Year ended December 31, 2018 compared to Year ended December 31, 2017*

	Year ended December 31, 2018 2017 (in millions of U.S. dollars)	
Operating Revenues		
Time charter revenue	\$ 157.1	\$ 159.3
Operating Expenses		
Vessel operating expenses	(49.3)	(42.7)
Time charter and voyage expenses	(1.6)	(1.0)
Depreciation and amortization	(35.5)	(38.0)
Impairment of vessels	(71.8)	(87.6)
General and administrative expenses	(9.2)	(5.4)
Total operating expenses	<u>(167.4)</u>	<u>(174.7)</u>
Operating Loss	<u>(10.3)</u>	<u>(15.4)</u>
Non-Operating Income (Expense)		
Interest income	1.4	0.5
Interest and other finance expense	(48.7)	(59.4)
Other income, net	0.3	0.1
Income taxes	0.0	0.0
Net Loss	<u>(57.3)</u>	<u>(74.2)</u>
Earnings allocated to Series B Preferred Shares	(3.1)	(3.1)
Net Loss available to Common Shareholders	<u>\$ (60.4)</u>	<u>\$ (77.3)</u>

Operating Revenues

Operating revenues reflect income under fixed rate time charters in effect and were \$157.1 million in the year ended December 31, 2018, a decrease of \$2.2 million, or 1.4%, from operating revenues of \$159.3 million for 2017. The Poseidon Fleet, acquired on November 15, 2018, contributed operating revenues of \$15.9 million. The decrease in operating revenues of \$18.1 million for the legacy GSL vessels is mainly due to charter renewals (i) Delmas Keta and GSL Julie where the day rate stepped down in September 2017 from \$18,465 per day to \$7,800 per day, (ii) GSL Tianjin, where the rate stepped down in October 2017 from \$34,500 per day to \$13,000 per day and to \$11,900 per day in November 2018, (iii) OOCL Qingdao where the rate stepped down in March 2018 from \$34,500 per day to \$14,000 per day (iv) GSL Ningbo where the day rate stepped down in September, 2018 from \$34,500 per day to an initial rate of \$11,500 per day, offset by (v) revenue earned by GSL Valerie from July 1, 2018.

There were 7,675 ownership days in 2018 with 98 days offhire, including 34 for regulatory drydockings, giving utilization of 98.7%. In 2017, there were 6,570 ownership days with 102 days offhire, including 62 days for drydockings, giving an overall utilization of 98.4%.

Total Operating Expenses

Total Operating expenses totaled \$167.4 million (or 107% of operating revenues) including \$71.8 million charge for impairment for the year ended December 31, 2018. Operating expenses, including \$87.6 million charge for impairment, totaled \$174.7 million for the year ended December 31, 2017 (or 110% of operating revenues). Excluding impairment, operating expenses for 2018 were \$95.6 million for 2018 (or 61% of operating revenue) and for 2017 were \$87.1 million (or 55% of operating revenues).

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Total Operating expenses can be analyzed as follows:

- *Vessel operating expenses:* Vessel operating expenses, which relate to the operation of the vessels themselves, were \$49.3 million for the year ended December 31, 2018 (or 31% of operating revenues) compared to \$42.7 million for the year ended December 31, 2017 (or 27% of operating revenues). The increase is mainly due to the addition of the Poseidon vessels from November 15, 2018. The average cost per ownership day was \$6,420, down \$79, from \$6,499 for 2017. The decrease is mainly due to lower insurance costs offset by increase in repairs and maintenance costs.
- *Time Charter and voyage expenses:* Time charter and voyage expenses, which are voyage expenses for the owner's account, were \$1.6 million for the year ended December 31, 2018 (or 1% of operating revenues) compared to \$1.0 million for the year ended December 31, 2017 (or 1% of operating revenues). The increase is mainly due to the addition of the Poseidon vessels from November 15, 2018. The increase is mainly due to increase in brokerage commissions.
- *Depreciation and Amortization:* Depreciation and Amortization was \$35.5 million (or 23% of operating revenues) for the year ended December 31, 2018, down from \$38.0 million (or 24% of operating revenues) in 2017 mainly due to the effect of lower book values for a number of vessels following impairment write downs taken in the fourth quarter 2017, offset by additional depreciation on the Poseidon vessels from November 15, 2018.
- *Impairment of Vessels:* Whilst charter rates in the spot market and asset values saw improvements through 2018, taking into account the seasonal as well as cyclical nature of the container shipping industry, the recovery was not considered to have been sufficiently sustained not to undertake a review for impairment as at December 31, 2018 which resulted in a non-cash impairment charge of \$71.8 million (or 46% of operating revenues) being recognized in the three months ended December 31, 2018. A non-cash charge for impairment was recorded in the fourth quarter 2017, due to continuing poor industry conditions, of \$87.6 million (or 55% of operating revenues).
- *General and administrative:* General and administrative expenses were \$9.2 million (or 6% of operating revenues) in the year ended December 31, 2018, compared to \$5.4 million (or 3% of operating revenues) for 2017. The increase is mainly due to costs associated with the Poseidon transaction.

Operating Loss

As a consequence of all preceding items, operating loss was \$10.3 million for the year ended December 31, 2018 compared to an operating loss of \$15.4 million for the year ended December 31, 2017.

Interest Income

Interest income earned on cash balances for the year ended December 31, 2018 was \$1.4 million compared to \$0.5 million in 2017 as average cash balances were higher as were interest rates on deposits.

Interest and other finance expenses

Our previous 2019 notes, revolving credit facility and secured term loan were refinanced in October 2017 using the net proceeds from the issuance of \$360.0 million principal amount new 9.875% First Priority Senior Secured Notes due 2022, a new \$54.8 million secured term loan, and cash on hand.

Interest expense for the year ended December 31, 2018 comprised interest on the new debt structure, including on debt assumed as a result of the Poseidon transaction on November 15, 2018, whereas interest expense for the year ended December 31, 2017 comprised interest of the previous debt structure up to dates in October and on the new debt structure from dates in October. Further, interest expense in 2017 included the premium paid for the redemption of the 2019 notes and the accelerated write off of unamortized original issue discount thereon and deferred financing charges associated with the previous financing structure.

Interest expense for the year ended December 31, 2018, was \$48.7 million, including \$0.4 million premium paid on the 2020 notes down \$10.7 million on interest expense of \$59.4 million for the year ended December 31, 2017. The decrease is mainly due to the consequences of the refinancing completed in October 2017 including a charge in 2017 of \$8.7 million premium on the redemption of the 2019 notes, the write-off of the remaining balance of original issue discount on the 2019 notes of \$1.3 million and the write-off of the remaining balance of deferred financing charges of \$4.3 million associated with all debt repaid.

Other income, net

Other operating income, net represents miscellaneous revenue mainly from carrying passengers and sundry recharges to charterers under our time charters. In the year ended December 31, 2018, other operating income, net was \$0.3 million, up from \$0.1 million in 2017.

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Income Taxes

Income taxes for the years ended December 31, 2018 and 2017 were not material as our vessel owning subsidiaries were subject to taxation based on tonnage rather than accounting profits.

Net Loss

For the year ended December 31, 2018, net loss was \$57.3 million, after \$71.8 million non-cash impairment, compared to a net loss for the year ended December 31, 2017 of \$74.2 million, after \$87.6 million non-cash impairment charge.

Earnings Allocated to Series B Preferred Shares

The dividends payable on the \$35.0 million Series B Preferred Shares issued on August 20, 2014 are presented as a reduction of net loss, as and when declared by the Board of Directors. These dividends totaled \$3.1 million for each of the years ended December 31, 2018 and 2017.

Net Loss Available to Common Shareholders

Net loss available to common shareholders for the year ended December 31, 2018 was \$60.4 million, after \$71.8 million non-cash impairment, compared to a net loss available to common shareholders, after \$87.6 million impairment charge, of \$77.3 million for the year ended December 31, 2017.

Year ended December 31, 2017 compared to Year ended December 31, 2016

	Year ended December 31, 2017 2016 (in millions of U.S. dollars)	
Operating Revenues		
Time charter revenue	\$ 159.3	\$ 166.8
Operating Expenses		
Vessel operating expenses	(42.7)	(45.4)
Time charter and voyage expenses	(1.0)	(0.7)
Depreciation and amortization	(38.0)	(42.8)
Impairment of vessels	(87.6)	(92.4)
General and administrative expenses	(5.4)	(6.2)
Total operating expenses	(174.7)	(187.5)
Operating Loss	(15.4)	(20.7)
Non-Operating Income (Expense)		
Interest income	0.5	0.2
Interest and other finance expense	(59.4)	(44.8)
Other income, net	0.1	0.2
Income taxes	(0.0)	(0.0)
Net Loss	(74.2)	(65.1)
Earnings allocated to Series B Preferred Shares	(3.1)	(3.1)
Net Loss available to Common Shareholders	\$ (77.3)	\$ (68.2)

Operating Revenues

Operating revenues reflect income under fixed rate time charters in effect and were \$159.3 million in the year ended December 31, 2017, down \$7.5 million, or 4.5%, from operating revenues of \$166.8 million for 2016. The decrease in operating revenues is mainly due to (i) the 12 month extensions of the charters of GSL Julie and Delmas Keta effective mid-September, 2017, at \$7,800 per day compared to \$18,465 per day previously, (ii) the new charter of GSL Tianjin to CMA CGM effective late October, 2017 at \$13,000 per day compared to \$34,500 per day for the expiring charter to OOCL and (iii) a stepdown from the previous charter rate of \$18,465 per day for Marie Delmas and Kumasi, effective August 1, 2016, following amendments to these charters, whereby the charter rate reduced to \$13,000 per day and further reduced to \$9,800 per day from mid-September 2017 as we exercised the first of three options in our favor to extend the charters to end 2018.

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There were 6,570 ownership days in 2017 with 102 days offhire, including 62 for regulatory drydockings, giving utilization of 98.4%. In 2016, there were 6,588 ownership days with 103 days offhire (including 100 days for drydockings), giving an overall utilization of 98.4%.

Total Operating Expenses

Total Operating expenses totaled \$174.7 million (or 110% of operating revenues) including \$87.6 million charge for impairment for the year ended December 31, 2017. Operating expenses, including \$92.4 million charge for impairment, totaled \$187.5 million for the year ended December 31, 2016 (or 112% of operating revenues). Excluding impairment, operating expenses for 2017 were \$87.1 million for 2017 (or 55% of operating revenue) and for 2016 were \$95.1 million (or 57% of operating revenues).

Total Operating expenses can be analyzed as follows:

- *Vessel operating expenses:* Vessel operating expenses were \$42.7 million for the year ended December 31, 2017 (or 27% of operating revenues) compared to \$45.4 million for the year ended December 31, 2016 (or 27% of operating revenues). The average cost per ownership day was \$6,499, down \$386, or 5.6%, from \$6,885 for 2016. The reduction is due mainly to lower repair and maintenance costs, partly offset by increased costs for insurance deductibles.
- *Time charter and voyage expenses:* Time charter and voyage expenses, were \$1.0 million for the year ended December 31, 2017 (or 1% of operating revenues) compared to \$0.7 million for the year ended December 31, 2016 (or 0.4% of operating revenues). The increase is mainly due to increase in port expenses.
- *Depreciation and Amortization:* Depreciation and Amortization was \$38.0 million (or 24% of operating revenues) for the year ended December 31, 2017, down from \$42.8 million (or 26% of operating revenues) in 2016 mainly due to the effect of lower book values for a number of vessels following impairment write downs taken in the third and fourth quarters of 2016.
- *Impairment of Vessels:* Whilst charter rates in the spot market and asset values saw improvements through 2017, taking into account the seasonal as well as cyclical nature of the container shipping industry, the recovery was not considered to have been sufficiently sustained not to undertake a fleet-wide review for impairment as at December 31, 2017 which resulted in a non-cash impairment charge of \$87.6 million being recognized in the three months ended December 31, 2017. A non-cash charge for impairment was recorded in the fourth quarter 2016, due to continuing poor industry conditions, of \$63.1 million. A further non-cash impairment charge of \$29.3 million was recognized in the three months ended September 30, 2016, following our agreement with CMA CGM to amend and extend the charters of the *Marie Delmas* and *Kumasi*. Accordingly, the total non-cash impairment charge for the year ended December 31, 2016 was \$92.4 million (or 55% of operating revenues).
- *General and administrative:* General and administrative expenses were \$5.4 million (or 3% of operating revenues) in the year ended December 31, 2017, compared to \$6.2 million (or 4% of operating revenues) for 2016. The reduction is mainly due to lower staff costs and professional fees.

Operating Loss

As a consequence of all preceding items, operating loss was \$15.4 million for the year ended December 31, 2017 compared to an operating loss of \$20.7 million for the year ended December 31, 2016.

Interest Income

Interest income earned on cash balances for the year ended December 31, 2017 was \$0.5 million compared to \$0.2 million in 2016 as average cash balances were higher as were interest rates on deposits.

Interest and other finance expenses

Our previous 2019 notes, revolving credit facility and secured term loan were refinanced in October 2017 using the net proceeds from the issuance of \$360.0 million principal amount new 9.875% First Priority Senior Secured Notes due 2022, a new \$54.8 million secured term loan, and cash on hand.

Interest expense for the year ended December 31, 2017 therefore comprised interest on the previous debt structure up to dates in October and on the new debt structure from dates in October. Further, interest expense includes the premium paid for the redemption of the 2019 notes and the accelerated write off of unamortized original issue discount thereon and deferred financing charges associated with the previous financing structure.

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Interest expense for the year ended December 31, 2017, was \$59.4 million, up \$14.6 million on interest expense of \$44.8 million for the year ended December 31, 2016. The increase is mainly due to the consequences of the refinancing completed in October 2017 including a premium on the redemption of the 2019 notes of \$8.7 million, the write off of the remaining balance of original issue discount on the 2019 notes of \$1.4 million and the write off of the remaining balance of deferred financing charges of \$4.3 million associated with all debt repaid. In contrast, interest expense for the year ended December 31, 2016 was reduced by \$1.9 million gain on the open market purchases of \$18.0 million principal amount of the 2019 notes in November 2016.

Other income, net

Other income, net represents miscellaneous revenue mainly from carrying passengers and sundry recharges to charterers under our time charters. In the year ended December 31, 2017, other operating income was \$0.1 million, down from \$0.2 million in 2016.

Income Taxes

Income taxes for the years ended December 31, 2017 and 2016 were not material as the vessel owning subsidiaries were subject to taxation based on tonnage rather than accounting profits.

Net Loss

For the year ended December 31, 2017, net loss was \$74.2 million, after \$87.6 million non-cash impairment, compared to a net loss for the year ended December 31, 2016 of \$65.1 million, after \$92.4 million non-cash impairment charge.

Earnings Allocated to Series B Preferred Shares

The dividends payable on the \$35.0 million Series B Preferred Shares issued on August 20, 2014 are presented as a reduction of net (loss), as and when declared by the Board of Directors. These dividends totaled \$3.1 million for each of the years ended December 31, 2017 and 2016.

Net Loss Available to Common Shareholders

Net loss available to common shareholders for the year ended December 31, 2017 was \$77.3 million, after \$87.6 million non-cash impairment, compared to a net loss available to common shareholders, after \$92.4 million impairment charge, of \$68.2 million for the year ended December 31, 2016.

B. Liquidity and Capital Resources

Liquidity, working capital and dividends

Overview

Our net cash flow from operating activities derives from revenue received under our charter contracts, which varies directly with the number of vessels under charter, days on-hire and charter rates, less operating expenses including crew costs, lubricating oil costs, costs of repairs and maintenance, insurance premiums, general and administrative expenses, interest and other financing costs. In addition, each of our vessels is subject to a drydock approximately every five years. The average cost of the 18 drydockings completed on vessels in the current fleet between January 2013 and December 2018 was \$1.2 million with an average loss of revenue of \$0.3 million while the relevant vessel was offhire. This amount does not include any allowance for the installation of ballast water treatment systems or other vessel enhancements. Two regulatory drydockings were completed in 2018, four in 2017 and six in 2016. We have included a schedule of the next anticipated drydocking date for each of our vessels in Item 4. "Business—Inspection by Classification Societies." In future years there will be incremental costs for compliance with ballast water management regulations and most likely with emission control regulations; see Item 4. "Business—Environmental and Other Regulations."

The main factor affecting operating cash flow in a period is the timing of the receipt of charterhire, which is due to be paid two weeks or one month in advance and, other than from any asset sales and purchases, are the payments for costs of drydockings, the timing of the payment of interest on the 2022 notes, which is due to be paid semi-annually on May 15 and November 15 each year, and quarterly on our other debt and amortization of our 2022 notes and other debt.

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We are required to repay \$40.0 million in each of the first three years and \$35.0 million annually thereafter, across both the 2022 notes and the related secured term loan provided by Citibank. The secured term loan has minimum fixed amortization whereas, as long as amounts are outstanding under that loan, amortization of the 2022 notes is at the option of the noteholders. Around the first anniversary of the issue of the 2022 notes, we offered to redeem \$20.0 million nominal amount of the 2022 notes at a purchase price of 102%. The offer was fully accepted and \$20 million nominal amount of the 2022 notes were redeemed and cancelled. If any portion of the offer had not been accepted, it would have been applied to repay the secured term loan at par. Around the second anniversary of the issue of the 2022 notes, we will offer to redeem a further \$20.0 million of the 2022 notes at a purchase price of 102%. Any such offer not accepted will be applied to repay the secured term loan at par. Should the amount outstanding under the loan be insufficient to absorb the total amount to be repaid, the excess will be mandatorily redeemed against the 2022 notes at 102%. Around the third anniversary of the issue of the 2022 notes, we will mandatorily redeem \$40.0 million of the 2022 notes at a purchase price of 102%, less any amount remaining under the secured term loan. Around the fourth anniversary of the issue of the 2022 notes, we will mandatorily redeem \$35.0 million of the 2022 notes at a purchase price of 102%. The minimum repayments of the secured term loan are four instalments of \$10.0 million semi-annually commencing April 30, 2018, and two subsequent instalments of \$7.4 million; the final maturity date of the loan is no later than October 31, 2020. We are also required to pay a minimum of \$24.1 million of amortization in 2019 on the \$514.4 million outstanding on other secured term loans and minimum amortization of \$22.2 million and balloon payment of \$267.8 in 2020.

As indicated in “F. Tabular Disclosure of Contractual Obligations,” below, interest payment obligations for 2019 are \$67.8 million, for 2020 and 2021 are \$104.8 million and for 2022 and 2023 are \$33.4 million. The dividend on the \$35.0 million Series B Preferred Shares amounts to \$3.1 million each year.

Prior to the issuance of the 2022 notes and the consequent redemption of the 2019 notes, we were obliged to make an Excess Cash Flow offer on the 2019 notes, within 120 days of the year end and in an amount up to a maximum of \$20 million per annum. In April 2017, we completed the Excess Cash Flow offer for 2016, purchasing \$19.5 million principal amount of 2019 notes at a price of 102% together with accrued but unpaid interest for a total amount of \$20.0 million. In March 2016, we completed the Excess Cash Flow offer for 2015 cashflow which was combined with a Collateral Sale Offer, on the same terms, relating to net proceeds received from the sale of two vessels late 2015. We purchased \$26.7 million principal amount of 2019 notes at a price of 102% together with accrued but unpaid interest for a total amount of \$28.4 million. The Excess Cash Flow offer early in 2015, for 2014 cashflow, to purchase up to \$20.0 million aggregate amount of our 2019 notes resulted in \$350,000 principal amount of 2019 notes being tendered and accepted.

At December 31, 2018, we had \$889.2 million of debt outstanding of which \$340.0 million was for our 2022 notes which carry interest at a fixed rate of 9.875%, \$38.5 million was provided by Blue Ocean at a fixed rate of interest of 10.0% and \$510.7 million was floating rate debt across a number of facilities and bearing interest at LIBOR plus an average margin of approximately 4.00%. Assuming LIBOR to be 2.5%, quarterly interest on total gross debt at December 31, 2018, without taking into account amortization, would amount to approximately \$17.7 million.

The previous secured term loan, repaid in full in October 2017, was repayable in 20 equal quarterly installments of \$1.75 million, commencing three months after drawdown on September 15, 2015. The agreement also required an additional amount of \$1.4 million to be repaid in eight equal quarterly installments of \$0.175 million beginning on the same day as the 20 equal quarterly installments, to provide a reserve for potential enhancement expenditure on the secured vessel ahead of the expiry of its then charter. In November 2016, we entered into an amendment to the secured term loan whereby we agreed to increase by \$1.0 million the five quarterly installments commencing December 2016, in exchange for a revision to the definition of shareholders equity, in the context of the minimum shareholders equity covenant, to eliminate from that definition any charge for impairment after July 1, 2016.

Both the 2022 notes and the new secured term loan require us to have \$20.0 million minimum liquidity at each quarter end.

In addition, we intend to declare and make quarterly dividend payments amounting to approximately \$0.8 million per quarter on our Series B Preferred Shares on a perpetual basis. Finally, we may declare and pay dividends on our common shares.

Other than costs for drydocking and compliance with environmental regulations, there are no other current material commitments for capital expenditures or other known and reasonably likely material cash requirements other than in respect of our growth strategy.

All our revenues are denominated in U.S. dollars and a portion of our expenses are denominated in currencies other than U.S. dollars. As of December 31, 2018, we had \$90.1 million in cash and cash equivalents, including restricted cash. Our cash and cash equivalents are mainly held in U.S. dollars, with relatively small amounts of UK pounds sterling, Euros and HK dollars. We regularly review the amount of cash and cash equivalents held in different jurisdictions to determine the amounts necessary to fund our operations and their growth initiatives and amounts needed to service our indebtedness and related obligations. If these amounts are moved out of their original jurisdictions, we may be subject to taxation.

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Due to our charter coverage and nature of our operating and financial costs, our cashflows are predictable and visible, at least in the near to medium term. We have policies in place to control treasury activities within the group. For example, all new funding must be approved by our Board of Directors, and cash deposits can only be made with institutions meeting certain credit metrics and up to predetermined limits by institution.

Our floating rate debt is represented by drawings under a number of secured credit facilities. We have in the past, and may in the future, enter into hedging instruments, including interest rate swap agreements, to hedge our cash flows. We would not enter into derivatives for trading or speculative purposes.

The table below shows our consolidated cash flows for each of the three years ended December 31, 2018, 2017 and 2016

	Year ended December 31,		
	2018	2017	2016
Cash flows from operating activities:			
Net loss	\$(57.3)	\$(74.2)	\$(65.1)
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	35.5	38.0	42.8
Vessel impairment	71.8	87.6	92.4
Gain on repurchase of secured notes	—	—	(2.9)
Amortization of deferred financing costs	4.6	7.8	3.6
Amortization of original issue discount/premium on repurchase of notes	1.2	11.6	2.2
Amortization of intangible liability/asset-charter agreements	(1.3)	(1.8)	(2.1)
Share based compensation	0.1	0.3	0.3
Movement in working capital	(6.9)	(2.4)	0.4
Net cash provided by operating activities	47.7	66.9	71.6
Cash flows from investing activities:			
Acquisition of vessels	(11.4)	—	—
Net proceeds from sale of vessels	14.5	—	(0.3)
Cash paid for vessel improvements	(0.2)	(0.3)	—
Cash paid for other assets	—	(0.0)	(0.0)
Cash paid for drydockings	(2.6)	(4.6)	(6.6)
Cash acquired from Poseidon transaction, net of capitalized expenses	24.0	0.0	0.0
Net cash provided by/(used in) investing activities	24.3	(4.9)	(6.9)
Cash flows from financing activities:			
Proceeds from issuance of secured notes	—	356.4	—
Repurchase of secured notes	(20.4)	(374.8)	(51.5)
Proceeds from drawdown of credit facilities	8.1	54.8	—
Repayment of credit facilities	(37.8)	(63.5)	(9.5)
Deferred financing costs paid	(2.0)	(12.7)	—
Series B Preferred Shares-dividends paid	(3.1)	(3.1)	(3.1)
Net cash used in financing activities	(55.2)	(42.9)	(64.1)
Net increase in cash and cash equivalents and restricted cash	16.8	19.1	0.6
Cash and cash equivalents and restricted cash at beginning of the year	73.3	54.2	53.6
Cash and cash equivalents and restricted cash at end of the year	\$ 90.1	\$ 73.3	\$ 54.2

Year ended December 31, 2018 compared to Year ended December 31, 2017

Net cash provided by operating activities was \$47.7 million for the year ended December 31, 2018 reflecting mainly net loss of \$57.3 million, adjusted for depreciation and amortization of \$35.5 million, impairment of \$71.8 million, amortization of deferred financing costs and original issue discount of \$5.8 million, including \$0.4 million premium paid on repurchase of our 2022 notes, share-based compensation of \$0.1 million, less movements in working capital of \$6.9 million and amortization of intangible liabilities/assets of \$1.3 million.

Net cash provided by operating activities for the year ended December 31, 2018 at \$47.7 million was \$19.2 million lower than in 2017 mainly due to the reduction in operating revenues of \$2.2 million from lower charter rates on some vessels offset by the contribution from the Poseidon Fleet from November 15, 2018, increased vessel operating expenses and time charter and voyage expenses from the Poseidon Fleet, costs associated with the Poseidon Transaction, offset by reduced interest and other financial expenses due to 2017 including costs associated with the refinancing completed in October 2017, including premium on redemption of all of the outstanding 2019 notes. In addition, movement in working capital was \$ 4.5 million higher in 2018 compared to 2017 mainly due to the Poseidon Transaction.

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Net cash provided by investing activities for the year ended December 31, 2018 was \$24.3 million, including \$24.0 million on completion of the Poseidon Transaction, \$14.5 million proceeds from sale of Argos, offset by \$11.4 million for the purchase of GSL Valerie and \$2.6 million for drydockings. In 2017, net cash used in investing activities was \$4.9 million, mainly from \$4.6 million for drydockings costs.

Net cash used in financing activities for the year ended December 31, 2018 was \$55.2 million, including \$37.8 million repayment of credit facilities, \$20.4 million repayment of the 2022 notes, \$2.0 million deferred financing costs paid and \$3.1 million dividend paid on the Series B Preferred Shares, offset by \$8.1 million net drawdown from a new secured term loan for partly finance the acquisition of GSL Valerie. Net cash used in financing activities for the year ended December 31, 2017 was \$42.9 million including \$356.4 million net proceeds from the issuance of the 2022 notes and \$54.8 million proceeds from the new secured term loan less \$374.8 million for the repurchase of the 2019 notes including premium, \$63.5 million repayment of the previous revolving credit facility and secured term loan, \$12.7 million deferred financing costs paid and \$3.1 million dividend paid on the Series B Preferred Shares.

Overall, there was a net increase in cash and cash equivalents and restricted cash of \$16.8 million in the year ended December 31, 2018, resulting in closing cash of \$90.1 million compared to closing cash of \$73.3 million at December 31, 2017.

Year ended December 31, 2017 compared to Year ended December 31, 2016

Net cash provided by operating activities was \$66.9 million for the year ended December 31, 2017 reflecting mainly net loss of \$74.2 million, adjusted for depreciation of \$38.0 million, impairment of \$87.6 million, amortization of deferred financing costs and original issue discount of \$19.4 million, including \$5.8 million accelerated write-off resulting from refinancing completed in October 2017, share-based compensation of \$0.3 million, less movements in working capital of \$2.4 million and amortization of intangible liabilities/assets of \$1.8 million.

Net cash provided by operating activities for the year ended December 31, 2017 at \$66.9 million was \$4.7 million lower than in 2016 mainly due to the reduction in operating revenues of \$7.5 million from lower charter rates on some vessels and costs associated with the refinancing, including \$8.7 million premium paid on the redemption of the 2019 notes in October 2017.

Net cash used in investing activities for the year ended December 31, 2017 was \$4.9 million, including \$4.6 million for drydockings. In 2016, net cash used in investing activities was \$6.9 million including \$6.6 million for drydockings costs.

Net cash used in financing activities for the year ended December 31, 2017 was \$42.9 million, including \$356.4 million net proceeds from the issuance of the 2022 notes and \$54.8 million proceeds from the new secured term loan less \$374.8 million for the repurchase of the 2019 notes including premium, \$63.5 million repayment of the previous revolving credit facility and secured term loan, \$12.7 million deferred financing costs incurred and \$3.1 million dividend paid on the Series B Preferred Shares. For 2016, net cash used in financing activities was \$64.1 million and included \$51.5 million repurchase of 2019 notes, \$9.5 million repayment of the secured term loan and \$3.1 million dividend paid on the Series B Preferred Shares.

Overall, there was a net increase in cash and cash equivalents of \$19.1 million in the year ended December 31, 2017, resulting in closing cash of \$73.3 million compared to closing cash of \$54.2 million at December 31, 2016.

Indebtedness

Our indebtedness as at December 31, 2018 comprised:

Lender	December 31, 2018 \$ million	Collateral vessels	Interest Rate	Final maturity date
2022 notes	340.0	GSL Fleet (18 vessels)	9.875%	November 15, 2022
GSL Citi Term Loan	34.8	GSL Fleet (18 vessels)	LIBOR plus 3.25%	October 31, 2020
GSL Hayfin Loan Facility	8.1	GSL Valerie	LIBOR plus 5.50%	July 16, 2022
Poseidon - DVB Bank	51.1	Maira, Nikolas, Newyorker, Mary	LIBOR plus 2.85%	December 31, 2020
Poseidon - Credit Agricole	53.1	Dolphin II, Athena, Kristina	LIBOR plus 2.75%	December 31, 2020
Poseidon - Blue Ocean	23.8	Agios Dimitrios	LIBOR plus 4.00%(2)	December 31, 2020
Poseidon - ABN - AMRO Bank	62.2	Katherine, Orca I	LIBOR plus 3.42%(1)	December 31, 2020
Poseidon - ATB	17.1	Tasman, Dimitris Y, Ian H	LIBOR plus 3.90%	December 31, 2020
Poseidon - Credit Agricole	80.0	Alexandra, UASC Bubiyan, UASC Yas	LIBOR plus 3.00%(2)	June 30, 2020
Poseidon - Blue Ocean	38.5	Alexandra, UASC Bubiyan, UASC Yas	10.00% fixed	October 3, 2023
Poseidon- Deutsche, CIT - Senior	141.9	Al Khor, Anthea Y, Maira XL	LIBOR plus 3.00%	June 30, 2022
Poseidon- Deutsche, Blue Ocean - Junior	38.6	Al Khor, Anthea Y, Maira XL	LIBOR plus 10.00%	June 30, 2022
	889.2			

(1) Increases to LIBOR plus 3.50% from March 31, 2019

(2) Bears interest on \$18.8 million of principal.

(3) LIBOR plus 3.00% for the first six months up to April 5, 2019, then LIBOR plus 3.25% for the next 12 months up to April 5, 2020 and then LIBOR plus 3.50%

Notes

9.875% First Priority Secured Notes due 2022

On October 31, 2017, we issued \$360.0 million in aggregate principal amount of 9.875% First Priority Secured Notes due 2022 (the “2022 notes”) in a private placement.

The 2022 notes mature on November 15, 2022. Proceeds after the deduction of the original issue discount, but before expenses, amounted to \$356.4 million.

The 2022 notes bear interest at a coupon rate of 9.875% per annum, and is payable semi-annually on May 15 and November 15 of each year, commencing on May 15, 2018. As at December 31, 2018 the 2022 notes were secured by first priority ship mortgages on 18 of our vessels in the GSL Flee) and by assignments of earnings and insurances, pledges over certain bank accounts, as well as share pledges over each subsidiary owning a Mortgaged Vessel. In addition, the 2022 notes are fully and unconditionally guaranteed, jointly and severally, by our relevant 18 vessel owning subsidiaries and Global Ship Lease Services Limited.

We are required to have a minimum cash balance of \$20.0 million on each test date, being March 31, June 30, September 30 and December 31 in each year.

We are required to repay \$40.0 million each year for the first three years and \$35.0 million thereafter, across both the 2022 notes and the Citibank Super Senior Term Loan (“Citi Term Loan”). See “—\$54.8 Million Citibank Super Senior Term Loan” below. The Citi Term Loan has minimum fixed amortization whereas as long as amounts are outstanding under the Citi Term Loan, amortization of the 2022 notes is at the option of the noteholders, who can accept or reject an annual tender offer which we are obliged to make. In December 2018, the tender offer was accepted in full and we repurchased \$20.0 million nominal amount of the 2022 notes at a purchase price of 102%. Around the second anniversary of the issue of the 2022 notes, we will further offer to redeem \$20.0 million of the 2022 notes at a purchase price of 102%. Any such offer not accepted will be applied to repay the Citi Term Loan at par. Should the amount outstanding under the Citi Term Loan be insufficient to absorb the total amount to be repaid, the excess will be mandatorily redeemed against the 2022 notes at 102%. Around the third anniversary of the issue of the 2022 notes, we will mandatorily redeem \$40.0 million of the 2022 notes at a purchase price of 102%, less any amount remaining under the Citi Term Loan. Around the fourth anniversary of the issue of the 2022 notes, we will mandatorily redeem \$35.0 million of the 2022 notes at a purchase price of 102%.

On December 20, 2018, we entered into a First Supplemental Indenture of the 2022 notes under which the date beginning on which we are permitted to pay dividends to common shareholders in an aggregate amount per year equal to 50% of our consolidated net profit after taxes for the preceding financial year, was brought forward from January 1, 2021 to January 1, 2020. Also, certain restrictions were agreed in the increase in the permitted transfer basket and the immediate increase in dividend capacity as a result of completing the Poseidon Transaction, and certain other provisions of the Indenture, among other things, the restricted payment covenant, the arm’s length transaction covenant and the reporting covenant were amended.

Optional Redemption

We may redeem the 2022 notes in whole or in part, at our option, at any time before November 15, 2019, at a redemption price equal to 100% of the principal amount plus a make-whole premium as provided in the indenture. We may redeem the 2022 notes in whole or in part, at our option, at any time on or after November 15, 2019, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest, if any, on the 2022 notes redeemed, to the applicable redemption date, if redeemed during the twelve-month period beginning on November 15 of the years indicated below, subject to the rights of holders of 2022 notes on the relevant record date to receive interest on the relevant interest payment date:

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<u>Year</u>	<u>Percentage</u>
2019	104.938%
2020	102.469%
2021	100.000%

As of December 31, 2018, the outstanding balance on the 2022 notes was \$340.0 million.

Credit Facilities

\$54.8 million Citibank Super Senior Term Loan

On October 26, 2017, and in connection with our 2022 notes, we entered into a \$54.8 Million Super Senior Term Loan with Citibank N.A. The proceeds of this facility were used, together with the proceeds of our 2022 notes and cash on hand, to refinance our 10.000% first priority secured notes due 2019 and other debt then outstanding. The term loan matures on October 31, 2020. The term loan is cross-collateralized on a first priority basis with the collateral under our 2022 notes, including 18 vessels in the GSL Fleet. The term loan is to be amortized in four semi-annual instalments of \$10.0 million followed by two semi-annual instalments of \$7.4 million. Amortization may be accelerated, as described above in “—Indebtedness—Notes—9.875% First Priority Secured Notes due 2022.”

The term loan bears interest at LIBOR plus a margin of 3.25%.

As of December 31, 2018, the outstanding balance on this facility was \$34.8 million.

\$65.0 million Hayfin Non-Revolving Secured Term Loan Facility

We agreed a new \$65 million Non-Revolving Secured Term Loan Facility with Hayfin Services LLP, as agent and service agent, and other financial institutions, on September 7, 2018. The facility provides for a secured term loan of up to \$65 million, which is available for drawing until May 10, 2019. The facility matures on July 16, 2022. The proceeds of this loan are to be used to finance our acquisition of feeder container vessels with carrying capacities of 1,000 to 3,600 TEU, with such borrowed amounts not to exceed the lower of scrap value, calculated at \$400 per lightweight tonne and 65% of the charter free market value of the vessel to be acquired. On September 10, 2018, we drew down approximately \$8.1 million in connection with our acquisition of GSL Valerie.

The facility bears interest at LIBOR plus a margin of 5.5%.

As of December 31, 2018, the outstanding balance of this facility was \$8.1 million.

\$52.6 million DVB Credit Facility

In connection with the Poseidon Transaction, we assumed debt outstanding of \$51.1 million related to Maira, Nikolas, Newyorker and Mary, provided by DVB Bank SE (“DVB”). The facility agreement is dated July 18, 2017, with initial drawdown amount of \$52.6 million and final maturity of December 31, 2020.

The facility has a repayment schedule, along with a cash sweep clause, whereby excess cash flows will be used against the outstanding balance of the facility and will be specifically applied to the prepayment of the balloon instalment up to a specific amount. Tranches A and B, each amounting to \$5.5 million, is scheduled to be repaid in four consecutive quarterly instalments of \$0.3 million starting from March 31, 2020 and a balloon payment of \$4.4 million payable on December 31, 2020. Tranche C, amounting to \$5.8 million, is scheduled to be repaid in four consecutive quarterly instalments of \$0.3 million starting from March 31, 2020 and a balloon payment of \$4.7 million payable on December 31, 2020. Tranche D, of the remaining \$35.8 million, is scheduled to be repaid in four consecutive quarterly instalments of \$1.1 million starting from March 31, 2020 and a balloon payment of \$31.5 million payable also on December 31, 2020. In addition, certain financial covenants will apply starting from January 1, 2020.

The facility bears interest at LIBOR plus a margin of 2.85% per annum.

As of December 31, 2018, the outstanding balance on this facility was \$51.1 million.

\$55.7 million Credit Agricole Credit Facility

In connection with the Poseidon Transaction, we assumed debt outstanding of \$54.0 million relating to Dolphin II, Kristina and Athena, provided by Credit Agricole Corporate and Investment Bank (“Credit Agricole”). The agreement is dated August 11, 2017, with initial drawdown amount of \$55.7 million and final maturity of December 31, 2020.

The facility has a repayment schedule, along with a cash sweep clause, whereby the excess cash flows will be used against the outstanding balance of the facility and will be specifically applied to the prepayment of the balloon instalment up to a specific amount. Tranche A, amounting to \$19.4 million, is scheduled to be repaid in four consecutive quarterly instalments of \$0.3 million starting from March 31, 2020 and a balloon payment of \$18.0 million payable on December 31, 2020. Tranche B, amounting to \$10.5 million, is scheduled to be repaid in four consecutive quarterly instalments of \$0.2 million starting from March 31, 2020 and a balloon payment of \$9.7 million payable on December 31, 2020. Tranche C, amounting to \$25.8 million, is scheduled to be repaid in four consecutive quarterly instalments of \$0.8 million starting from March 31, 2020 and a balloon payment of \$22.4 million payable also on December 31, 2020. In addition, certain financial covenants will apply starting from January 1, 2020.

This facility bears interest at LIBOR plus a margin of 2.75% per annum.

As of December 31, 2018, the outstanding balance on this facility was \$53.1 million.

\$24.5 million Blue Ocean Credit Facility

In connection with the Poseidon Transaction, we assume debt outstanding of \$24.2 million relating to Agios Dimitrios provided by Blue Ocean Income Fund LP, Blue Ocean Onshore Fund LP, Blue Ocean Investments SPC One and Blue Ocean Investments SPC Three (together, “Blue Ocean”). The agreement is dated August 11, 2017, with initial drawdown amount of \$24.5 million and final maturity of December 31, 2020.

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The facility has a repayment schedule, along with a cash sweep clause, whereby the excess cash flows will be used against the outstanding balance on the facility and will be specifically applied to the prepayment of the balloon instalment up to a specific amount. The facility is scheduled to be repaid in four consecutive quarterly instalments of \$0.6 million starting from March 31, 2020 and a balloon payment of \$21.9 million payable on December 31, 2020.

This facility bears interest on \$18.8 million of principal at LIBOR plus a margin of 4.0% per annum.

As of December 31, 2018, the outstanding balance on this facility was \$23.8 million.

\$65.3 million ABN AMRO Bank Credit Facility

In connection with the Poseidon Transaction, we assumed debt outstanding of \$64.3 million relating to Orca II and Katherine provided by ABN AMRO Bank N.V. The agreement is dated August 30, 2017, with initial drawdown amount of \$65.3 million and final maturity of December 31, 2020.

The facility has a repayment schedule, along with a cash sweep clause, whereby the excess cash flows will be used against the outstanding balance on the facility and will be specifically applied to the prepayment of the balloon instalment up to a specific amount. The facility is scheduled to be repaid in four consecutive instalments in the amount of \$1.1 million starting from March 31, 2020 plus a balloon instalment of \$60.8 million on December 31, 2020.

This facility bears interest at LIBOR plus a margin of 3.42% per annum up to March 31, 2019 and afterwards 3.50% per annum.

As of December 31, 2018, the outstanding balance on this facility was \$62.2 million.

\$17.1 million Amsterdam Trade Bank N.V. Credit Facility

In connection with the Poseidon Transaction, we assumed debt outstanding of 17.1 million relating to Tasman, Dimitris Y and Ian H provided by Amsterdam Trade Bank N.V. The agreement is dated October 9, 2018 with initial drawdown amount of \$17.1 million divided in three tranches of \$5.7 million each and final maturity of December 31, 2020.

The facility has a repayment schedule along with a cash sweep clause, whereby the excess cash flows will be used against the outstanding balance on the facility and will be specifically applied to the prepayment of the balloon instalment up to a specific amount. Each Tranche is scheduled to be repaid in four consecutive quarterly instalments of \$110,000 each, with the first being due on March 31, 2020 and the final together with a balloon payment of \$5.3 million on December 31, 2020.

This facility bears interest at LIBOR plus a margin of 3.90% per annum.

As of December 31, 2018, the outstanding balance on this facility was \$17.1 million.

\$80.0 million Credit Agricole Credit Facility

In connection with the Poseidon Transaction, we assumed debt outstanding of \$80.0 million relating to Alexandra, UASC Bubiyan and UASC Yas provided by Credit Agricole. The agreement is dated October 3, 2018, with initial drawdown amount of \$80.0 million and final maturity of June 30, 2020.

The Facility shall be repaid in seven equal quarterly instalments of \$1.5 million each, the first such instalment due three months from the utilization date, plus a final balloon of \$69.5 million payable together with the final instalment.

This facility bears interest at LIBOR plus a margin of 3.00% per annum for the first 6 months, 3.25% for the following 12 months and 3.50% thereafter payable quarterly in arrears.

As of December 31, 2018, the outstanding balance on this facility was \$80.0 million.

\$38.5 million Blue Ocean Credit Facility

In connection with the Poseidon Transaction, we assumed debt outstanding of \$38.5 million relating to Alexandra, UASC Bubiyan and UASC Yas provided by Blue Ocean. The agreement is dated October 3, 2018, with initial drawdown amount of \$38.5 million and final maturity of October 3, 2023.

The Facility is scheduled to be repaid in one instalment at maturity date and bears interest at 10.0% fixed, payable quarterly in arrears.

As of December 31, 2018, the outstanding balance on this facility was \$38.5 million.

\$180.5 million Deutsche, CIT, Entrust Credit Facility

In connection with the Poseidon Transaction, we assumed debt outstanding of \$180.5 million relating to UASC Al Khor, Maira XL and Anthea Y provided by Deutsche Bank AG. The agreement is dated November 9, 2018, with initial drawdown amount of \$180.5 million and final maturity of June 30, 2022.

On December 31, 2018, the borrowers entered into a deed of amendment and restatement with the bank. Based on this restatement there was a re-tranche of the facility such that it was split into a senior facility in an amount of \$141.9 million ("Senior Facility") and a junior facility in an amount of \$38.6 million ("Junior Facility"). The Lenders of the Senior Facility are Deutsche Bank AG and CIT Bank N.A and the Lenders of the Junior Facility are Deutsche Bank AG, Blue Ocean, and Entrustpermal ICAV. The final maturity of both Facilities (Senior and Junior) is June 30, 2022. In addition to the repayment schedule, a cash sweep mechanism based on a DSCR ratio of 1.10:1 (DSCR ratio is the ratio of Cash Flow to the Cash Flow Debt Service) will apply pro rata against the Senior Facility and the Junior Facility.

Senior Facility

The Senior Facility comprised of three tranches. Tranche A relates to Al Khor and is scheduled to be repaid in 14 instalments of \$0.9 million with the first such instalment due three months from the utilization date, and a final instalment of \$35.1 million. Tranche B relates to Anthea Y and is scheduled to be repaid in 14 instalments of \$0.9 million, the first such instalment due three months from the utilization date, and a final instalment of \$35.2 million. Tranche C relates to Maira XL and is scheduled to be repaid in 14 instalments of \$0.9 million, the first such instalment due three months from the utilization date, and a final instalment of \$35.3 million.

The Senior Facility bears interest at LIBOR plus 3.0% payable quarterly in arrears.

As of December 31, 2018, the outstanding balance on the Senior Facility was \$141.9 million.

Junior Facility

The Junior Facility comprised of in three Tranches. Tranche A relates to Al Khor and is scheduled to be repaid in 14 instalments of \$0.2 million, the first such instalment due three months from the utilization date, and a final instalment of \$9.6 million. Tranche B relates to Anthea Y and is scheduled to be repaid in 14 instalments of \$0.2 million, the first such instalment due three months from the utilization date, and a final instalment of \$9.6 million. Tranche C relates to Maira XL and is scheduled to be repaid in 14 instalments of \$0.2 million, the first such instalment due three months from the utilization date, and a final instalment of \$9.6 million.

The Junior Facility bears interest at LIBOR plus 10.0% payable quarterly in arrears.

As of December 31, 2018, the outstanding balance on the Junior Facility was \$38.6 million.

Covenants

Certain of our credit facilities have financial covenants, which require us to maintain, among other things:

- minimum consolidated liquidity of not less than \$12.5 million, or an average of \$300,000 per vessel, whichever is higher;
- minimum net worth of not less than \$50.0 million;
- minimum market value of collateral for each credit facility, such that the aggregate market value of the vessels collateralizing the particular credit facility is between 125% and 135%, depending on the particular facility, of the aggregate principal amount outstanding under such credit facility, or, if we do not meet such threshold, to provide additional security to eliminate the shortfall; and
- book leverage ratio (the ratio of total borrowings divided by total assets) and value adjusted leverage ratio (the ratio of total interest-bearing debt divided by the value adjusted total assets) of not more than 75%.

The agreements governing our indebtedness also contain undertakings restricting us from, among other things:

- incur additional indebtedness or issue certain preferred stock;
- make any substantial change to the general nature of our business;
- pay dividends on or repay or distribute any dividend or share premium reserve;
- redeem or repurchase capital stock;
- create or impair certain securities interests, including liens;
- transfer or sell certain assets;
- enter into certain transactions other than arm's length transactions;
- acquire a company, shares or securities or a business or undertaking;
- enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction, or sell all or substantially all of our properties or assets;
- experience any change in the position of Executive Chairman; and
- change the flag, class or technical or commercial management of the vessel mortgaged under such facility or terminate or materially amend the management agreement relating to such vessel.

Our secured credit facilities are generally secured by, among other things:

- a first priority mortgage over the relevant collateralized vessels;
- first priority assignment of earnings and insurances from the mortgaged vessels;
- pledge of the earnings account of the mortgaged vessel;
- pledge of the equity interest of each of the vessel-owning subsidiaries; and
- corporate guarantees.

Repaid Debt

Secured Term Loan

On July 29, 2015, we entered into a \$35.0 million secured term loan with DVB. The entire amount was drawn on September 10, 2015. The borrower was Global Ship Lease 20 Limited, our subsidiary and owner of the OOCL Tianjin, which vessel was secured to the facility. Borrowings under the secured term loan carried interest at LIBOR plus a margin of 2.75% per annum up to November 30, 2018 and 3.25% thereafter, payable at least quarterly in arrears or at the end of certain other interest periods. The secured term loan was guaranteed by Global Ship Lease, Inc. The loan was fully repaid and cancelled in October 2017 as part of our refinancing.

DVB Credit Facility

On November 14, 2018, the vessel owning company of Argos entered into a deed of amendment and restatement of a loan agreement for a \$14.3 million credit facility with DVB. This facility was fully repaid on December 19, 2018, following the sale of the vessel.

The 2019 Notes and the Indenture

The 2019 notes were issued under an indenture, dated as of March 19, 2014, among the Company, the guarantors party thereto and Deutsche Bank Trust Company Americas, as trustee and as security agent. The 2019 notes were fully redeemed on October 31, 2017 as part of our refinancing.

Revolving Credit Facility

In connection with the private placement of our 2019 notes, we and GSLS Limited, as initial borrowers, and together with each of our 17 subsidiaries that owned Mortgaged Vessels, as initial guarantors, entered into a credit agreement dated as of March 19, 2014, with Citibank, N.A., London Branch, as original lender, lead arranger and book-runner, Citibank International plc, as facility agent and Deutsche Bank Trust Company Americas, as security agent, together with security and other agreements, which provided for our revolving credit facility. Borrowings under the revolving credit facility carried interest at LIBOR plus a margin of 3.25% per annum, payable at least quarterly in arrears or at the end of certain other interest payment periods. The revolving credit facility was fully repaid and cancelled in October 2017 as part of the refinancing.

Leverage

As at December 31, 2018, we had a total of \$889.2 million of gross debt, comprising \$340.0 million of fixed rate debt under our 2022 notes and \$38.5 million fixed rate facility in Poseidon, and \$510.7 million floating rate debt being \$34.8 outstanding under the Citibank Super Senior Term Loan, \$8.1 million under the Hayfin Non-Revolver Secured Term Loan Facility and \$467.8 million under the floating rate credit facilities assumed as part of the Poseidon transaction.

Our liquidity requirements are significant, primarily due to drydocking costs and debt service requirements. As indicated in “—F. Tabular Disclosure of Contractual Obligations,” below, minimum amortization of debt in 2019 totals \$64.1 million and interest is \$67.8 million. The table shows minimum amortization of debt of \$378.2 million for 2020 and 2021; interest in that period would be \$104.8 million. The table shows minimum amortization of debt of \$446.9 million for 2022 and 2023; interest in that period would be \$33.4 million. Finally, the dividend on the \$35.0 million Series B Preferred Shares amounts to \$3.1 million each year.

We believe that funds generated by the business and retained will be sufficient to meet our operating needs for the next twelve months following the issuance of this Form 20-F, including working capital requirements, drydocking costs, interest and debt repayment obligations.

As market conditions warrant, we may from time to time, depending upon market conditions and the provisions of the indenture governing the 2022 notes and of the agreement governing the secured term loan, seek to repurchase debt securities that we have issued or repay loans that we have borrowed, including the 2022 notes and borrowings under our other credit facilities, in privately-negotiated or open market transactions, by tender offer or otherwise.

Working capital and dividends

Our net cash flows from operating activities depend on the number of vessels under charter, days on-hire, vessel charter rates, operating expenses, drydock costs, interest and other financing costs including amortization and general and administrative expenses. Pursuant to our ship management agreements, we have agreed to pay our ship managers an annual management fee per vessel and to reimburse them for operating costs they incur on our behalf. Charterhire is payable by our charterers 15 days in advance and estimated ship management costs are payable monthly in advance. Although we can provide no assurances (see Item 3.D. “Key Information—Risk Factors—Risks Related to our Business—We are highly dependent on charter payments from CMA CGM”), we expect that our cash flow from our chartering arrangements will be sufficient to cover our ship management costs and fees, interest payments under the 2022 notes and our other borrowings, amortization, insurance premiums, vessel taxes, general and administrative expenses, dividends on our Series B Preferred Shares and other costs and any other working capital requirements for the short and medium term and planned drydocking expenses.

We estimate that the average cost of each of the 18 drydockings completed on vessels in the fleet between January 2013 and December 2018 was \$1.2 million, with an average loss of revenue of \$0.3 million from offhire. We have included a schedule of the next anticipated drydocking date for each of our vessels in the section of this Annual Report entitled Item 4.B. “Information on the Company—Business Overview—Inspection by Classification Societies.”

Our other liquidity requirements include a requirement to pay \$40.0 million of amortization, across both the 2022 notes and the secured term loan, in each of 2018, 2019 and 2020. Thereafter, the amortization requirement falls to \$35 million. Finally, the dividend on the \$35.0 million Series B Preferred Shares amounts to \$3.1 million each year. In addition to funds generated by the business, we may require new borrowings, issuances of equity or other securities, or a combination of the former and the latter to purchase additional vessels and will likely require such further funding to meet all of our repayment obligations under the 2022 notes.

C. Research and Development

None.

D. Trend Information

Container shipping plays a fundamental role in world trade, with growth in containerized trade volumes historically correlated to growth in global GDP. The industry is both seasonal and cyclical, but has shown positive demand growth in every year of its history except 2009. Between 2000 and 2007, during a period of super-cyclical growth partly fueled by a significant increase in trade with China, containerized trade exhibited annual growth averaging almost 11%. The global financial crisis, from late 2008, prompted a contraction of demand, with 2009 volumes falling by over 8%. In 2010, demand rebounded, with volume growth of approximately 15%. From 2011 through 2017, containerized trade grew, year-on-year, by between 1.7% and 7.4%. In 2018, containerized trade is estimated to have grown approximately 3.9%, notwithstanding negative sentiment, including from increased trade tensions between the US and China, particularly in the second half of the year. On the supply side, cellular containership capacity grew annually by between 1.3% and 8.6% in the years 2011 through 2017. With much reduced levels of scrapping, net supply growth in 2018 is estimated at 5.1%.

The period of super-cyclical growth, combined with operators seeking reduced slot costs through economies of scale achievable with ever larger vessels, led to a significant orderbook of new containerships. In December 2008, the orderbook was estimated to represent over 60% of existing global capacity measured in TEU. Since then, however, the industry has been adjusting to lower demand growth, capital constraints, and consolidation. By the end of 2018, the overall orderbook-to-fleet ratio was down to 12.3%; for mid-size and smaller vessels (10,000 TEU and below), it was 3.8%.

Vessel newbuilding prices, second hand values and charter rates have tended to be closely correlated and are all strongly influenced by the dynamics of supply and demand, combined with sentiment. From 2000 through 2018, the average newbuilding price for a theoretical 3,500 – 3,600 TEU containership was around \$44 million, with prices ranging between \$33 million (2017) and \$67 million (2008). During the same period, secondhand values for a 10-year old vessel of similar size averaged \$24 million and ranged between \$5 million (2016) and \$52 million (2005). Meantime, spot market charter rates for such tonnage averaged about \$17,550 per day and ranged between \$5,150 (2016) and \$44,000 (2005). In December 2018, prevailing spot market charter rates were around \$9,250 per day, with newbuilding prices at approximately \$39 million and second hand values at about \$11 million.

Negative sentiment from the second half of 2018 also impacted the beginning of 2019. However, after Chinese New Year in February, charter rates for larger mid-size vessels have firmed materially; rates for 8,500 TEU vessels increased from lows of around \$12,000 per day in the Fall of 2018 to around \$21,000 per day in early March 2019. Although downside risks remain, potential upside catalysts for the industry include a constructive outcome to trade discussions between the US and China, and the imminent implementation of IMO 2020 emission control regulations. The latter is expected to reduce the effective supply of containerships through a combination of vessel withdrawals for the retro-fitting of scrubbers, and a further reduction in operating speeds to reduce consumption of more expensive, low-sulfur fuel.

E. Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

F. Tabular Disclosure of Contractual Obligations

The contractual obligations presented below represent our estimates of future payments under fixed contractual obligations and commitments as at December 31, 2018. These amounts do not include dividends on the Series B Preferred Shares which amount to \$3.1 million annually. Changes in our business needs or in interest rates, as well as actions by third parties and other factors, may cause these estimates to change. These estimates are necessarily subjective and our actual payments in future periods are likely to vary from those presented in the table.

	Less than 1 year	1-3 years	3-5 years	More than 5 years	Total
	(in millions of U.S. dollars)				
Long-term debt obligations, excluding interest(1)	\$ 64.1	\$ 378.2	\$ 446.9	\$ —	\$ 889.2
Interest on long-term debt(2)	67.8	104.8	33.4	—	206.0
Ship management agreements(3)	11.7	24.2	1.1	—	37.0
Total	<u>\$ 143.6</u>	<u>\$ 507.2</u>	<u>\$ 481.4</u>	<u>\$ —</u>	<u>\$1,132.2</u>

- (1) Consists of total debt outstanding as at December 31, 2018 of \$340.0 million aggregate principal amount of the 2022 notes, \$34.8 million under our Citibank Super Senior Term Loan, \$8.1 million under the Hayfin Non-Revolving Secured Term Loan Facility and \$506.3 million under the Poseidon credit facilities. The table reflects the annual redemption of the 2022 notes and amortization of the Citibank Super Senior Term Loan, as relevant, as well as the scheduled fixed amortization and final repayments of all other credit facilities, excluding future cash sweeps other than the sweep paid in the first quarter 2019 reflecting excess cash generated in fourth quarter 2018, as defined in the relevant credit facilities.
- (2) Represents aggregate interest payments at the fixed rate of 9.875% on the 2022 notes, and at the fixed rate of 10.00% on the Blue Ocean credit facility and on all of our floating rate debt at the relevant margin plus LIBOR at 2.5%
- (3) Reflects the fees payable to our ship managers for (i) two-month notice period required in connection with the termination of the eight ship management contracts in place with CMA Ships and one other manager as at December 31, 2018, (ii) the three-month notice period required in connection with the 11 ship management contracts with our other ship manager, both based on the annual management fee of \$123,000, and (iii) the minimum term of 36 months for the ship management agreements with Technomar, from the actual or anticipated effective date of these contracts, as a daily rate of €685 and an exchange rate of 1.145 USD:Euro, inflated at 2.5% annually and brokerage commissions payable to our commercial manager, Conchart, for the current employment of the fleet, up to earliest date of delivery. The obligations to our ship managers do not include any amount for the reimbursement of daily operating costs incurred by them on our behalf.

G. Safe Harbor

See the section titled “Cautionary Statement Regarding Forward-Looking Statements” at the beginning of this annual report.

Item 6. Directors, Senior Management and Employees**A. Directors and Senior Management**

Our directors and executive officers as of the date of this Annual Report and their ages as of December 31, 2018 are listed below:

Name	Age	Position
George Giouroukos	53	Executive Chairman
Michael S. Gross	57	Director
Alain Wils	75	Director
Philippe Lemonnier	58	Director
Michael Chalkias	48	Director
Henry Mannix III	39	Director
Alain Pitner	69	Director
Menno van Lacum	48	Director
Ian J. Webber	61	Chief Executive Officer
Thomas A. Lister	49	Chief Commercial Officer
Anastasios Psaropoulos	40	Chief Financial Officer

George Giouroukos: Mr. Giouroukos has been our Executive Chairman since November 2018 when the strategic combination with Poseidon Containers was completed. He has been involved in Shipping since 1993, when he joined a major Greek shipowning company and worked in various departments. He founded Technomar, an internationally recognized ship management company, in 1994, where he has served as Managing Director. With over 25 years of experience in the sector, he has negotiated and executed over 200 secondhand and newbuilding vessel transactions, creating partnerships with a number of major shipping banks resulting in co-investment of approximately \$230 million in workout transactions. He has also partnered with Private Equity firms to jointly invest in container and dry bulk vessels. Mr. Giouroukos serves as the Chairman of the Hellenic Advisory Committee of International classification society, RINA and holds a Bachelor in Mechanical Engineering from University College London and a Master in Engineering from Brunel University.

Michael S. Gross: Mr. Gross has been a director since inception and was Chairman from September 2008 to November 2018 when the strategic combination with Poseidon Containers closed. Since 2010, Mr. Gross has been the Chairman of the board of directors and Chief Executive Officer of Solar Senior Capital Ltd. Since 2007, Mr. Gross has served as the Chairman and Chief Executive Officer of Solar Capital Ltd, a finance company focusing on debt and equity investments in leveraged companies. From 2004 to 2006, Mr. Gross was the President and Chief Executive Officer of Apollo Investment Corporation (“AIC”), a publicly traded business development company, and was the managing partner of Apollo Investment Management, L.P. (“AIM”), the investment adviser to AIC. From 1990 to 2006 Mr. Gross was a senior partner of Apollo Management, a leading private equity firm which he co-founded in 1990.

Alain Wils: Mr. Wils has been a director since May 2014. He is a consultant in the shipping and logistics industries, after more than 40 years of experience in the sector. Mr. Wils joined the CMA CGM group in 1996 as managing director of the previously state-owned shipping company, CGM, on its acquisition by CMA. He was appointed an executive board member of CMA CGM in 2001 on the merger of CMA and CGM until his retirement in 2008. From 1992 to 1996, he was chairman and CEO of Sceta International, later renamed Geodis International, a leading European logistics and freight forwarding company. He was the managing director of the shipping group Delmas Vieljeux, which he joined in 1971, from 1982 to 1992. Mr. Wils, who is a graduate of HEC Paris and of Paris University, was appointed Chevalier de la Légion d’Honneur in 1995 and chaired the French Shipowners’ Association from 1998 to 2000.

Philippe Lemonnier: Mr. Lemonnier was appointed as director in September 2017. He currently serves as Global Head of Efficiency Programs at CEVA Logistics and is responsible for Procurement and the Margin Improvement Program. Previously, he was Group Financial Controller and in charge of the Agility Program (cost savings program) at CMA CGM, having joined the company in 2005. He has more than 30 years of experience in finance and accounting, and has served in senior leadership roles across multiple industries, including as the Chief Financial Officer of two French telecommunications companies.

Michael. Chalkias: Mr Chalkias is the Co-founder of Prime Marine, a leading international product tanker and gas carrier management company, where he serves as Co-Chief Executive Officer. He has more than 20 years of experience in the shipping industry, during which he has accumulated broad experience in all aspects of the business and established strong relationships in the

industry. Prior to co-founding Prime Marine's predecessor in 1999, he was employed by Tufton Oceanic Limited, a specialized shipping finance and investment firm in London, where he was involved with debt and equity instruments as well as structured financing. Over the course of his career, Mr. Chalkias has invested in many vessels, primarily product tankers and gas carriers, as well as co-investing in shipping assets alongside well known US based Private Equity Funds.

He also serves as Director of First Ship Lease Trust, a publicly traded Singapore-based business trust, which controls a diversified portfolio of 19 vessels. Mr. Chalkias holds an MSc with Distinction in Shipping, Trade & Finance from the Cass Business School at the City University of London and a BSc with Honours in Maritime Business and Maritime Law from the University of Plymouth.

Henry (Hank) Mannix III: Mr. Mannix was appointed a director in November 2018. He has served as a director of Poseidon Containers since 2010. Mr. Mannix joined Kelso in 2004 and became a Managing Director in 2015. He spent the preceding two years in the investment banking division of Credit Suisse First Boston. Mr. Mannix is also a director of Elara Caring, Physicians Endoscopy, Sirius Computer Solutions and The Traxys Companies. Mr. Mannix received a B.A. in Math and Economics from the College of the Holy Cross in 2001. Mr. Mannix has extensive experience in corporate financing and in evaluating the financial performance and operations of companies across a variety of business sectors, including the shipping sector.

Alain Pitner: Mr. Pitner, who has 30 years of shipping experience, was appointed a director in November 2018. Mr. Pitner commenced his career in 1974 in the Risk Department of Banque Indosuez, now part of Credit Agricole Group. He held various operational and commercial responsibilities in the Bank's French Export Credit Department. In 1987, Mr. Pitner joined the Shipping Division of the Bank's Structured Finance Department, where he financed newbuildings and was also responsible for special projects. He then was entrusted with increasingly senior roles. In September 2017, after 42 years, Mr. Pitner retired from the bank. He graduated from Reims business school and holds a MSIA from Krannert Business School—Purdue University, USA.

Menno van Lacum: Mr. van Lacum commenced his career in 1997 at the Fortis Group in the Netherlands. In 1999, he joined the Transportation Group at MeesPierson where he was responsible, in different capacities, for arranging and structuring debt capital markets and leasing products predominantly for the Transportation Equipment Leasing sector. In 2005, Mr. van Lacum became Director of the Fortis Principal Finance Group in the USA, responsible for holding equity investments and structuring debt instruments across different asset classes within the Transportation Sector. In 2009, Mr. van Lacum joined the Transportation Capital Group ("TCG") as a Partner in the Netherlands. TCG is a private investment firm focusing primarily on the maritime industry. Mr. van Lacum holds a Master's Degree in Economics from the University of Amsterdam, Netherlands.

Ian J. Webber: Mr. Webber became our Chief Executive Officer in August 2008. From 1979 to 1996, Mr. Webber worked for PriceWaterhouse, the last five years of which he was a partner. From 1996 to 2006, Mr. Webber served as the Chief Financial Officer and a director of CP Ships Limited, a subsidiary of Canadian Pacific Limited until 2001 and thereafter a public company listed on the New York and Toronto stock exchanges until its acquisition by TUI A.G. in 2005. Mr. Webber is a graduate of Cambridge University.

Thomas A. Lister: Mr. Lister has been our Chief Commercial Officer since August 2008 and, from April 2017 to November 2018, was also our Chief Financial Officer. From 2005 until 2007, Mr. Lister was a Senior Vice President at DVB. Before that, from 2004 to 2005, he worked for the German KG financier and ship owning group, Nordcapital & E.R.Schiffahrt, as Director of Business Development. From 1991 to 2002, Mr. Lister worked in a number of managerial, strategic and operational roles in international shipping groups. Mr. Lister graduated from Durham University and holds an MBA from INSEAD.

Anastasios Psaropoulos: Mr. Psaropoulos became our Chief Financial Officer in November 2018. He has over 12 years of experience in finance in the shipping sector. He has served as Chief Financial Officer of Poseidon Containers and Technomar, which he joined in 2011, participating in a number of successful distressed assets acquisitions. Prior to Poseidon, he was financial controller in Dolphin Capital, an AIM listed real estate development fund. He has also worked as an external auditor with PricewaterhouseCoopers, covering shipping and oil & gas industries. Mr. Psaropoulos holds a Master in Economics with specialization in Finance and Investments, from the Athens University of Economics and Business. He has also participated in the Program for Leadership Development (PLDA) of Harvard Business School.

From November 2008 until January 2019 Vivek Puri was our Chief Technical Officer.

From August 2008 through March 31, 2017, Susan J. Cook was our Chief Financial Officer. As of April 1, 2017, she became a part-time advisor to the company.

B. Compensation

Employment Agreements and Executive Compensation

With respect to the service of Mr. Giouroukos as our Executive Chairman, our board has approved the entry into an employment contract between GSL Enterprises Ltd. (“GSL Enterprises”), our wholly-owned subsidiary, and Mr. Giouroukos, and an inter-company agreement between us and GSL Enterprises. Pursuant to the intended employment agreement, Mr. Giouroukos will receive an annual salary and will be eligible to receive an annual performance-based cash bonus payment out of the profits of GSL Enterprises.

The agreement will be terminable by Mr. Giouroukos if he provides not less than six months’ advance written notice to GSL Enterprises except if such termination is for “good reason”, including a “change in control” of Global Ship Lease, Inc., as such terms will be defined in the employment agreement, in which case Mr. Giouroukos will be able to terminate the agreement by providing not less than 14 days’ advance written notice to GSL Enterprises. GSL Enterprises will be able to terminate Mr. Giouroukos’ employment agreement by providing no less than 12 months’ advance written notice to Mr. Giouroukos (subject to exceptions in the case of summary termination). If Mr. Giouroukos resigns for “good reason” or GSL Enterprises terminates his employment for any reason whatsoever other than for “cause”, Mr. Giouroukos shall be entitled to receive a severance payment in lieu of a salary and contractual benefits for 12 months following the termination date, together with any bonus payable in accordance with the terms of the employment agreement.

GSLs, our wholly-owned subsidiary, has entered into an employment agreement with Mr. Webber and, pursuant to the terms of an inter-company agreement between us and GSLs, Mr. Webber serves as our Chief Executive Officer.

Mr. Webber’s employment agreement provided that for “good reason” following a “change of control” (each as defined in the employment agreement), he would be entitled to receive payment in lieu of salary and contractual benefits for his 12 month notice period, together with any accrued but unpaid bonus. As the Poseidon Transaction would constitute a “change of control” as defined, in order to protect the interests of the Global Ship Lease group, GSLs and Mr. Webber entered into an Amended and Restated Service Agreement dated June 1, 2018 with a further Deed of Amendment dated October 16, 2018.

Pursuant to these revised employment agreements, the Poseidon Transaction was excluded from the definition of change of control. On completion of the Poseidon Transaction, for so long as Mr. Webber has not resigned, he became entitled to a transaction bonus equivalent to 60% of six months’ salary, and is entitled to receive a Retention Amount payable in nine equal instalments, up to end of July 2019, being equal to salary and bonus at 60% of his salary for 12 months, together with bonus at 60% of his salary up to end July 2019. The company retains the right to terminate the employment agreement against payment of all amounts due, unless such termination is for cause. The company and Mr. Webber may each terminate the employment agreement on one month’s notice within 90 days following (i) the completion of the Transition, being the substantive completion of the transfer of accounting, finance and other administrative functions from London to Athens, and (ii) November 15, 2019, being the anniversary of the completion of the Poseidon Transaction. Should the employment agreement be terminated in this manner, Mr. Webber is entitled to receive the balance of the Retention Amount, if any, the value of one year’s contractual benefits, such as private medical cover, and the balance of bonus, if any, at 60% of his salary from August 1, 2019 to the date of termination.

Mr. Webber receives a salary and is eligible to receive a cash bonus payment up to an annual maximum of 60% of his salary at the discretion of GSLs. He is also eligible to receive share based incentives.

Subject to the above, the agreement is terminable by Mr. Webber if he provides not less than six months advance written notice to GSLs, or by GSLs if it provides not less than 12 months advance written notice to him (subject to exceptions in the case of summary termination). GSLs has the right to terminate Mr. Webber at any time and in its absolute discretion by paying Mr. Webber a sum equal to his salary and contractual benefits for the relevant period of notice.

The agreement also provides that, during his employment or for a period of one year thereafter, Mr. Webber will not, among other actions, solicit or attempt to solicit certain employees or certain customers of ours (or one of our group companies) or be involved in any relevant business in competition with us (or one of our group companies).

With respect to the service of Mr. Psaropoulos as our Chief Financial Officer and Treasurer, our board has approved the entry into an employment contract between GSL Enterprises, our wholly-owned subsidiary, and Mr. Psaropoulos, and an inter-company agreement between us and GSL Enterprises. Pursuant to the intended employment agreement, Mr. Psaropoulos will receive an annual salary and will be eligible to receive an annual performance-based cash bonus payment out of the profits of GSL Enterprises.

The agreement will be terminable by Mr. Psaropoulos if he provides not less than six months’ advance written notice to GSL Enterprises except if such termination is for “good reason”, including a “change in control” of Global Ship Lease, Inc., as such terms will be defined in the employment agreement, in which case Mr. Psaropoulos will be able to terminate the agreement by providing not less than 14 days’ advance written notice to GSL Enterprises. GSL Enterprises will be able to terminate Mr. Psaropoulos’ employment agreement by providing no less than 12 months’ advance written notice to Mr. Psaropoulos (subject to exceptions in the case of summary termination). If Mr. Psaropoulos resigns for “good reason” or GSL Enterprises terminates his employment for any reason whatsoever other than for “cause”, Mr. Psaropoulos shall be entitled to receive a severance payment in lieu of a salary and contractual benefits for 12 months following the termination date, together with any bonus payable in accordance with the terms of the employment agreement.

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GSLs, our wholly-owned subsidiary, has entered into an employment agreement with Mr. Lister and, pursuant to the terms of an inter-company agreement between us and GSLs, Mr. Lister serves as our Chief Commercial Officer. Mr. also served as our Chief Financial Officer from April 1, 2017 to November 15, 2018.

Mr. Lister's employment agreement provided that for "good reason" following a "change of control" (each as defined in the employment agreement), he would be entitled to receive payment in lieu of salary and contractual benefits for his nine month notice period, together with any accrued but unpaid bonus. As the Poseidon Transaction would constitute a "change of control" as defined, in order to protect the interests of the Global Ship Lease group, GSLs and Mr. Lister entered into an Amended and Restated Service Agreement dated June 1, 2018 with a further Amended and Restated Service Agreement dated October 16, 2018.

Pursuant to the revised employment agreement, the Poseidon Transaction was excluded from the definition of change of control. On completion of the Poseidon Transaction, for so long as Mr. Lister has not resigned, he became entitled to a transaction bonus equivalent to 40% of six months' salary, and is entitled to receive a Retention Amount payable in nine equal instalments, up to end of July 2019, being equal to salary and bonus at 40% of his salary for 12 months, together with bonus at 40% of his salary up to end July 2019. The company retains the right to terminate the employment agreement against payment of all amounts due, unless such termination is for cause. The company and Mr. Lister may each terminate the employment agreement on one month's notice within 90 days following (i) the completion of the Transition, being the substantive completion of the transfer of accounting, finance and other administrative functions from London to Athens, and (ii) November 15, 2019, being the anniversary of the completion of the Poseidon Transaction. Should the employment agreement be terminated in this manner, Mr. Lister is entitled to receive the balance of the Retention Amount, if any, the value of one year's contractual benefits, such as private medical cover, and the balance of bonus, if any, at 40% of his salary from August 1, 2019 to the date of termination.

Mr. Lister receives a salary and is eligible to receive a cash bonus payment up to an annual maximum of 40% of his salary at the discretion of GSLs. He is also eligible to receive share based incentives.

Subject to the above, the agreement is terminable by Mr. Lister if he provided not less than six months advance written notice to GSLs, or by GSLs if it provided not less than nine months advance written notice to him (subject to exceptions in the case of summary termination). Pursuant to the terms of his employment agreement, GSLs will have the right to terminate Mr. Lister at any time and in its absolute discretion by paying him a sum equal to his salary and contractual benefits for the relevant period of notice.

The agreement also provides that, during his employment or for a period of three months thereafter, Mr. Lister will not, among other actions, solicit or attempt to solicit certain employees or certain customers of ours (or one of our group companies) or be involved in any relevant business in competition with us (or one of our group companies).

GSLs has entered into an employment agreement with Mr. Puri and, pursuant to the inter-company agreement, Mr. Puri served as our Chief Technical Officer until completion of the Poseidon Transaction on November 15, 2018.

Mr. Puri's employment agreement provided that for "good reason" following a "change of control" (each as defined in the employment agreement), he would be entitled to receive payment in lieu of salary and contractual benefits for his six month notice period, together with any accrued but unpaid bonus. As the Poseidon Transaction would constitute a "change of control" as defined, in order to protect the interests of the Global Ship Lease group, GSLs and Mr. Puri entered into an Amended and Restated Service Agreement dated June 17, 2018 with a further Amended and Restated Service Agreement dated October 16, 2018.

Mr. Puri's revised employment agreement retained the good reason following a change of control triggers, which Mr. Puri exercised on December 12, 2018, crystallizing an entitlement to a termination payment equivalent to salary, contractual benefits and bonus at 40% for 12 months, together with bonus at 40% from October 1, 2018 to the termination date. He was also entitled to a transaction bonus equivalent to three months' salary at 40%.

GSLs and Mr. Puri agreed, under a Settlement Agreement dated January 18, 2019, that, notwithstanding the above, Mr. Puri's employment would continue unless and until terminated by either party on at least two weeks' notice. Mr. Puri received an initial severance amount and is entitled to a further severance amount at termination.

Pursuant to his employment agreement, Mr. Puri receives a salary and is eligible to receive a cash bonus payment up to an annual maximum of 40% of his salary at the discretion of GSLs.

Pursuant to the terms of his employment agreement, GSLs will have the right to terminate Mr. Puri at any time and in its absolute discretion by paying him a sum equal to his salary and contractual benefits for the relevant period of notice

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The agreement also provides that, during his employment or for a period of 12 months thereafter, Mr. Puri will not, among other actions, solicit or attempt to solicit certain employees or certain customers of ours (or one of our group companies) or be involved in any relevant business in competition with us (or one of our group companies).

Susan Cook was our Chief Financial Officer until March 31, 2017, when she stepped down from that role. She has continued to be employed by GSLS, in a part-time advisory capacity. Ms. Cook also entered into an Amended and Restated Service Agreement dated June 1, 2018 with a further Deed of Amendment dated October 16, 2018. Ms. Cook was also entitled to receive a Retention Amount, payable in six equal instalments, up to end of April 2019, being equal to salary and bonus at 40% for 12 months, together with bonus at 40% up to end July 2019. Ms. Cook's employment terminated on February 28, 2019, accelerating the payment of the outstanding Retention Amount instalments.

Aggregate compensation, including base salary for 2018, annual bonus for 2017, annual bonus for the first three quarters of 2018 and amounts paid as a result of the Poseidon Transaction including the Retentions amounts referred to above, paid to Mr. Webber, Ms. Cook, Mr. Lister and Mr. Puri during 2018 was \$2.3 million.

Compensation of Directors

Our Executive Chairman shall be employed by GSL Enterprises Ltd. and is entitled to a net annual salary of \$80,000 and an annual performance-based cash bonus which is anticipated to be at least \$170,000. Previously, the Chairman of our board of directors received an annual fee of \$157,500. Our other directors receive an annual fee of \$105,000. For 2017, 20% of the annual fee was settled by the issuance of shares under the 2015 Equity Incentive Plan, with the determination of the number of shares issued based on a notional per share value of \$32.00 rather than market prices. A total of 34,125 shares were issued in respect of directors fees for 2017. The Chairman of the audit committee receives an additional fee of \$15,000 and each member of the audit committee receives an additional \$7,500. The Chairman of the governance and nominating committee and the compensation committee each receive an additional \$5,000 and each member receives an additional \$2,500. In addition, each director is reimbursed for out-of-pocket expenses in connection with attending meetings of the board of directors or committees.

2019 Equity Incentive Plan

On February 4, 2019, our board of directors adopted the Global Ship Lease, Inc. 2019 Equity Incentive Plan, (the "2019 Plan"), under which directors, officers and employees (including any prospective director, officer or employee) of us and our subsidiaries and affiliates are eligible to receive non-qualified options, stock appreciation rights, restricted stock units, dividend equivalents, cash awards, unrestricted stock and other equity-based or equity-related awards as set forth fully in the 2019 Plan. We have reserved a total of 1,812,500 Class A common stock, par value \$0.01 per share, for issuance under the 2019 Plan during its 10-year term. During any calendar year, non-employee directors may not be granted more than 12,500 shares of Class A common stock or cash awards in excess of \$100,000.

The purpose of the 2019 Plan is to provide directors, officers and employees, whose initiative and efforts are deemed to be important to the successful conduct of our business, with incentives to (a) enter into and remain in the service of our company or our subsidiaries and affiliates, (b) acquire a proprietary interest in the success of our company, (c) maximize their performance and (d) enhance the long-term performance of our company. The 2019 Plan is administered by our compensation committee of our board of directors or such other committee of our board of directors as may be designated by the board.

Under the terms of the 2019 Plan, stock options and appreciation rights granted under the 2019 Plan will have an exercise price equal to the fair market value of a common share on the date of grant, provided that in no event may the exercise price be less than the fair market value of a common share on the date of grant. Options and stock appreciation rights will be exercisable at times and under conditions as determined by the plan administrator, but in no event will they be exercisable later than ten years from the date of grant.

The plan administrator may grant restricted stock and awards of restricted stock units subject to vesting and forfeiture provisions and other terms and conditions as determined by the administrator of the 2019 Plan. Upon the vesting of a restricted stock unit, the award recipient will be paid an amount equal to the number of restricted stock units that then vest multiplied by the fair market value of a common share on the date of vesting, which payment may be paid in the form of cash or common shares or a combination of both, as determined by the administrator of the 2019 Plan. The 2019 Plan administrator may grant dividend equivalents with respect to grants of restricted stock units.

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Adjustments may be made to outstanding awards in the event of a corporate transaction or change in capitalization or other extraordinary event. In the event of a “change in control” (as defined in the 2019 Plan), unless otherwise provided by the 2019 Plan administrator in an award agreement, awards then outstanding shall become fully vested and exercisable in full.

Our board of directors may amend or terminate the 2019 Plan and may amend outstanding awards, provided that no such amendment or termination may be made that would materially impair the rights or materially increase any obligations, of a grantee under an outstanding award. Shareholders’ approval of 2019 Plan amendments may be required in certain circumstances if required by applicable rules of a national securities exchange or the SEC. Unless terminated earlier by the board of directors, the 2019 Plan will expire ten years from the date on which the 2019 Plan was adopted by the board of directors.

Following the adoption of the 2019 Plan, the 2015 and 2008 Plans were terminated. As of the date of filing of this report, no awards have been made under the 2019 Plan.

2015 Equity Incentive Plan

We adopted the Global Ship Lease, Inc. 2015 Equity Incentive Plan (the “2015 Plan”) on August 28, 2015 when it was approved at our 2015 annual meeting. The 2015 Plan is substantively similar to the prior plan, the Global Ship Lease, Inc. 2008 Equity Incentive Plan (the “2008 Plan”), which became effective on the closing of the Marathon Merger. The 2015 Plan has now been terminated.

The 2015 Plan allowed our and our subsidiaries’ employees, consultants and directors to receive options, stock appreciation rights, stock grants, stock units and dividend equivalents. The following description of the Plan is qualified by reference to the 2015 Plan, a copy of which is filed as an exhibit to this Annual Report.

The 2015 Plan was administered by our board of directors or a committee of the board of directors. Subject to adjustment as provided below, the maximum aggregate number of Class A common shares that may be delivered pursuant to awards granted under the 2015 Plan during its 10-year term was 187,500. The maximum number of Class A common shares with respect to which awards may be granted to any participant in the 2015 Plan in any fiscal year was 62,500 per participant.

In the event that we were subject to a change of control, the 2015 Plan administrator, in its sole discretion, may make such adjustments and other substitutions to the 2015 Plan and outstanding awards under the 2015 Plan as it deems equitable or desirable.

A total of 4,266 shares were issued under the 2015 Plan as part of our directors’ compensation for 2017.

In January 2018, Mr. Webber was granted 8,757 restricted shares, Mr. Lister 5,848 restricted shares, Mr. Puri 4,598 restricted shares. Further awards totaling 5,796 were made to two other employees. Half of these awards, totaling 12,500 restricted shares, were expected to vest when the individual left employment provided that this was after March 31, 2018 and was not as a result of termination for cause. The other half was expected to vest after March 31, 2018 but only after our stock price had been at least \$24.00 for 20 consecutive trading days, provided that this was before December 31, 2020.

In March 2018, Mr. Webber was granted 8,835 restricted shares, Mr. Lister 6,476 restricted shares, Mr. Puri 4,640 restricted shares. Further awards totaling 5,047 were made to two other employees. Half of these awards, totaling 12,500 restricted shares, were expected to vest when the individual left employment provided that this was after March 31, 2019 and was not as a result of termination for cause. The other half was expected to vest after March 31, 2019 but only after our stock price had been at least \$24.00 for 20 consecutive trading days, provided that this was before December 31, 2021.

In March 2016, Mr. Webber was granted 9,537 restricted shares, Ms. Cook 5,428 restricted shares, Mr. Lister 5,755 restricted shares and Mr. Puri 4,278 restricted shares. Half of these awards, totaling 12,500 restricted shares, were expected to vest when the individual left employment provided that this was after December 31, 2016 and was not as a result of termination for cause. The other half was expected to vest after December 31, 2016 but only after the company’s stock price had been at least \$40.00 for 20 consecutive trading days, provided that this was before December 31, 2019.

During 2016, a total of 4,266 shares were issued under the 2015 Plan as part of our directors’ compensation.

No other awards have been granted under the 2015 Plan and none may be granted after the tenth anniversary of the date of shareholder approval.

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2008 Equity Incentive Plan

The 2008 Plan, which has now been terminated, allowed our and our subsidiaries' employees, consultants and directors to receive options, stock appreciation rights, stock grants, stock units and dividend equivalents. The material terms of the 2008 Plan are substantively similar to the 2015 Plan described above.

A total of 187,265 Class A common shares have been awarded under the Plan.

In August 2008, our board of directors granted 46,875 restricted shares to Mr. Webber, 25,312 restricted shares to Ms. Cook and 25,312 restricted shares to Mr. Lister under the 2008 Plan, which vested over a three-year period. One third of the award vested over 20 business days commencing mid-September 2009, one third vested over 20 business days commencing mid-September 2010 and one third vested over 20 business days commencing mid-September 2011. In November 2008, Mr. Puri was granted 10,000 restricted shares, half of which vested over 20 business days commencing mid-September 2009 and the other half vested over 20 business days commencing mid-September 2010. In March 2011, Mr. Puri was granted 1,875 restricted shares that vested over 20 business days commencing mid-September 2011. In September 2011, Mr. Webber was granted 6,975 restricted shares, Ms. Cook was granted 4,250 restricted shares, Mr. Lister was granted 4,250 restricted shares and Mr. Puri was granted 3,375 restricted shares, which were expected to vest over a two-year period. One half of the award was expected to vest over 20 business days commencing mid-September 2012, and one half over 20 business days commencing mid-September 2013. In March 2012, the grants made in September 2011 were amended and restated to provide that vesting would occur only when the individual leaves employment, for whatever reason other than for termination for cause, provided that this would be after September 30, 2012 in respect of half of the grant and September 30, 2013 for the other half of the grant. In March 2012, Mr. Webber was granted 3,437 restricted shares, Ms. Cook was granted 2,125 restricted shares, Mr. Lister was granted 2,125 restricted shares and Mr. Puri was granted 1,687 restricted shares, which are expected to vest when the individual leaves employment provided that this will be after September 30, 2014 and is not as a result of termination for cause or resignation prior to January 1, 2017. In March 2013, Mr. Webber was granted 3,437 restricted shares, Ms. Cook was granted 2,125 restricted shares, Mr. Lister was granted 2,125 restricted shares and Mr. Puri was granted 1,687 restricted shares, which are expected to vest when the individual leaves employment provided that this will be after September 30, 2015 and is not as a result of termination for cause or resignation prior to January 1, 2017. Other than the annual awards of restricted stock units as part of the compensation of our board of directors, no other awards have been made.

Completion of the Poseidon Transaction represented a Change of Control as defined under the 2015 and 2008 Plans and, as a consequence, all outstanding restricted share awards vested in November 2018.

C. Board Practices

Our board of directors is divided into three classes with one class of directors being elected in each year and each class serving a three-year term.

The current term of office of the Term I class of directors consisting of Mr. Lemonnier, Mr. Mannix and Mr. Pitner, expires at the annual meeting of shareholders to be held in 2021.

The current term of office of the Term II class of directors, consisting of Mr. Chalkias and Mr. Giouroukos, expires at the annual meeting of shareholders to be held in 2019.

The current term of office of the Term III class of directors, consisting of Mr. Gross, Mr. van Lacum and Mr. Wils, expires at the annual meeting of shareholders to be held in 2020.

Other than our Executive Chairman, none of our directors have service contracts with us or any of our subsidiaries providing for benefits upon the termination of their employment.

For information about the period during which each director and executive officer has served in such position at our company, see Item 6.A "Directors, Senior Management and Employees – Directors and Senior Management."

Director Independence

Our board of directors has determined that all directors other than Mr. Lemonnier are "independent directors" as such term is defined in Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the NYSE rules. Mr. Lemonnier, a senior executive of CMA CGM, our largest shareholder, was appointed to as a Director in September 2017, following CMA CGM's nomination.

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Board Committees

Our board of directors has formed an audit committee, a compensation committee, and a governance and nominating committee. Our board committee charters are available on our website (www.globalshiplease.com) and in print to any investor upon request. The information included on our website is not incorporated herein by reference.

Audit Committee

We have established an audit committee, comprised of three members of our board of directors, who, as directed by our written audit committee charter, is responsible for overseeing the management's conduct of our systems of internal accounting and financial controls, reviewing our financial statements, recommending to the board of directors the engagement of our independent auditors, and pre-approving audit and audit-related services and fees.

The audit committee will at all times be composed exclusively of "independent directors" who, as may be required by the NYSE listing standards, are able to read and understand fundamental financial statements, including a company's balance sheet, income statement and cash flow statement. Our audit committee consists of Messrs. Chalkias, van Lacum and Wils, each of whom is "independent" as defined in Rule 10A-3 under the Exchange Act and the NYSE rules.

In addition, the audit committee has at least one member who has past employment experience in finance or accounting, requisite professional certification in accounting, or other comparable experience or background that results in the individual's financial sophistication. The board of directors has determined that Mr. van Lacum satisfies the NYSE's definition of financial sophistication and also qualifies as an "audit committee financial expert," as defined under Item 401 of Regulation S-K under the Exchange Act.

Compensation Committee

U.S. issuers are required to have a compensation committee that is comprised entirely of independent directors. Although as a foreign private issuer this rule does not apply to us, we have a compensation committee. Our compensation committee consists of Messrs. Gross, Mannix and Pitner. The compensation committee is responsible for and reports to the board of directors on the evaluation and compensation of executives, oversees the administration of compensation plans, reviews and determines director and executive compensation and prepares any report on executive compensation required by the rules and regulations of the SEC.

Nominating and Corporate Governance Committee

U.S. issuers are required to have a nominating and corporate governance committee that is comprised entirely of independent directors. Although as a foreign private issuer this rule does not apply to us, we have a nominating and corporate governance committee. Our nominating and corporate governance committee consists of Messrs. Chalkias, Pitner and Wils. The nominating and corporate governance committee reports to the board of directors on and is responsible for succession planning and the appointment, development and performance evaluation of our board members and senior executives. It also assesses the adequacy and effectiveness of our corporate governance guidelines, reviewing and recommending changes to the board whenever necessary.

D. Employees

At December 31, 2018, we had 11 employees. At each of December 31, 2017 and 2016, we had nine employees.

E. Share Ownership

See Item 7.A. "Major Shareholders and Related Party Transactions—Major Shareholders" for information regarding beneficial ownership by our directors and executive officers.

See Item 6.B. "Compensation – 2015 Equity Incentive Plan" for information regarding our equity incentive plan.

Item 7. Major Shareholders and Related Party Transactions

A. Major Shareholders

The following table sets forth information regarding the beneficial ownership of our common shares as of the date of this report by:

- each person known by us to be the beneficial owner of more than 5% of our outstanding common shares;

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- each of our officers and directors; and
- all of our officers and directors as a group.

Except as otherwise indicated, each person or entity named in the table below has sole voting and investment power with respect to all of our Class A common shares or our Series C Preferred Shares, shown as beneficially owned, subject to applicable community property laws. As of the date of this report, an aggregate of 9,942,950 Class A common shares were issued and outstanding, the 7,405,956 Class B common shares having converted to Class A common shares on January 2, 2019 and a reverse stock split in the ratio one-for-eight having been effected as of March 25, 2019. In addition, there were an aggregate of 250,000 Series C Preferred Shares outstanding, all held by Kelso affiliates, which convert in limited circumstances to an aggregate of 12,955,187 Class A common shares.

The Class A common shares each have one vote and vote together as a single class except that any amendment to the articles of incorporation, including those made pursuant to the terms of any merger, consolidation or similar transaction, that would increase or decrease the aggregate number of authorized common shares of a class, increase or decrease the par value of common shares of a class, or alter or change the powers, preferences or rights of the class of common shares so as to affect them adversely, must be approved by the holders of not less than a majority of the votes entitled to be cast by the holders of such class of common shares then outstanding, voting separately as a class. Each Series C Preferred Share is entitled to 38.75 votes on all matters submitted to a vote of the shareholders. The holders of Series C Preferred Shares vote together with the common shareholders as one class on all matters submitted to a vote of the shareholders.

Name of Beneficial Owner	Amount of Beneficial Ownership of Class A Common Shares	Approximate Percentage of Outstanding Common Shares (1)
George Giouroukos	1,969,188 (2)	19.80%
Michael S. Gross	1,344,094 (3)	13.52%
Alain Wils	1,312	0.01%
Philippe Lemonnier	0	0%
Henry Mannix III	155,750 (4)	1.57%
Michael Chalkias	0	0%
Ian J. Webber	55,312	0.56%
Thomas Lister	26,904	0.27%
Anastasios Psaropoulos	0	0%
All directors and executive officers as a group (11 individuals)	3,552,560	35.73%
CMA CGM S.A.	3,051,587 (5)	30.69%
MAAS Capital	1,036,415	10.42%
KIA VIII (Newco Marine) Ltd.	155,750 (4)	1.57%
KEP VI (Newco Marine) Ltd.	155,750 (4)	1.57%

(1) Calculated based on 9,942,950 common shares outstanding as of the date of this report.

(2) Mr. Giouroukos, who serves as our Executive Chairman, owns and controls Management Investor Co., which is the record holder of 1,969,188 Class A common shares. As a result, Mr. Giouroukos may be deemed to beneficially own the shares held by Management Investor Co.

(3) This information is derived from a Schedule 13D/A filed with the SEC on January 3, 2019. Michael S. Gross directly holds 566,880 shares of Class A Common Stock. Marathon Founders, LLC directly holds 777,214 shares of Class A Common Stock. As the Managing Member of Marathon Founders, LLC, Mr. Gross may be deemed to exercise voting rights and investment power over all securities of Global Ship Lease, Inc. held by Marathon Founders, LLC and thus may be deemed to beneficially own such shares.

(4) This information is derived from a Schedule 13D filed with the SEC on November 26, 2018. Includes Class A common shares deemed to be beneficially owned by KIA VIII (Newco Marine) Ltd., or KIA VIII, and KEP VI (Newco Marine) Ltd., or KEP VI, by virtue of a voting agreement entered into among KEP VIII, KEP VI, CMA CGM S.A. and Michael S. Gross. KEP VI (Cayman, L.P., KEP VI (Cayman) GP Ltd., KIA VIII (International), L.P., KELSO GP VIII (Cayman) L.P., KELSO GP VIII (Cayman) Ltd., Frank T. Nickell, Thomas R. Wall, IV, George E. Matelich, Michael B. Goldberg, David I. Wahrhaftig, Frank K. Bynum, Jr., Philip Berney, Frank J. Loverro, James J. Connors, II, Stanley de J. Osborne, Church M. Moore, Christopher L. Collins, Anna Lynn Alexander, Howard A. Matlin, Stephen C. Dutton, Matthew S. Edgerton, John K. Kim and Henry Mannix III (the "Kelso Joint Filers") may be deemed to share beneficial ownership of these Class A common shares. Each of the Kelso Joint Filers share investment and voting power with respect to any Class A common shares beneficially owned by KIA VIII and KEP VI but disclaim beneficial ownership of such Class A common shares.

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In addition, there were an aggregate of 250,000 Series C Preferred Shares outstanding, all held by Kelso affiliates, which convert in limited circumstances to an aggregate of 12,955,187 Class A common shares. Each Series C Preferred Share is entitled to 38.75 votes on all matters submitted to a vote of the shareholders. The holders of Series C Preferred Shares vote together with the common shareholders as one class on all matters submitted to a vote of the shareholders. According to information contained in public filings, KEP VI (Newco Marine) Ltd. and KIA VIII (Newco Marine) Ltd., both affiliates of Kelso & Company, a U.S. private equity firm, hereafter referred to as Kelso, controls approximately 50.1% of the vote on any matter submitted to the vote of our common shareholders, through its ownership of Series C Preferred Shares and by virtue of the voting agreement with certain other of our shareholders.

- (5) This information is derived from a Schedule 13D/A filed with the SEC on January 14, 2019. CMA CGM S.A. is controlled by Merit Corporation S.A.L., which may be deemed to exercise voting and investment power over all securities of Global Ship Lease, Inc. held by CMA CGM S.A. and thus may be deemed to beneficially own such securities.

As of March 27, 2019, we had 21 registered shareholders of record, 7 of which were located in the United States and held an aggregate of 5,358,863 of our Class A common shares, representing 53.9% of our outstanding common shares. However, one of the U.S. shareholders of record is CEDE & CO., a nominee of The Depository Trust Company, which held 4,543,721 of our Class A common shares as of March 27, 2019. We believe that the shares held by CEDE & CO. include common shares beneficially owned by both holders in the United States and non-U.S. beneficial owners.

Other than Kelso by virtue of its beneficial ownership of Series C Preferred Shares, our major shareholders, directors and executive officers do not have different voting rights.

We are not aware of any arrangements the operation of which may at a subsequent date result in our change of control.

B. Related Party Transactions

Registration Rights Agreement

At the time of the Marathon Merger, we entered into a registration rights agreement with CMA CGM, Marathon Investors, LLC, Marathon Founders, LLC and the other initial shareholders of Marathon common stock (including Michael S. Gross), pursuant to which we agreed to register for resale on a registration statement under the Securities Act of 1933, as amended, and applicable state securities laws, the common shares issued to such shareholders pursuant to the Marathon Merger or upon exercise of warrants (the “Marathon Registration Rights Agreement”).

On October 29, 2018, we entered into an Amended and Restated Registration Rights Agreement (the “Amended and Restated Registration Rights Agreement”), which amended and restated the Marathon Registration Rights Agreement, with KEP VI, KIA VIII, CMA CGM, Management Investor Co., Anmani Consulting Inc., Marathon Founders, LLC, Michael S. Gross and Maas Capital Investments B.V. with respect to all Class A common shares and Series C Preferred Shares held by such shareholders on the closing date of the Poseidon Transaction, including any Class A common shares issuable on conversion of Series C Preferred Shares. The Amended and Restated Registration Rights Agreement became effective on the closing of the Poseidon Transaction. Pursuant to the Amended and Restated Registration Rights Agreement, we will, on or before the date that is six months after the closing of the Poseidon Transaction, file with the SEC a shelf registration statement to register the offer and resale of all securities covered by the Amended and Restated Registration Rights Agreement. The Amended and Restated Registration Rights Agreement provides certain piggyback and demand registration rights. The Amended and Restated Registration Rights Agreement also provides that the shareholders party to it will not transfer any shares covered by the agreement for a period of six months following the closing of the Poseidon Transaction (with certain exceptions) and contains customary indemnification and other provisions.

Letter Agreement

On October 29, 2018, we entered into a Letter Agreement with affiliates of Kelso, CMA CGM, Marathon Founders, LLC and Michael S. Gross. The Letter Agreement became effective on the closing of the Poseidon Transaction.

Pursuant to the Letter Agreement, (a) for so long as CMA CGM holds at least 5% of our voting power, CMA CGM has the right to designate (and Kelso has the obligation to vote in favor of) an individual nominee to serve on our Board of Directors (and such nominee will also have a right to serve on the Audit Committee of the Board of Directors), (b) for so long as CMA CGM holds at least 10% of our voting power, CMA CGM has the right to designate (and Kelso has the obligation to vote in favor of) two individuals to serve on the Board of Directors and (c) CMA CGM designated Philippe Lemonnier and Alain Wils as the two individuals to serve on the Board of Directors.

The Letter Agreement also contains certain participation and tag-along rights. For example, each of Kelso and CMA CGM has the right to purchase a pro rata portion of any new issuance of securities by us (other than certain exempt issuances) for so long as it holds at least 10% of our voting power. Additionally, each of CMA CGM, Marathon Founders, LLC and Mr. Gross have the right to transfer Class A common shares pro rata alongside Kelso in any transfer or series of related transfers by Kelso to a third party that would result in the third party acquiring more than 30% of our voting power (with the exception of certain exempt transfers).

The Letter Agreement also provides that, for so long as CMA CGM holds at least 5% of our voting power, we may not make any material change in the nature of our business without the unanimous consent of the Board of Directors.

Non-Compete Agreement

On October 29, 2018, we entered into a Non-Compete Agreement with Mr. George Giouroukos and Conchart reflecting, among others, the provisions described below. The Non-Compete Agreement became effective on the closing of the Poseidon Transaction.

Restricted Business

For so long as Mr. Giouroukos is our Executive Chairman, Mr. Giouroukos and any entity which he controls will agree not to acquire, own or operate containerships. However, under certain exceptions, Mr. Giouroukos, and any entity which he controls, may compete with us, which could affect our business. Specifically, Mr. Giouroukos, and any entity which he controls, will not be prevented from:

- (1) acquiring, owning, operating or chartering vessels other than containerships;
- (2) acquiring or owning one or more containerships if we decide not to exercise our right of first refusal to acquire such containership, in accordance with the terms of the Non-Compete Agreement described below under “Right of First Refusal”;

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- (3) Acquiring, owning, operating or chartering one or more containerships as part of the acquisition of a controlling interest in a business or package of assets that owns, operates or charters such containerships; provided, however, that Mr. Giouroukos, and any entity which he controls must offer to sell such containership(s) to us at their fair market value plus any additional tax or other similar costs that Mr. Giouroukos, and any entity which he controls, incurs in connection with the acquisition and the transfer of such containership to us separate from the acquired business, if a majority of the value of the business or the package of assets acquired is attributable to containerships;
- (4) providing vessel management services relating to containerships, or other vessel types, including technical and commercial management, warehouse transactions for financial institutions and pool management;
- (5) Acquiring, owning, operating or chartering any containership that Mr. Giouroukos, and any entity which he controls, owned or operated or had a contractual arrangement with respect to as of the closing date of the Plan of Merger by and among Poseidon Containers Holdings LLC, K&T Marine LLC, us and other parties;
- (6) transferring to Mr. Giouroukos or any entity which he controls, title to a vessel that Mr. Giouroukos or such entity that he controls or any third party is entitled to acquire, own and operate under the Non-Compete Agreement, pursuant to or in connection with the termination of a financing arrangement, including by way of a sale and leaseback or similar transaction, which is accounted for under United States generally accepted accounting principles as a financial lease; and
- (7) acquiring, owning, operating or chartering any containership that is subject to an offer to purchase as described in paragraphs (2) and (3) above, in each case pending the offer of such containership to us and our determination whether to purchase the containership and, if so, pending the closing of such purchase.

Further to the above, notwithstanding this agreement, Mr. Giouroukos, and any entity which he controls, may claim business opportunities that would benefit us, and this could have an adverse effect on our business, results of operations, cash flows, financial condition and ability to pay dividends.

Right of First Refusal

Mr. Giouroukos, and any entity he controls, will also agree to grant us a right of first refusal to acquire any containership, after Mr. Giouroukos, or an entity controlled by him, enters into an agreement that sets forth terms upon which he or it would acquire such containership. Mr. Giouroukos, or such entity controlled by him, shall notify us within 30 days of any agreement that he, or his controlled entity, has entered into to purchase a containership and will provide a period of 7 calendar days in respect of a single vessel transaction, or a period of 14 calendar days in respect of a multi-vessel transaction, from the date that he delivers such notice to us of said opportunity, within which to decide whether or not to accept the opportunity and nominate a subsidiary of ours to become the purchaser of such containership, before Mr. Giouroukos, or any entity he controls, will accept the opportunity or offer it to any of his other affiliates or entities controlled by him. The opportunity offered to us will be on no less favorable terms than those offered to Mr. Giouroukos, or entity controlled by him. The approval of our conflicts committee which is comprised of independent directors will be required to accept or reject this offer.

Upon a change of control of us, these rights of first refusal will terminate immediately. In addition, at such time that Mr. Giouroukos ceases to serve as our Executive Chairman, these rights of first refusal as applicable to Mr. Giouroukos will terminate immediately.

Right of First Offer on Containerships

Mr. Giouroukos will also agree to grant a right of first offer to us for any containership he, or any entity controlled by him, owns or acquires, upon any proposed sale, transfer, or other disposition.

Prior to entering into any transaction regarding any containership's disposition with a non-affiliated third party, Mr. Giouroukos, or such entity controlled by him, will deliver a written notice to us setting forth the material terms and conditions of the proposed transaction. During the 14-day period after the delivery of such notice, and at our election we (through our conflicts committee) and Mr. Giouroukos, or such entity controlled by him, will negotiate in good faith to reach an agreement on the transaction, which shall be approved by our conflicts committee which is comprised of independent directors. If we do not reach an agreement within such 14-day period, Mr. Giouroukos, or such entity controlled by him, as the case may be, will be able within the next 180 calendar days to sell, transfer, dispose or re-contract the containership to a third party (or to agree in writing to undertake such transaction with a third party) on terms generally no less favorable than those offered pursuant to the written notice.

Upon a change of control of us, these rights of first offer will terminate immediately. In addition, at such time that Mr. Giouroukos ceases to serve as our Executive Chairman, these rights of first offer as applicable to Mr. Giouroukos will terminate immediately.

Chartering Opportunities

If Conchart, or any entity it controls, acquires knowledge of a potential opportunity to enter into a potential charter with or without profit sharing for a particular containership that it believes in good faith would be suitable for our vessels, which we refer to as a “Potential Charter Opportunity,” then Conchart, or such entity that it controls, would be obliged to offer such Potential Charter Opportunity to us and, for a period of up to two business days, we shall have the right to elect to pursue such Potential Charter Opportunity for ourselves or allow Conchart to direct such Potential Charter Opportunity to itself or another person or entity. In determining suitability of a Potential Charter Opportunity, Conchart shall take into consideration certain factors, such as the availability, suitability and positioning of the relevant vessel, the potential charterer’s demands for the vessel’s specifications and costs. In the event we do not elect to accept the Potential Charter Opportunity, Conchart shall be free to pursue such Potential Charter Opportunity or direct it to another person or entity for a period of 15 calendar days on the same terms and conditions as presented to us.

Ship Management Agreements

As of December 31, 2018, Technomar provided day-to-day technical ship management services to us on 19 of our vessels pursuant to technical ship management agreements. Mr. George Giouroukos, our Executive Chairman, is a significant shareholder of Technomar. Technomar’s services being provided under the technical ship management agreements include crewing, purchasing stores, lubricating oils and spare parts, paying wages, pensions and insurance for the crew, and organizing other vessel operating necessities, including the arrangement and management of drydocking. We pay Technomar a daily management fee of EUR 685 per vessel, to be paid in U.S. Dollars at an agreed rate of exchange, which, in addition to covering the technical ship management services being provided, includes administrative support services, including accounting and financial reporting, treasury management services and legal services also being provided pursuant to the technical ship management agreements. The technical ship management agreements with Technomar are for a minimum term of 36 months. The technical ship management agreements may be terminated by either party by giving not less than six months’ prior written notice with termination to be effective no sooner than the expiry of the minimum term. If the technical ship management agreements are terminated on at least six months prior written notice, a termination fee equal to 50% of the annual management fee is payable to Technomar if the technical ship management agreements are terminated by the managers and a termination fee equal to two times the annual fee is payable to Technomar if the technical ship management agreements are terminated by the owners. Our other ship technical ship management agreements may generally be terminated by either party on two months prior written notice. The Technomar technical ship management agreements may also be terminated (i) by one party on the change of control in the other party, (ii) automatically on the insolvency of a party, (iii) by one party upon the breach by the other party of the technical ship management agreement, and (iv) upon the sale or total loss of a vessel; except where the owner is terminating the technical ship management agreements for cause, a termination fee is payable to Technomar and will range from 25% of the annual management fee to two times the annual management fee, depending on the reason for the termination.

As of December 31, 2018, CMA Ships, a wholly-owned subsidiary of CMA CGM, provided day-to-day technical ship management services on 11 of our vessels. As of December 31, 2018, CMA CGM owned approximately 15.6% of voting rights and has two nominees of our Board of Directors. CMA Ship’s services include the provision of crew, lubricating oils and routine maintenance. We pay CMA Ships an annual management fee of \$123,000 per vessel and reimburse costs incurred by CMA Ships on our behalf, mainly being for the provision of crew, lubricating oils and routine maintenance.

The management fees paid by us to Technomar and CMA Ships for the year ended December 31, 2018 amounted to \$723,000 and \$967,000, respectively (for the year ended 2017, CMA Ships was paid a management fee equal to \$1.6 million).

Conchart provides commercial management services to us on 20 of our vessels pursuant to commercial management agreements. Mr. George Giouroukos, our Executive Chairman, is a significant shareholder of Conchart. Under the commercial management agreements, Conchart is responsible for (i) marketing of our vessels, (ii) seeking and negotiating employment of our vessels, (iii) advising us on market developments, and on the development of new rules and regulations with respect to trading and cargo restrictions, (iv) assisting in the calculation of hires, and the collection of any sums related to the operation of vessels, (v) communicating with agents, and (vi), negotiating memoranda of agreement for the sale of the vessels. Except with respect to charters with CMA CGM, we have agreed to pay Conchart a commission of 1.25% on all monies earned under each charter fixture, and we have agreed to pay Conchart a 1.00% commission on any sale and purchase transaction. No commission is payable on any charter to CMA CGM, or extension thereof, in place as of October 29, 2018. For any new charters to CMA CGM or its affiliates, the rate of commission is 0.75%. However, no commission is payable for such charters if CMA CGM or its affiliates waive their own address commission. The commercial management agreements with Conchart are for a minimum term of 36 months. The commercial management agreements may be terminated by either party by giving not less than six months’ prior written notice with termination to be effective no sooner than the expiry of the minimum term. If the commercial management agreements are terminated on at least six months prior written notice, a termination fee equal to six times the average monthly commission paid by us to Conchart (or which accrued) in the prior six month period is payable to Conchart if the commercial management agreements are terminated by the managers and a termination fee equal to twelve times the average monthly commission paid by us to Conchart (or which accrued) in the prior twelve month period is payable to Conchart if the commercial management agreements are terminated by the owners. The Conchart commercial management agreements may also be terminated (i) by one party on the change of control in the other party, (ii) automatically on the insolvency of a party, (iii) by one party upon the breach by the other party of the commercial management

agreement, and (iv) upon the sale or total loss of a vessel; except where the owner is terminating the commercial management agreements for cause, a termination fee is payable to Conchart and will range from three times the average monthly commission paid by us to Conchart (or which accrued) in the prior three month period to twelve times the average monthly commission paid by us to Conchart (or which accrued) in the prior twelve month period, depending on the reason for the termination.

The fees paid by us to Conchart for the year ended December 31, 2018 amounted to \$222,000.

GSLs has entered into a Commercial Advisory Services and Exclusive Brokerage Services Agreement (“EBSA”) with Conchart, whereby Conchart is appointed to provide commercial advisory and exclusive brokerage services to us on 18 of our vessels (none of which are vessels covered by the commercial management agreement with us and Conchart). Under the EBSA, Conchart shall provide GSLs brokerage services which includes the marketing of the vessels for sale, and the negotiation and execution of charters for the vessels. Except with respect to charters with CMA CGM, GSLs has agreed to pay Conchart a commission of 1.25% on all monies earned under each charter fixture, and GSLs has agreed to pay Conchart a 1.00% commission on any sale and purchase transaction. No commission is payable on any charter to CMA CGM, or extension thereof, in place as of October 29, 2018. Also, no commission is payable to Conchart in cases when not more than 30 days have elapsed between the conclusion of a new charter to CMA CGM and the end of a preexisting CMA CGM charter which was in place on October 29, 2018, provided that the relevant vessel has not been chartered to any non-CMA CGM charterer in the period between the two CMA CGM charters. For any other new charters to CMA CGM or its affiliates, the rate of commission is 0.75%; however, no commission is payable for such charters if CMA CGM or its affiliates waive their own address commission. The EBSA with Conchart is for a minimum term of three years. The EBSA may be terminated by either party by giving not less than six months’ prior written notice with termination to be effective no sooner than the expiry of the minimum term. If the EBSA is terminated on at least six months prior written notice, a termination fee equal to six times the average monthly commission paid by GSLs to Conchart (or which accrued) in the prior six month period is payable to Conchart if the EBSA is terminated by the managers and a termination fee equal to twelve times the average monthly commission paid by GSLs to Conchart (or which accrued) in the prior twelve month period is payable to Conchart if the EBSA is terminated by the owners. The EBSA may also be terminated (i) by one party on the change of control in the other party, (ii) automatically on the insolvency of a party, (iii) by one party upon the breach by the other party of the EBSA, and (iv) upon the sale or total loss of a vessel; except where GSLs is terminating the EBSA for cause, a termination fee is payable to Conchart and will range from three times the average monthly commission paid by GSLs to Conchart (or which accrued) in the prior three month period to twelve times the average monthly commission paid by GSLs to Conchart (or which accrued) in the prior twelve month period, depending on the reason for the termination.

For additional information on our related party transactions, please see the notes to our consolidated financial statements included herein.

C. Interests of Experts and Counsel

Not applicable.

Item 8. Financial Information

A. Consolidated Statements and Other Financial Information

Please see Item 18. “Financial Statements” below.

Legal Proceedings

We have not been involved in any legal proceedings that may have, or have had a significant effect on our business, financial position, results of operations or liquidity, and we are not aware of any proceedings that are pending or threatened that may have a material adverse effect on our business, financial position, results of operations or liquidity. From time to time, we may be subject to legal proceedings and claims in the ordinary course of business, principally personal injury and property casualty claims associated with operating containerhips. We expect that these claims would be covered by insurance, subject to customary deductibles. Claims, even if lacking merit, could result in the expenditure of significant financial and managerial resources.

Dividend Policy

Dividends, if any, would be based on available cash flow, rather than net income, after all relevant cash expenditures, including cash interest expense on borrowings that finance operating assets, cash income taxes and after an allowance for the cash cost of future drydockings but not including deductions for non-cash items including depreciation and amortization and changes in the fair values of financial instruments, if any.

In addition to the 9,017,205 Class A common shares outstanding at December 31, 2018, there were 925,745 subordinated Class B common shares held by Marathon’s initial shareholders and CMA CGM. During the subordination period, no dividends could be paid on the Class B common shares unless dividends at the rate of \$0.02875 per share had been paid on all Class A common shares for all quarters. In general, during the subordination period, we could have paid quarterly dividends on our Class A common shares and subordinated Class B common shares from our operating surplus (as defined in the amended and restated articles of incorporation) in the following manner:

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first, 100% to all Class A common shares, pro rata, until each outstanding common share has been paid an amount equal to the applicable dividend for that quarter;

second, 100% to all Class A common shares, pro rata, until they have received any unpaid arrearages in the dividend for prior quarters during the subordination period;

third, 100% to all subordinated Class B common shares, pro rata, until each outstanding Class B common share has been paid an amount equal to the applicable dividend for that quarter;

after that, 100% to all Class A and Class B common shares, pro rata, as if they were a single class.

Notwithstanding the foregoing, the dividend rights of the holders of Class B common shares continued to be subordinated to those of holders of Class A common shares absent a prior change in control of us.

Following the completion of the Poseidon Transaction, all outstanding Class B common shares converted one-for-one to Class A common shares on January 2, 2019.

The declaration and payment of any dividend is subject at all times to the discretion of our board of directors which reviews our dividend policy quarterly, taking into consideration capital structure, growth opportunities, industry fundamentals, asset value trends and financial performance including cash flow, restrictions under our secured term loan and the indenture that governs our 2022 notes, the provisions of Marshall Islands law affecting the payment of distributions to shareholders, required capital and drydocking expenditures, reserves established by our board of directors, increased or unanticipated expenses, additional borrowings or future issuances of securities and other factors, many of which will be beyond our control.

There were 1,400,000 depository shares outstanding at December 31, 2018, each of which represents 1/100th of one share of our Series B Preferred Shares. Dividends on the Series B Preferred Shares are payable at 8.75% per annum in arrears on a quarterly basis, when and if declared by the Board of Directors. Following the issuance of the Series B Preferred Shares of the Company, no dividend may be declared or paid or set apart for payment on our common shares and other junior securities, unless full cumulative dividends have been or contemporaneously are being paid or declared and set aside for payment on all outstanding Series B Preferred Shares, subject to certain exceptions. See Item 10.B. “Additional Information—Memorandum and Articles of Association.” Dividends have been declared as scheduled with respect to our Series B Preferred Shares.

Our ability to pay dividends may be subject to constraints under the indenture governing our 2022 notes and our various credit facilities and limited by the amount of cash we can generate from operations following the payment of fees and expenses and the establishment of any reserves as well as additional factors unrelated to our profitability. We are a holding company, and we will depend on the ability of our subsidiaries to distribute funds to us in order to satisfy our financial obligations and to pay dividend payments. Further, our board of directors may elect to not distribute any dividends or may significantly reduce the dividends. As a result, the amount of dividends actually paid, if any, may vary from the amount previously paid and such variations may be material. See Item 3.D. “Key Information—Risk Factors” for a discussion of the risks associated with our ability to pay dividends.

Marshall Islands law generally prohibits the payment of dividends other than from surplus (retained earnings and the excess of consideration received for the sale of shares above the par value of the shares) or while a company is insolvent or would be rendered insolvent by the payment of such a dividend.

We believe that, under current U.S. federal income tax law, some portion of the distributions you receive from us will constitute dividends and, if you are an individual that is a citizen or resident of the United States and that meets certain holding period and other requirements, such dividends will be treated as “qualified dividend income” subject to tax at preferential rates. See Item. 10.E. “Additional Information—Taxation—Tax Consequences of Holding Class A common shares —Taxation of distributions paid on Class A common shares” for information regarding the eligibility requirements for “qualified dividend income.”

B. Significant Changes

None.

Item 9. The Offer and Listing.

A. Offer and Listing Details

Please see Item 9.C. “Offer and the Listing—Markets.”

B. Plan of Distribution

Not applicable

C. Markets

On August 15, 2008, our Class A common shares began trading on the NYSE under the symbol “GSL”. On August 20, 2014, our depository shares, each of which represents a 1/100th interest in a share of our Series B Preferred Shares, began trading on the NYSE under the symbol “GSL-B”.

D. Selling Shareholders

Not applicable

E. Dilution

Not applicable

F. Expenses of the Issue

Not applicable

Item 10. Additional Information

A. Share Capital

Not applicable.

B. Memorandum and Articles of Association

Our Amended and Restated Articles of Incorporation have previously been filed as Exhibit 3.1 to Amendment No. 1 to our Registration Statement on Form 8-A (File No. 001-34153) filed with the SEC on March 26, 2019 and are hereby incorporated by reference into this Annual Report. Articles of Amendment to the Amended and Restated Articles of Incorporation have previously been filed as Exhibit 3.3 to our Current Report on Form 6-K, filed with the SEC on March 25, 2019 and are hereby incorporated by reference into this Annual Report. Our Second Amended and Restated Bylaws have previously been filed as Exhibit 1 to the current report on Form 6-K filed with the SEC on November 27, 2018 and are hereby incorporated by reference into this Annual Report.

The necessary actions required to change the rights of shareholders and the conditions governing the manner in which annual general meetings and special meetings of shareholders are convoked are described in our Articles of Incorporation and Bylaws and are hereby incorporated by reference into this Annual Report.

The rights, preferences and restrictions attaching to each class of shares of our capital stock are described in the sections “Description of Capital Shares,” “Description of Preferred Shares,” and “Description of Depository Shares” of the Amendment No. 1 to our registration statement on Form F-3 (File No. 333-197518) filed with the SEC on July 28, 2014 and hereby incorporated by reference into this Annual Report. There have been no changes since that date, other than the issuance of the Series B Preferred Shares in August 2014, as described below.

On August 20, 2014, we issued 1,400,000 depository shares, each of which represents 1/100th of one share of our Series B Preferred Shares. In the event of any liquidation, dissolution or winding up of our affairs, holders of the Series B Preferred Shares will have the right to receive the liquidation preference of \$2,500.00 per share of Series B Preferred Shares (equivalent to \$25.00 per depository share or \$35.0 million in the aggregate) plus an amount equal to all accumulated and unpaid dividends thereon to the date of payment, whether or not declared. Dividends are payable at 8.75% per annum in arrears on a quarterly basis, when and if declared by the Board of Directors. Following the issuance of the Series B Preferred Shares of the Company, no dividend may be declared or

paid or set apart for payment on our common stock and each other class or series of capital stock established after the original issue date of the Series B Preferred Shares that is not expressly made senior to or on parity with the Series B Preferred Shares as to the payment of dividends and amounts payable upon liquidation, dissolution or winding up, whether voluntary or involuntary (“Junior Securities”) (other than a dividend payable solely in Junior Securities), unless full cumulative dividends have been or contemporaneously are being paid or declared and set aside for payment on all outstanding Series B Preferred Shares and any securities that rank pari passu with the Series B Preferred Shares through the most recent respective dividend payment dates. Holders of the Series B Preferred Shares generally have no voting rights, except in limited circumstances. At any time after August 20, 2019 (or within 180 days after the occurrence of a fundamental change), the Series B Preferred Shares may be redeemed, at the discretion of the Company, in whole or in part, at a redemption price of \$2,500.00 per share (equivalent to \$25.00 per depositary share). The rights, preferences and restrictions attaching to the Series B Preferred Shares are described in the section “Description of Series B Preferred Shares and Depositary Shares” of our prospectus supplement dated August 13, 2014 filed with the SEC on August 15, 2014 and hereby incorporated by reference into this Annual Report. There have been no changes since that date. The rights, preferences and restrictions attaching to the Series B Preferred Shares are further qualified by (i) the Certificate of Designations of Global Ship Lease, Inc., filed with the Registrar or Deputy Registrar of Corporations of the Republic of the Marshall Islands and effective August 19, 2014, and (ii) the Deposit Agreement, dated as of August 20, 2014, by and among Global Ship Lease, Inc., Computershare Inc. and Computershare Trust Company, N.A., as applicable, as depositary, registrar and transfer agent, and the holders from time to time of the depositary receipts described therein (each of (i) and (ii) being incorporated by reference to Exhibits 3.1 and 4.1, respectively, of Global Ship Lease, Inc.’s Report on Form 6-K (File No. 001-34153) filed on August 20, 2014), each of which is hereby incorporated by reference into this Annual Report. There have been no changes since that date.

On November 15, 2018, we issued 250,000 Series C Preferred Shares of par value \$0.01 per share. The Series C Preferred Shares are convertible to an aggregate of 12,955,187 Class A common shares at the option of the holder on the date when our 9.875% First Priority Secured Notes due 2022 are no longer outstanding. In addition, the Series C Preferred Shares will convert automatically upon transfer to any person who is not an affiliate of the initial holder of such Series C Preferred Shares. Upon the occurrence of any liquidation, dissolution or winding up of our affairs, holders of Series C Perpetual Shares shall be entitled to receive an amount equal to the amount payable in respect of the number of Class A common shares into which such Series C Preferred Shares would be convertible at such time, such amount to be determined as of the record date for determination of holders of Class A common shares entitled to receive such distribution or, if no such record date is established, as of the date of such distribution. Holders of Series C Preferred Shares are entitled to a dividend only should such a dividend be declared on our Class A common shares. If our Board of Directors declares a dividend or other distribution upon the then-outstanding Class A common shares, then the holders of the Series C Preferred Shares shall be entitled to receive the amount of dividends as would be payable in respect of the number of Class A common shares into which such Series C Preferred Shares would be convertible. Each Series C Preferred Share shall entitle the holder thereof to 38.75 votes on all matters submitted to a vote of shareholders. Except as otherwise provided in the Certificate of Designation for Series C Preferred Shares or required by law, the Series C Preferred Shares shall vote together with the Common Shares as one class in the election of directors of the Company and on all other matters submitted to a vote of the shareholders. The Series C Preferred Shares shall be perpetual and shall not be subject to mandatory redemption, sinking fund or other similar provisions. The rights, preferences and restrictions attaching to the Series C Preferred Shares are described in the Certificate of Designation for Series C Perpetual Preferred Shares of Global Ship Lease, Inc. (incorporated by reference to Exhibit A of Global Ship Lease, Inc.’s Report on Form 6-K (File No. 001-34153) filed on October 29, 2018) and hereby incorporated by reference into this Annual Report. There have been no changes since that date.

We are not aware of any limitations on the rights to own securities, including the rights of non-resident or foreign shareholders to hold or exercise voting rights on the securities, imposed by the laws of the Republic of the Marshall Islands or by our Articles of Incorporation or Bylaws.

C. Material Contracts

Attached as exhibits to this Annual Report are the contracts we consider to be both material and outside the ordinary course of business during the two-year period immediately preceding the date of this Annual Report. We refer you to Item 4.B. “Information on the Company—Business Overview,” Item 5.B. “Operating and Financial Review and Prospects—Liquidity and Capital Resources—Liquidity, working capital and dividends—Indebtedness,” to Item 6.B. “Directors, Senior Management and Employees—Compensation,” and Item 7.B. “Major Shareholders and Related Party Transactions—Related Party Transactions” for a discussion of these contracts. Other than as discussed in this Annual Report, we have no material contracts, other than contracts entered into in the ordinary course of business, to which we are a party.

D. Exchange Controls

We are not aware of any governmental laws, decrees or regulations in the Republic of The Marshall Islands that restrict the export or import of capital, including foreign exchange controls, or that affect the remittance of dividends, interest or other payments to non-resident holders of our securities.

E. Taxation

The following represents the opinion of our United States and Marshall Islands tax counsel, Seward & Kissel LLP, and is a summary of the material U.S. federal income tax and Marshall Islands tax consequences of the ownership and disposition of our Class A common shares.

This section is based on current provisions of the Code, current and proposed Treasury regulations promulgated thereunder, and administrative and judicial decisions as of the date hereof, all of which are subject to change or differing interpretation, possibly on a retroactive basis. Changes in these authorities may cause the tax consequences of Class A common share ownership to vary substantially from the consequences described below.

This section does not purport to be a comprehensive description of all of the tax considerations that may be relevant to us or each investor. This section does not address all aspects of U.S. federal income taxation that may be relevant to any particular investor based on such investor's individual circumstances. In particular, this section considers only investors that will own Class A common shares as capital assets and does not address the potential application of the alternative minimum tax or the U.S. federal income tax consequences to investors that are subject to special treatment, including:

- broker-dealers;
- insurance companies;
- taxpayers who have elected mark-to-market accounting;
- tax-exempt organizations;
- regulated investment companies;
- real estate investment trusts;
- financial institutions or "financial services entities";
- taxpayers who hold Class A common shares as part of a straddle, hedge, conversion transaction or other integrated transaction;
- taxpayers required to recognize income for U.S. federal income tax purposes no later than when such income is reported on an "applicable financial statement";
- taxpayers that own 10% or more, directly or constructively, of the Class A common shares;
- certain expatriates or former long-term residents of the United States; and
- U.S. holders (as defined herein) whose functional currency is not the U.S. dollar.

No ruling has been or will be requested from the IRS regarding any matter affecting us or our shareholders. The statements made herein may be challenged by the IRS and, if so challenged, may not be sustained upon review in a court.

The following does not address any aspect of U.S. federal gift or estate tax laws, or state or local tax laws. Additionally, the section does not consider the tax treatment of partnerships or other pass-through entities or persons who hold our Class A common shares through such entities. Shareholders should consult their tax advisors regarding the specific tax consequences to them of the acquisition, holding or disposition of our Class A common shares, in light of their particular circumstances.

Taxation of Global Ship Lease

Taxation of operating income

Unless exempt from U.S. federal income taxation under the rules described below in "The Section 883 exemption," a foreign corporation that earns only transportation income is generally subject to U.S. federal income taxation under one of two alternative tax regimes: (1) the 4% gross basis tax or (2) the net basis tax and branch profits tax.

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The 4% gross basis tax

For foreign corporations not engaged in a U.S. trade or business, the United States imposes a 4% U.S. federal income tax (without allowance of any deductions) on the corporation's U.S. source gross transportation income. For this purpose, transportation income includes income from the use, hiring or leasing of a vessel, or the performance of services directly related to the use of a vessel (and thus includes time charter and bareboat charter income). The U.S. source portion of transportation income includes 50% of the income attributable to voyages that begin or end (but not both) in the United States. Generally, no amount of the income from voyages that begin and end outside the United States is treated as U.S. source, and consequently none of the transportation income attributable to such voyages is subject to this 4% tax. Although the entire amount of transportation income from voyages that begin and end in the United States would be U.S. source, we do not expect to have any transportation income from voyages that begin and end in the United States.

The net basis tax and branch profits tax

We do not expect to engage in any activities in the United States or otherwise have a fixed place of business in the United States. Nonetheless, if this situation were to change or were we to be treated as engaged in a U.S. trade or business, all or a portion of our taxable income, including gains from the sale of vessels, could be treated as effectively connected with the conduct of this U.S. trade or business, or effectively connected income. Any effectively connected income would be subject to U.S. federal corporate income tax, currently imposed at a rate of 21%. In addition, an additional 30% branch profits tax would be imposed on us at such time as our after-tax effectively connected income is viewed as having been repatriated to our offshore office. The 4% gross basis tax described above is inapplicable to income that is treated as effectively connected income.

The Section 883 exemption

Both the 4% gross basis tax and the net basis and branch profits taxes described above are inapplicable to U.S. source transportation income that qualifies for exemption under Section 883 of the Code. To qualify for the Section 883 exemption, a foreign corporation must, among other things:

- be organized in a jurisdiction outside the United States that grants an equivalent exemption from tax to corporations organized in the United States, which we call an Equivalent Exemption;
- satisfy one of the following three ownership tests (discussed in more detail below): (1) the more than 50% ownership test, or 50% Ownership Test, (2) the controlled foreign corporation test, or CFC Test or (3) the "Publicly Traded Test"; and
- meet certain substantiation, reporting and other requirements (that include the filing of U.S. income tax returns).

We are organized under the laws of the Marshall Islands. Each of the vessels in the fleet is owned by a separate wholly owned subsidiary organized either in the Marshall Islands, Cyprus or Hong Kong. The U.S. Treasury Department recognizes the Marshall Islands, Cyprus and Hong Kong as jurisdictions that grant an Equivalent Exemption; therefore, we should meet the first requirement for the Section 883 exemption. Additionally, we intend to comply with the substantiation, reporting and other requirements that are applicable under Section 883 of the Code. As a result, qualification for the Section 883 exemption will turn primarily on our ability to satisfy the second requirement enumerated above.

(1) The 50% Ownership Test

In order to satisfy the 50% Ownership Test, a non-U.S. corporation must be able to substantiate that more than 50% of the value of its stock is owned, directly or indirectly, by "qualified shareholders." For this purpose, qualified shareholders include: (1) individuals who are residents (as defined in the regulations promulgated under Section 883 of the Code, or Section 883 Regulations) of countries, other than the United States, that grant an Equivalent Exemption, (2) non-U.S. corporations that meet the Publicly Traded Test of the Section 883 Regulations and are organized in countries that grant an Equivalent Exemption, or (3) certain foreign governments, non-profit organizations, and certain beneficiaries of foreign pension funds. A corporation claiming the Section 883 exemption based on the 50% Ownership Test must obtain all the facts necessary to satisfy the IRS that the 50% Ownership Test has been satisfied (as detailed in the Section 883 Regulations). We believe that we satisfied the 50% Ownership Test, up to and including 2008, due to being a wholly owned subsidiary of CMA CGM until the Marathon Merger on August 14, 2008, but believe that we currently may not be able to satisfy the 50% Ownership Test due to our lack of knowledge of the direct and indirect owners of entities which own our Class A common shares.

(2) The CFC Test

The CFC Test requires that the non-U.S. corporation be treated as a controlled foreign corporation, or CFC, for U.S. federal income tax purposes. We believe that we are not a CFC but cannot predict whether we will become a CFC, and satisfaction of the CFC definitional test is outside of our control.

(3) The Publicly Traded Test

The Publicly Traded Test requires that one or more classes of equity representing more than 50% of the voting power and value in a non-U.S. corporation be “primarily and regularly traded” on an established securities market either in the United States or in a foreign country that grants an Equivalent Exemption.

The Section 883 Regulations provide, in pertinent part, that stock of a non-U.S. corporation will be considered to be “primarily traded” on an established securities market in a given country if the number of shares of each class of stock that are traded during any taxable year on all established securities markets in that country exceeds the number of shares in each such class that are traded during that year on established securities markets in any other single country. Our Class A common shares are listed on the NYSE and are not listed on any other securities exchange. Therefore, our Class A common shares should be treated as primarily traded on an established securities market in the United States. Moreover, the Class A common shares represent more than 50% of both the voting power and value of all classes of our shares.

The Section 883 Regulations also generally provide that stock will be considered to be “regularly traded” on an established securities market if one or more classes of stock in the corporation representing in the aggregate more than 50% of the total combined voting power and value of all classes of stock of the corporation are listed on an established securities market during the taxable year. However, even if a class of shares is so listed, it is not treated as regularly traded under the Section 883 Regulations unless (1) trades are made in the shares on the established securities market, other than in minimal quantities, on at least 60 days during the taxable year (or 1/6 of the days in a short taxable year); and (2) the aggregate number of shares traded on the established securities market during the taxable year is at least 10% of the average number of outstanding shares of that class during that year (as appropriately adjusted in the case of a short taxable year). Even if these trading frequency and trading volume tests are not satisfied with respect to the Class A common shares, however, the Section 883 Regulations provide that such tests will be deemed satisfied if the Class A common shares are regularly quoted by dealers making a market in such Class A common shares. While we anticipate that these trading frequency and trading volume tests will be satisfied each year, satisfaction of these requirements is outside of our control and, hence, no assurances can be provided that we will satisfy the Publicly Traded Test each year.

In addition, even if the “primarily and regularly traded” tests described above are satisfied, a class of stock will not be treated as primarily and regularly traded on an established securities market if, during more than half the number of days during the taxable year, one or more shareholders holding, directly or indirectly, at least 5% of the vote and value of that class of stock, or 5% Shareholders, own, in the aggregate, 50% or more of the vote and value of that class of stock. This is referred to as the 5% Override Rule. In performing the analysis, we are entitled to rely on current Schedule 13D and 13G filings with the SEC to identify our 5% Shareholders, without having to make any independent investigation to determine the identity of the 5% Shareholder. In the event the 5% Override Rule is triggered, the Section 883 Regulations provide that the 5% Override Rule will nevertheless not apply if the company can establish that among the closely-held group of 5% Shareholders, sufficient shares are owned by 5% Shareholders that are considered to be “qualified shareholders,” as defined above, to preclude non-qualified 5% Shareholders in the closely-held group from owning 50% or more of the total value of the relevant class of stock held by 5% Shareholders for more than half the number of days during the taxable year.

Based on information that we have as to our shareholders and other matters, we believed that we qualified for the Section 883 exemption for 2009 through 2018 under the Publicly Traded Test. However, it is likely that our ownership may change such that nonqualified shareholders may own, in the aggregate, 50% or more of the total value of our Class A common stock, causing the 5% Override Rule to apply. If the 5% Override Rule applies, we would fail the Publicly Traded Test, and may fail to qualify for the Section 883 exemption.

Such an ownership change, and certain other requirements for our stock to be treated as primarily and regularly traded on an established securities market, are outside of our control and, as a result, no assurances can be provided that our stock will be so treated for any year. Moreover, since the availability of the Section 883 exemption depends on other matters over which we have no control, we can give no assurances that we will, or will continue to, qualify for the Section 883 exemption.

If we were not to qualify for the Section 883 exemption in any year, the U.S. income taxes that become payable could have a negative effect on our business, and could result in decreased earnings available for distribution to our shareholders. However, under the charter agreements, CMA CGM has agreed to provide reimbursement for any such taxes.

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United States taxation of gain on sale of vessels

If we qualify for the Section 883 exemption, then gain from the sale of any vessel may be exempt from tax under Section 883. Even if such gain is not exempt from tax under Section 883, we will not be subject to U.S. federal income taxation with respect to such gain, assuming that we are not, and have never been, engaged in a U.S. trade or business. Under certain circumstances, if we are so engaged, gain on sale of vessels could be subject to U.S. federal income tax.

Possibility of taxation as a U.S. corporation

Section 7874 of the Code provides that a foreign corporation that acquires substantially all the properties of a U.S. corporation is generally treated as though it were a U.S. corporation for U.S. federal income tax purposes if, after the acquisition, (1) at least 80% (by vote or value) of the stock of the foreign corporation is owned by former shareholders of the U.S. corporation by reason of owning stock in the U.S. corporation, and (2) the foreign corporation's expanded affiliate group does not have substantial business activities in the foreign corporation's jurisdiction of organization. Although we believe that this rule should not apply to us in the context of the Marathon Merger, there is no definitive legal authority applying the principles of Section 7874 of the Code and, therefore, there can be no assurance that the IRS would not seek to challenge such a position, or that such a challenge would not be successful.

If we were to be treated as a U.S. corporation, our net income would be subject to U.S. federal corporate income tax, currently imposed at a rate of 21%. The imposition of this tax would likely have a negative effect on our business, financial condition and results of operations.

Tax Consequences of Holding Class A common shares

U.S. holders

For purposes of this discussion, a U.S. holder is a beneficial owner of our Class A common shares that owns (actually or constructively) less than 10% of our equity and that is:

- an individual who is a citizen or resident of the United States (as determined for U.S. federal income tax purposes);
- a corporation (or other entity taxed as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia;
- an estate whose income is includible in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust if (i) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or (ii) it has in effect a valid election to be treated as a U.S. person.

Taxation of distributions paid on Class A common shares

When we make a distribution with respect to our Class A common shares, subject to the discussions of the passive foreign investment company, or PFIC rules below, a U.S. holder will be required to include in gross income as foreign source dividend income the amount of the distribution to the extent paid out of our current or accumulated earnings and profits as determined for U.S. federal income tax purposes. Distributions in excess of such earnings and profits will be applied against and will reduce the U.S. holder's tax basis in the Class A common shares and, to the extent in excess of such basis, will be treated as gain from the sale or exchange of the Class A common shares.

Subject to the discussions of the PFIC rules below, in the case of a U.S. holder that is a corporation, dividends that we pay will generally be taxable at the regular corporate rate of 21% and generally will not qualify for a dividends-received deduction available for dividends received from U.S. corporations. In the case of certain non-corporate U.S. holders, dividends that we pay generally will be treated as "qualified dividend income" subject to tax at preferential rates, provided that the Class A common shares are listed on an established securities market in the United States (such as the NYSE), the U.S. holder meets certain holding period and other requirements and we are not a PFIC in the taxable year in which the dividends are paid or in the immediately preceding taxable year. Special rules may apply to any "extraordinary dividend" paid by us. An extraordinary dividend is, generally, a dividend with respect to a share if the amount of the dividend is equal to or in excess of 10 percent of a shareholder's adjusted basis (or fair market value in certain circumstances) in such share. In addition, extraordinary dividends include dividends received within a one-year period that, in the aggregate, equal or exceed 20% of a U.S. holder's tax basis (or fair market value). If we pay an "extraordinary dividend" on our Class A common shares that is treated as "qualified dividend income," then any loss derived by certain non-corporate U.S. holders from the sale or exchange of such shares will be treated as long-term capital loss to the extent of the amount of such dividend.

Taxation of the disposition of Class A common shares

Subject to the discussions of the PFIC rules below, upon the sale, exchange or other disposition of Class A common shares, a U.S. holder will recognize capital gain or loss in an amount equal to the difference between the amount realized on the disposition and such U.S. holder's tax basis in our Class A common shares. The U.S. holder's initial tax basis in its Class A common shares generally will be the U.S. holder's purchase price for the Class A common shares and that tax basis will be reduced (but not below zero) by the amount of any distributions on the units that are treated as non-taxable returns of capital, as discussed above under 'Taxation of distributions paid on Class A common shares.'

Subject to the discussions of the PFIC rules below, capital gain from the sale, exchange or other disposition of Class A common shares held more than one year is long-term capital gain, and is eligible for a reduced rate of taxation for individuals. Gain recognized by a U.S. holder on a sale, exchange or other disposition of Class A common shares generally will be treated as U.S. source income. A loss recognized by a U.S. holder on the sale, exchange or other disposition of Class A common shares generally will be allocated to U.S. source income. The deductibility of a capital loss recognized on the sale, exchange or other disposition of Class A common shares may be subject to limitations, and U.S. holders may want to consult their own tax advisors regarding their ability to deduct any such capital loss in light of their particular circumstances.

3.8% tax on net investment income

A U.S. holder that is an individual, estate, or, in certain cases, a trust, will generally be subject to a 3.8% tax on the lesser of (1) the U.S. holder's net investment income (or undistributed net investment income in the case of an estate or trust) for the taxable year and (2) the excess of the U.S. holder's modified adjusted gross income for the taxable year over a certain threshold (which in the case of individuals is between \$125,000 and \$250,000). A U.S. holder's net investment income will generally include distributions made by us that constitute dividends and gain upon a sale, exchange or other disposition of our Class A common shares. This tax is in addition to any income taxes due on such investment income.

If you are a U.S. holder that is an individual, estate or trust, you are encouraged to consult your tax advisors regarding the applicability of the 3.8% tax on net investment income to the ownership of our Class A common shares.

Consequences of possible passive foreign investment company classification

A non-U.S. entity treated as a corporation for U.S. federal income tax purposes will be a PFIC in any taxable year in which, after taking into account the income and assets of the corporation and certain subsidiaries pursuant to a "look through" rule, either: (1) 75% or more of its gross income is "passive" income or (2) 50% or more of the average value of its assets is attributable to assets that produce passive income or are held for the production of passive income. For purposes of these tests, "passive income" includes dividends, interest and gains from the sale or exchange of investment property and rents and royalties other than rents and royalties which are received from unrelated parties in connection with the active conduct of a trade or business; income derived from the performance of services does not, however, constitute "passive income." The determination of whether a corporation is a PFIC is made annually. If a corporation is a PFIC in any taxable year that a person holds stock in the corporation (and was not a qualified electing fund with respect to such year, as discussed below), the stock held by such person will be treated as stock in a PFIC for all future years (absent an election which, if made, may require the electing person to pay taxes in the year of the election).

Based on the projected composition of our income and valuation of our assets, we do not expect that we will constitute a PFIC with respect to the current or any future taxable year, although there can be no assurance in this regard. Our expectation is based principally on the position that, for purposes of determining whether we are a PFIC, the majority, if not all, of the gross income we derive from our chartering activities should constitute services income rather than rental income.

In this regard, we have been advised by our tax advisor that the income from our chartering activities is, more likely than not, services income. There is, however, no direct legal authority under the PFIC rules addressing our current and projected future operations or supporting our position. Accordingly, no assurance can be given that the IRS will not assert that we are a PFIC with respect to any taxable year, nor that a court would not uphold any such assertion and we have not obtained advice from our tax advisor on whether we are a PFIC.

Further, in a case not concerning PFICs, *Tidewater Inc. v. U.S.*, 2009-1 USTC ¶ 50,337, the Fifth Circuit held that a vessel time charter at issue generated rental, rather than services, income. However, the court's ruling was contrary to the position of the IRS that the time charter income should be treated as services income. Subsequently, the IRS has stated that it disagrees with and will not acquiesce to the rental versus services distinction in the *Tidewater* decision, and in its discussion stated that the time charters at issue in *Tidewater* would be treated as producing services income for PFIC purposes. The IRS's statement with respect to *Tidewater* cannot be relied upon or otherwise cited as precedent by taxpayers. Further, the facts in *Tidewater* are not directly analogous to our facts. Consequently, no assurance can be given that the IRS or a court of law would accept our position, and there is a risk that the IRS or a court of law could determine that the company is a PFIC.

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If we were to be classified as a PFIC in any year, each U.S. holder of our Class A common shares that does not make a timely qualified electing fund or mark-to-market election (as discussed below) will be subject (in that year and all subsequent years) to special rules with respect to: (1) any “excess distribution” (generally defined as any distribution received by a U.S. holder in a taxable year that is greater than 125% of the average annual distributions received by the U.S. holder in the three preceding taxable years or, if shorter, the U.S. holder’s holding period for the Class A common shares), and (2) any gain realized upon the sale or other disposition of the Class A common shares. Under these rules:

- the excess distribution or gain will be allocated ratably over the U.S. holder’s holding period for our Class A common shares;
- the amount allocated to the current taxable year and any year prior to the first year in which we were a PFIC will be taxed as ordinary income in the current year; and
- the amount allocated to each of the other taxable years in the U.S. holder’s holding period for our Class A common shares will be subject to U.S. federal income tax at the highest rate in effect for the applicable class of taxpayer for that year, and an interest charge will be added as though the amount of the taxes computed with respect to these other taxable years were overdue.

In addition, each U.S. holder of our Class A common shares will generally be required to file an IRS Form 8621 if such U.S. holder holds its shares in any year in which we were classified as a PFIC.

In order to avoid the application of the PFIC rules discussed above with respect to excess distributions and realized gains, U.S. holders of our Class A common shares may make a qualified electing fund, or a QEF, election provided in Section 1295 of the Code. In lieu of the PFIC rules discussed above, a U.S. holder that makes a valid QEF election will, in very general terms, be required to include its pro rata share of our ordinary income and net capital gains, unreduced by any prior year losses, in income for each taxable year (as ordinary income and long-term capital gain, respectively) and to pay tax thereon, even if the amount of that income is not the same as the distributions paid on the Class A common shares during the year. If we later distribute the income or gain on which the U.S. holder has already paid taxes under the QEF rules, the amounts so distributed will not again be subject to tax in the hands of the U.S. holder. A U.S. holder’s tax basis in any Class A common shares as to which a QEF election has been validly made will be increased by the amount included in such U.S. holder’s income as a result of the QEF election and decreased by the amount of nontaxable distributions received by the U.S. holder. On the disposition of a common share, a U.S. holder making the QEF election generally will recognize capital gain or loss equal to the difference, if any, between the amount realized upon such disposition and its adjusted tax basis in the common share. In general, a QEF election should be made on or before the due date for filing a U.S. holder’s federal income tax return for the first taxable year for which we are a PFIC or, if later, the first taxable year for which the U.S. holder held common stock. In this regard, a QEF election is effective only if certain required information is made available by the PFIC. Subsequent to the date that we first determine that we are a PFIC, we will use commercially reasonable efforts to provide any U.S. holder of Class A common shares, upon request, with the information necessary for such U.S. holder to make the QEF election. If we do not believe that we are a PFIC for a particular year but it is ultimately determined that we were a PFIC, it may not be possible for a holder to make a QEF election for such year.

In addition to the QEF election, Section 1296 of the Code permits U.S. persons to make a “mark-to-market” election with respect to marketable stock in a PFIC. If a U.S. holder of our Class A common shares makes a mark-to-market election, such U.S. holder generally would, in each taxable year that we are a PFIC: (1) include as ordinary income the excess, if any, of the fair market value of the Class A common shares at the end of the taxable year over such U.S. holder’s adjusted tax basis in the Class A common shares, and (2) be permitted an ordinary loss in respect of the excess, if any, of such U.S. holder’s adjusted tax basis in the Class A common shares over their fair market value at the end of the taxable year, but only to the extent of the net amount previously included in income as a result of the mark-to-market election (with the U.S. holder’s basis in the Class A common shares being increased and decreased, respectively, by the amount of such ordinary income or ordinary loss). If a U.S. holder makes an effective mark-to-market election, any gain such U.S. holder recognizes upon the sale or other disposition of our Class A common shares in a year that we are a PFIC will be treated as ordinary income and any loss will be treated as ordinary loss, but only to the extent of the net amount previously included in income as a result of the mark-to-market election. The consequences of this election are generally less favorable than those of a QEF election for U.S. holders that are sensitive to the distinction between ordinary income and capital gain, although this is not necessarily the case. U.S. holders should consult their tax advisors as to the consequences to them of making a mark-to-market or QEF election, as well as other U.S. federal income tax consequences of holding stock in a PFIC in light of their particular circumstances.

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As previously indicated, if we were to be classified as a PFIC for a taxable year in which we pay a dividend or the immediately preceding taxable year, dividends paid by us would not constitute “qualified dividend income” and, hence, would not be eligible for the preferential rates of U.S. federal income tax that apply to certain non-corporate U.S. holders.

If we are classified as a PFIC for any taxable year during which a U.S. holder holds our Class A common shares and any of our non-U.S. subsidiaries is also classified as a PFIC, such U.S. holder will be treated as owning a proportionate amount (by value) of the shares of the lower-tier PFIC for purposes of the application of the PFIC rules. U.S. holders are urged to consult their tax advisors about the application of the PFIC rules to any of our subsidiaries.

Non-U.S. holders

For purposes of this discussion, a non-U.S. holder is a beneficial owner of our Class A common shares that is neither a U.S. holder nor a partnership (or any other entity taxed as a partnership for U.S. federal income tax purposes).

A non-U.S. holder will generally not be subject to U.S. federal income tax on dividends paid in respect of the Class A common shares or on gains recognized in connection with the sale or other disposition of the Class A common shares, provided, in each case, that such dividends or gains are not effectively connected with the non-U.S. holder’s conduct of a U.S. trade or business. . However, even if not engaged in a U.S. trader or business, individual non-U.S. holders may be subject to tax on gain resulting from the disposition of our Class A common shares if they are present in the U.S. for 183 days or more during the taxable year in which those Class A common shares are disposed and meet certain other requirements.

Dividends or gains that are effectively connected with a non-U.S. holder’s conduct of a U.S. trade or business (and, if required by an applicable income tax treaty, are attributable to a U.S. permanent establishment) are subject to U.S. federal income tax on a net income basis in the same manner as if the non-U.S. holder were a U.S. holder, and may be subject to an additional “branch profits tax” at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

If we are treated as a U.S. corporation pursuant to Section 7874 of the Code, non-U.S. holders generally will be subject to withholding tax at a rate of 30% on all dividends paid by us, unless a reduced rate of tax is available under a tax treaty or the dividends are exempt from withholding because they are effectively connected with a non-U.S. holder’s conduct of a U.S. trade or business (and, in each case, the relevant certification requirements are satisfied).

Information Reporting and Back-up Withholding

U.S. holders generally are subject to information reporting requirements with respect to dividends paid on Class A common shares, and on the proceeds from the sale, exchange or disposition of Class A common shares. In addition, a holder may be subject to back-up withholding (currently at 24%) on dividends paid on Class A common shares, and on the proceeds from the sale, exchange or other disposition of Class A common shares, unless the holder provides certain identifying information, such as a duly executed IRS Form W-9, W-8BEN or W-8BEN-E, or otherwise establishes an exemption. Back-up withholding is not an additional tax and the amount of any back-up withholding will be allowable as a credit against a holder’s U.S. federal income tax liability and may entitle such holder to a refund, provided that certain required information is timely furnished to the IRS.

Tax Consequences of Holding 8.75% Series B Cumulative Redeemable Perpetual Preferred Shares

Our Series B preferred shares are treated as equity rather than debt for U.S. federal income tax purposes. Similar considerations apply as those described above in “—Tax Consequences of Holding Class A common shares.” Prospective investors should consult their tax advisors regarding the specific tax consequences to them of the acquisition, holding or disposition of our Series B preferred shares, in light of their particular circumstances.

Marshall Islands Taxation

In the opinion of our Marshall Islands tax counsel, Seward & Kissel LLP, because we do not (and do not expect in the future that we will) conduct business or operations in the Republic of The Marshall Islands, we are not subject to income, capital gains, profits or other taxation under current Marshall Islands law. Distributions on our Class A common shares or on our Series B Preferred Shares will not be subject to Marshall Islands withholding tax.

Other Taxation

We are subject to taxation in certain non-U.S. jurisdictions because we are either organized, or conduct business or operations, in such jurisdictions. We intend that our business and the business of our subsidiaries will be conducted and operated in a manner that minimizes taxes imposed upon us and our subsidiaries. However, we cannot assure this result as tax laws in these or other jurisdictions may change or we may enter into new business transactions relating to such jurisdictions, which could affect our tax liability.

F. Dividends and Paying Agents

Not applicable.

G. Statements by Experts

Not applicable.

H. Documents on Display

Documents concerning us that are referred to herein may be inspected at the offices of our subsidiary, Global Ship Lease Services Limited, Portland House, Stag Place, London SW1E 5RS, United Kingdom. Those documents electronically filed via the Electronic Data Gathering, Analysis, and Retrieval (or EDGAR) system may also be obtained from the SEC's website at www.sec.gov or from the SEC public reference room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Further information on the operation of the public reference rooms may be obtained by calling the SEC at 1-800-SEC-0330. Copies of documents can be requested from the SEC public reference rooms for a copying fee.

I. Subsidiaries

Not applicable.

Item 11. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

We are exposed to the impact of interest rate changes primarily through our floating-rate borrowings under our secured term loan. Significant increases in interest rates could adversely affect our results of operations and our ability to service our own debt. Details of the expected maturity of our borrowings are presented in Item 5.F. "Operating and Financial Review and Prospects—Contractual Obligations."

Sensitivity Analysis

Our analysis of the potential effects of variations in market interest rates is based on a sensitivity analysis, which models the effects of potential market interest rate changes on our financial condition and results of operations. The following sensitivity analysis may have limited use as a benchmark and should not be viewed as a forecast as it does not include a variety of other potential factors that could affect our business as a result of changes in interest rates.

Based on the outstanding balance at December 31, 2018 of our floating rate credit facilities of \$510.7 million and ignoring amortization thereon and cash on hand, a hypothetical 1% increase in LIBOR would have the impact of reducing our annual net income, before income taxes, by approximately \$5.1 million.

Foreign Currency Exchange Risk

The shipping industry's functional currency is the U.S. dollar. All of our revenues and the majority of our operating costs are in U.S. dollars. In the future, we do not expect to be exposed to any significant extent to the impact of changes in foreign currency exchange rates. Consequently, we do not presently intend to enter into derivative instruments to hedge the foreign currency translation of assets or liabilities or foreign currency transactions or to use financial instruments for trading or other speculative purposes.

Inflation

With the exception of rising costs associated with the employment of international crews for our vessels and the impact of global oil prices on the cost of lubricating oil, we do not believe that inflation has had, or is likely in the foreseeable future to have, a significant impact on vessel operating expenses, drydocking expenses and general and administrative expenses. For the duration of the global expense agreement, under certain predefined circumstances, we will be able to recover a portion of our vessel operating costs above a pre-determined threshold.

Item 12. Description of Securities Other than Equity Securities

A. Debt Securities

Not applicable.

B. Warrants and Rights

Not applicable.

C. Other Securities

Not applicable.

D. American Depositary Shares

None.

PART II

Item 13. Defaults, Dividend Arrearages and Delinquencies

None.

Item 14. Material Modifications to the Rights of Security Holders and Use of Proceeds

None.

Item 15. Controls and Procedures

Disclosure Controls and Procedures

As required by Rules 13a-15 and 15d-15 under the Exchange Act, management has evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. Disclosure controls and procedures refer to controls and other procedures designed to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in our reports that we file or submit under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding our required disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management was required to apply its judgment in evaluating and implementing possible controls and procedures.

Based on the foregoing, our Chief Executive Officer and Chief Financial Officer have concluded that, as of December 31, 2018, the end of the period covered by this report, our disclosure controls and procedures were effective at the reasonable assurance level.

Management's Annual Report on Internal Control Over Financial Reporting

Management acknowledges its responsibility for establishing and maintaining adequate internal controls over financial reporting. Internal control over financial reporting refers to a process designed by, or under the supervision of, our Chief Executive Officer and Chief Financial Officer and effected by our board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- relate to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and members of our board of directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on our financial statements.

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Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper override. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process, and it is possible to design into the process safeguards to reduce, though not eliminate, this risk. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management evaluated the effectiveness of our internal control over financial reporting as of December 31, 2018 using the framework established in Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on the foregoing, management has concluded that internal control over financial reporting was effective as of December 31, 2018.

Changes in Internal Control over Financial Reporting

In accordance with Rule 13a-15(d), management has evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, whether any changes in our internal control over financial reporting that occurred during our last fiscal year have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

During the year ended December 31, 2018, there were no changes with regard to internal control over financial reporting that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

Attestation Report of the Registered Public Accounting Firm

Not applicable

Item 16A. Audit Committee Financial Expert

The Board has determined that our director and chairman of the audit committee, Mr. van Lacum, qualifies as an audit committee financial expert and is independent under applicable NYSE and SEC standards.

Item 16B. Code of Ethics

We have adopted a Code of Business Conduct and Ethics that applies to our directors, officers and employees. This document is available in the Corporate Governance section of our website (www.globalshiplease.com). The information included on our website is not incorporate herein by reference. We also intend to disclose on our website any waivers to or amendments of our Code of Business Conduct and Ethics for the benefit of our executive officers that we may be required to disclose under applicable rules.

Item 16C. Principal Accountant Fees and Services

Our principal accountants for 2018 and 2017 were PricewaterhouseCoopers S.A. and PricewaterhouseCoopers Audit, France, respectively, independent registered public accounting firms.

Fees Incurred by Global Ship Lease for PricewaterhouseCoopers Audit's Services

The fees for services rendered by the auditors in 2018 and 2017 were as follows:

	2018	2017
Audit Fees	\$ 661,800	\$328,700
Audit-Related Fees	403,300	100,000
Tax Fees	43,800	47,500
All Other Fees	—	—
	<u>\$ 1,108,900</u>	<u>\$476,200</u>

Audit Fees

Audit fees represent professional services rendered for the audit of our consolidated annual financial statements, the quarterly reviews and services provided by our principal accountant in connection with statutory and regulatory filings or engagements.

Audit-Related Fees

Audit-related fees consist of assurance and related services rendered by the principal accountant related to the performance of the audit or review of our consolidated financial statements or other filings which have not been reported under Audit Fees above.

Tax Fees

Tax fees for 2018 and 2017 are primarily for tax compliance and consultation services.

The audit committee has the authority to pre-approve audit-related and non-audit services not prohibited by law to be performed by our independent auditors and associated fees. Engagements for proposed services either may be separately pre-approved by the audit committee or entered into pursuant to detailed pre-approval policies and procedures established by the audit committee, as long as the audit committee is informed on a timely basis of any engagement entered into on that basis. The audit committee has pre-approved services, subject to a detailed pre-approval policy and procedure established by them and also subject to a limit for all non-audit fees of \$100,000 per year.

Item 16D. Exemptions from the Listing Standards for Audit Committees

None.

Item 16E. Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

Item 16F. Change in Registrant's Certifying Accountant

On November 16, 2018, the Audit Committee of the Board of Directors of Global Ship Lease, Inc. replaced PricewaterhouseCoopers Audit ("PwC Audit") with PricewaterhouseCoopers S.A. ("PwC S.A.") as our new independent registered public accounting firm.

The reports of PwC Audit on Global Ship Lease's consolidated financial statements for the fiscal years ended December 31, 2017 and 2016 did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principle.

During the fiscal years ended December 31, 2016 and 2017, and the subsequent interim period from January 1, 2018 through November 15, 2018, (i) Global Ship Lease had no disagreements with PwC Audit on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of PwC Audit, would have caused PwC Audit to make reference to the subject matter of the disagreements in connection with its reports on the combined and consolidated financial statements for such years, and (ii) there were no "reportable events" as defined in Item 16F(a)(1)(v) of Form 20-F.

Global Ship Lease provided PwC Audit with a copy of this Form 20-F prior to its filing with the Securities and Exchange Commission and requested that PwC Audit furnish it with a letter addressed to the Securities and Exchange Commission stating whether it agrees with the above statements. A copy of PwC Audit's letter is attached as Exhibit 16.1 to this Form 20-F.

In connection with the audits of the Company's financial statements for each of the fiscal years ended December 31, 2016 and 2017 and from January 1, 2018 through November 15, 2018 neither Global Ship Lease nor anyone on its behalf has consulted with PwC S.A. on the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on Global Ship Lease's financial statements, or any matter that was the subject of a disagreement, as that term is defined in Item 16F(a)(1)(iv) of Form 20-F and the related instructions to Item 16F of Form 20-F, or a reportable event, as that term is defined in Item 16F(a)(1)(v) of Form 20-F.

Item 16G. Corporate Governance

As a foreign private issuer, we are exempt from certain corporate governance rules that apply to domestic companies under NYSE listing standards. Even though we are not required to do so, we follow certain corporate governance practices applicable to domestic companies under NYSE listing standards, such as:

- we have a compensation committee that consists of four directors, all of whom satisfy NYSE standards for independence;
- we have a nominating and corporate governance committee that consists of three directors, all of whom satisfy NYSE standards for independence; and
- we hold annual meetings of shareholders under the Business Corporations Act of the Republic of the Marshall Islands, similar to NYSE requirements.

The significant differences between our corporate governance practices and the NYSE standards are set forth below.

Shareholder Approval of Equity Compensation Plans

The NYSE requires listed companies to obtain prior shareholder approval to adopt or materially revise any equity compensation plan. As permitted under Marshall Islands law and our amended and restated bylaws, we do not need prior shareholder approval to adopt or revise equity compensation plans, including our equity incentive plan.

Share Issuances

In lieu of obtaining shareholder approval prior to the issuance of designated securities, we will comply with provisions of the Marshall Islands Business Corporations Act, which allows the Board of Directors to approve share issuances. Additionally, the NYSE restricts the issuance of super voting stock such as our Series C Preferred Shares. However, pursuant to 313.00 of Section 3 of the NYSE Listed Company Manual, the NYSE will accept any action or issuance relating to the voting rights structure of a non-U.S. company that is in compliance with the NYSE's requirements for domestic companies or that is not prohibited by the company's home country law. We are not subject to such restrictions under our home country, Marshall Islands, law.

Item 16H. Mine Safety Disclosure

Not applicable.

PART III

Item 17. Financial Statements

Not applicable.

Item 18. Financial Statements

The following financial statements, together with the reports of PricewaterhouseCoopers S.A. and PricewaterhouseCoopers Audit thereon, beginning on page F-1, are filed as part of this Annual Report:

	<u>Page</u>
GLOBAL SHIP LEASE, INC.	
Report of Independent Registered Public Accounting Firm – PricewaterhouseCoopers S.A.	F-2
Report of Independent Registered Public Accounting Firm – PricewaterhouseCoopers Audit	F-3
Consolidated Balance Sheets as at December 31, 2018 and 2017	F-5
Consolidated Statements of Income for the years ended December 31, 2018, 2017 and 2016	F-6
Consolidated Statements of Cash Flows for the years ended December 31, 2018, 2017 and 2016	F-7
Consolidated Statements of Shareholders' Equity for the years ended December 31, 2018, 2017 and 2016	F-8
Notes to the Consolidated Financial Statements	F-9

Item 19. Exhibits

The agreements and other documents filed as exhibits to this Annual Report are not intended to provide factual information or other disclosure other than with respect to the terms of the agreements or other documents themselves, and you should not rely on them for that purpose. In particular, any representations and warranties made by the registrant in these agreements or other documents were made solely within the specific context of the relevant agreement or document and may not describe the actual state of affairs as of the date they were made or at any other time.

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The following exhibits are filed as part of this Annual Report:

<u>Exhibit Number</u>	<u>Description</u>
1.1	<u>Amended and Restated Articles of Incorporation of GSL Holdings, Inc. (incorporated by reference to Exhibit 3.1 to Global Ship Lease, Inc.'s Registration Statement on Form 8-A (File No. 001-34153) filed with the SEC on March 26, 2019).</u>
1.2	<u>Articles of Amendment to the Amended and Restated Articles of Incorporation of Global Ship Lease, Inc. (incorporated by reference to Exhibit 3.3 to Global Ship Lease, Inc.'s Current Report on Form 6-K, filed with the SEC on March 25, 2019).</u>
1.3	<u>Second Amended and Restated Bylaws of GSL Holdings, Inc. (incorporated by reference to Exhibit 1 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on November 27, 2018).</u>
1.4	<u>Certificate of Designation of the 8.75% Series B Cumulative Redeemable Perpetual Preferred Shares of Global Ship Lease, Inc., filed with the Registrar or Deputy Registrar of Corporations of the Republic of the Marshall Islands and effective August 19, 2014 (incorporated by reference to Exhibit 3.1 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on August 20, 2014).</u>
1.5*	<u>Certificate of Designation of the Series C Perpetual Preferred Shares of Global Ship Lease, Inc. filed with the Registrar or Deputy Registrar of Corporations of the Republic of the Marshall Islands and effective November 12, 2018.</u>
2.1	<u>Form of Common Share Certificate of the Company (incorporated by reference to Exhibit 4.1 of Global Ship Lease, Inc.'s Form 6-K (File No. 001-34153) filed on March 25, 2019).</u>
2.2	<u>Deposit Agreement, dated as of August 20, 2014, by and among Global Ship Lease, Inc., Computershare Inc. and Computershare Trust Company, N.A., as applicable, as depository, registrar and transfer agent, and the holders from time to time of the depository receipts described therein (incorporated by reference to Exhibit 4.1 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on August 20, 2014).</u>
4.1	<u>Form of Registration Rights Agreement between GSL Holdings, Inc., Marathon Founders, LLC, Marathon Investors, LLC, the insiders listed on the signature page thereto and CMA CGM S.A. (incorporated by reference to Exhibit A-1 to Exhibit 2.1 of Marathon Acquisition Corp.'s Current Report on Form 8-K (File No. 001-32983) filed on July 24, 2008).</u>
4.2	<u>First Amendment to Registration Rights Agreement, dated as of February 11, 2013, among Global Ship Lease, Inc. (formerly GSL Holdings, Inc.) and CMA CGM S.A. (incorporated by reference to Exhibit I of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on February 28, 2013).</u>
4.3	<u>Indenture, dated as of October 31, 2017, among Global Ship Lease, Inc., the guarantors party thereto and Citibank, N.A., London Branch, as trustee, security agent, paying agent, registrar and transfer agent (incorporated by reference to Exhibit 99.1 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on November 3, 2017).</u>
4.4	<u>First Supplemental Indenture, dated December 20, 2018, by and among Global Ship Lease, Inc., the guarantors party thereto and Citibank, N.A., London Branch (incorporated by reference to Exhibit 99.1 to Global Ship Lease, Inc.'s Report on Form 6-K (File No. 001-34153) filed on December 20, 2018).</u>
4.5	<u>Form of Notes (incorporated by reference to Exhibit 99.1 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on November 3, 2017).</u>
4.6	<u>Facility Agreement, dated October 25, 2017, among Global Ship Lease, Inc., as borrower, the guarantors party thereto, Citibank, N.A., London Branch, as arranger, bookrunner and security agent, and Citibank Europe plc, UK Branch, as facility agent. (incorporated by reference to Exhibit 99.3 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on November 3, 2017).</u>

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<u>Exhibit Number</u>	<u>Description</u>
4.7	<u>Intercreditor Agreement, dated as of October 31, 2017, among Global Ship Lease, Inc., the guarantors party thereto, Citibank, N.A., London Branch, as Notes trustee, Citibank Europe plc, UK Branch, as term agent, and the other parties from time to time party thereto (incorporated by reference to Exhibit 99.4 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on November 3, 2017).</u>
4.8	<u>Form of Guarantee made by Global Ship Lease, Inc. in favor of the charterer listed on Schedule I thereto (incorporated by reference to Exhibit 10.10 of Global Ship Lease, Inc.'s Registration Statement on Form F-1 (File No. 333-147070) filed on November 1, 2007).</u>
4.9	<u>Form of Guarantee made by CMA CGM S.A. for Global Ship Lease, Inc. (incorporated by reference to Exhibit 10.11 of Global Ship Lease, Inc.'s Registration Statement on Form F-1 (File No. 333-147070) filed on November 1, 2007).</u>
4.10	<u>Form of Charter Agreement entered into by a subsidiary of Global Ship Lease, Inc. and CMA CGM S.A. or one of its subsidiaries (incorporated by reference to Exhibit A-3 to Exhibit 2.1 of Marathon Acquisition Corp.'s Current Report on Form 8-K (File No. 001-32983) filed on March 25, 2008).</u>
4.11	<u>Form of Ship Management Agreement entered into by CMA Ships and a Subsidiary of Global Ship Lease, Inc. (incorporated by reference to Exhibit A-4 to Exhibit 2.1 of Marathon Acquisition Corp.'s Current Report on Form 8-K (File No. 001-32983) filed on March 25, 2008).</u>
4.12	<u>Form of Guarantee made by Global Ship Lease, Inc. for CMA CGM S.A. and CMA Ships (incorporated by reference to Exhibit 10.14 of Global Ship Lease, Inc.'s Registration Statement on Form F-1 (File No. 333-147070) filed on November 1, 2007).</u>
4.13	<u>Form of Guarantee made by CMA CGM S.A. in favor of Global Ship Lease, Inc. and its Subsidiaries (incorporated by reference to Exhibit 10.15 of Global Ship Lease, Inc.'s Registration Statement on Form F-1 (File No. 333-147070) filed on November 1, 2007).</u>
4.14*	<u>Loan Agreement dated August 30, 2017, made by and among Zeus One Marine LLC and Ikaros Marine LLC, as joint and several borrowers, the banks and financial institutions listed therein as lenders, and ABN AMRO Bank N.V., as agent, arranger, security trustee and swap bank.</u>
4.15*	<u>Amending and Restating Deed dated October 9, 2018, by and among Zeus One Marine LLC and Ikaros Marine LLC as joint and several borrowers, Tasman Marine LLC, Hudson Marine LLC and Drake Marine LLC as collateral owners, Poseidon Containers Holdings LLC as corporate guarantor, Odysseus Marine LLC as shareholder, the banks and financial institutions listed therein as lenders, and ABN Amro Bank N.V. as agent, arranger, swap bank and security trustee.</u>
4.16*	<u>Second Amending and Restating Deed dated October 25, 2018, by and among Zeus One Marine LLC and Ikaros Marine LLC as joint and several borrowers, Tasman Marine LLC, Hudson Marine LLC and Drake Marine LLC as collateral owners, Poseidon Containers Holdings LLC as corporate guarantor, Odysseus Marine LLC as shareholder, the banks and financial institutions listed therein as lenders, and ABN Amro Bank N.V. as agent, arranger, swap bank and security trustee.</u>
4.17*	<u>Facility Agreement, dated October 9, 2018, by and among THD Maritime Co. Limited as Borrower, Tasman Marine LLC, Hudson Marine LLC, Drake Marine LLC and Poseidon Containers Holdings LLC as joint and several guarantors, Amsterdam Trade Bank N.V. as mandated lead arranger, agent and security trustee and the financial institutions listed therein as lenders.</u>
4.18*	<u>Loan Agreement dated August 11, 2017 made by and among Crédit Agricole Corporate and Investment Bank, as lender, and Hector Marine LLC, Hephaestus Marine LLC and Pericles Marine LLC, as borrowers.</u>
4.19*	<u>First Supplemental Agreement, dated October 24, 2018, by and among Hector Marine LLC, Hephaestus Marine LLC and Pericles Marine LLC as joint and several borrowers, Poseidon Containers Holdings LLC as corporate guarantor, Odysseus Marine LLC as share pledgor and Crédit Agricole Corporate and Investment Bank as lender.</u>
4.20*	<u>Facility Agreement dated August 11, 2017 made by and among Leonidas Marine LLC, as borrower, Poseidon Containers Holdings LLC, as guarantor, the financial institutions listed therein as lenders, and Wilmington Trust National Association as facility agent and security agent.</u>
4.21*	<u>First Supplemental Agreement, dated October 24, 2018, by and among Leonidas Marine LLC as borrower, Poseidon Containers Holdings LLC as guarantor, the financial institutions listed therein as lenders and Wilmington Trust, National Association as facility agent and security agent.</u>

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<u>Exhibit Number</u>	<u>Description</u>
4.22*	<u>Facility Agreement dated July 18, 2017 made by and among Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC, as joint and Several Borrowers, Poseidon Containers Holdings LLC, as guarantor, DVB Bank SE, Amsterdam Branch, as arranger, facility agent and security agent, and DVB Bank SE, as account bank.</u>
4.23*	<u>First Supplemental Agreement with respect to the DVB Facility (as hereinafter defined), dated October 24 2018, by and among Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC as joint and several borrowers, Poseidon Containers Holdings LLC as guarantor, Odysseus Marine LLC as shareholder, the banks and financial institutions listed therein as lenders, DVB Bank SE, Amsterdam Branch as facility agent, security agent and arranger, and DVB Bank SE as account bank.</u>
4.24*	<u>Facility Agreement, dated October 3, 2018, by and among Philippos Marine LLC, Aristoteles Marine LLC and Menelaos Marine LLC as joint and several borrowers, Poseidon Containers Holdings LLC and Triton Containers Holdings LLC as parent guarantors, the banks and financial institutions listed therein as lenders, Crédit Agricole Corporate and Investment Bank as arranger, facility agent and security agent.</u>
4.25*	<u>Junior Facility Agreement, dated October 3, 2018, by and among Philippos Marine LLC, Aristoteles Marine LLC and Menelaos Marine LLC as joint and several borrowers, Poseidon Containers Holdings LLC and Triton Containers Holdings LLC as guarantors, the banks and financial institutions listed therein as lenders, and Wilmington Trust, National Association as agent and security agent.</u>
4.26*	<u>Term Loan Facility, dated [•], 2018, by and among Laertis Marine LLC, Telemachus Marine LLC and Penelope Marine LLC as joint and several borrowers and hedge guarantors, Poseidon Containers Holdings LLC, Odyssea Containers Holdings LLC and K&T Marine LLC, as guarantors, Deutsche Bank AG, as arranger, Deutsche Bank AG Filiale Deutschlandgeschaft, as account bank, and Wilmington Trust, National Association, as facility agent and security agent.</u>
4.27	<u>Form of Global Expense Agreement between CMA Ship Management and Global Ship Lease, Inc. (incorporated by reference to Exhibit 10.16 of Global Ship Lease, Inc.'s Registration Statement on Form F-1 (File No. 333-147070) filed on November 1, 2007).</u>
4.28	<u>Form of Indemnification Agreement entered into between Global Ship Lease, Inc. and each of its directors and officers (incorporated by reference to Exhibit 10.17 of Global Ship Lease, Inc.'s Registration Statement on Form F-1 (File No. 333-147070) filed on November 1, 2007).</u>
4.29	<u>2008 Equity Incentive Plan (incorporated by reference to Exhibit 10.22 of Global Ship Lease, Inc.'s Registration Statement on Form F-1 (File No. 333-153448) filed on September 12, 2008).</u>
4.30	<u>2015 Equity Incentive Plan (incorporated by reference to Appendix A to Global Ship Lease, Inc.'s Report on Form 6-K (File No. 001-34153) filed on July 31, 2015).</u>
4.31	<u>2019 Omnibus Incentive Plan (incorporated by reference to Exhibit I of Global Ship Lease, Inc.'s Report on Form 6-K (File No. 001-34153) filed on March 1, 2019).</u>
4.32	<u>Form of Service Agreement of Ian J. Webber (incorporated by reference to Exhibit 10.23 of Amendment No. 3 to Global Ship Lease, Inc.'s Registration Statement on Form F-4 (File No. 333-150309) filed on July 3, 2008).</u>
4.33	<u>Form of Service Agreement of Thomas A. Lister (incorporated by reference to Exhibit 10.25 of Amendment No. 3 to Global Ship Lease, Inc.'s Registration Statement on Form F-4 (File No. 333-150309) filed on July 3, 2008).</u>
4.34*	<u>Amended and Restated Service Agreement of Ian J. Webber, dated June 1, 2018</u>
4.35*	<u>Deed of Amendment of Amended and Restated Service Agreement of Ian J. Webber, dated October 16, 2018</u>
4.36*	<u>Amended and Restated Service Agreement of Thomas A. Lister, dated June 1, 2018</u>
4.37*	<u>Deed of Amendment of Amended and Restated Service Agreement of Thomas A. Lister, dated October 16, 2018</u>
4.38	<u>Non-Compete Agreement, dated as of October 29, 2018, by and among Global Ship Lease, Inc., Georgios Giouroukos and Conchart Commercial, Inc. (incorporated by reference to Exhibit 10.2 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on October 30, 2018).</u>
4.39	<u>Deed of Commercial Advisory Services and Exclusive Brokerage Services Agreement, dated as of October 29, 2018, by and among Conchart Commercial Inc., Global Ship Lease Services Limited and Global Ship Lease, Inc. (incorporated by reference to Exhibit 10.4 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on October 30, 2018).</u>

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<u>Exhibit Number</u>	<u>Description</u>
4.40	<u>Amended and Restated Registration Rights Agreement, dated as of October 29, 2018, by and among Global Ship Lease, Inc., KEP VI (Newco Marine), Ltd., KIA VIII (Newco Marine), Ltd., CMA CGM S.A., Management Investor Co., Anmani Consulting Inc., Marathon Founders, LLC, Michael S. Gross and Maas Capital Investments B.V. (incorporated by reference to Exhibit 10.1 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on October 30, 2018).</u>
4.41	<u>Letter Agreement, dated as of October 29, 2018, by and among KIA VIII (Newco Marine), Ltd., KEP VI (Newco Marine), Ltd., Global Ship Lease, Inc., CMA CGM S.A., Marathon Founders, LLC and Michael S. Gross (incorporated by reference to Exhibit 10.5 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on October 30, 2018).</u>
4.42	<u>Agreement and Plan of Merger, dated as of October 29, 2018, by and among Poseidon Containers Holdings LLC, K&T Marine LLC, Global Ship Lease, Inc., GSL Sub One LLC, GSL Sub Two LLC and, solely for purposes of Article III, Article XI and Sections 5.2, 6.2 and 6.9 therein, KEP VI (Newco Marine), Ltd., KIA VIII (Newco Marine), Ltd., Maas Capital Investments B.V., Management Investor Co. and Anmani Consulting Inc. (incorporated by reference to Exhibit 2.1 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on October 30, 2018).</u>
4.43	<u>Form of Technical Management Agreement by and between Technomar Shipping Inc., on the one hand, and vessel-owning subsidiaries of Global Ship Lease, Inc. (incorporated by reference to Exhibit 10.3 of Global Ship Lease, Inc.'s Current Report on Form 6-K (File No. 001-34153) filed on October 30, 2018).</u>
4.44*	<u>Form of Commercial Management Agreement by and between Conchart Commercial Inc., and vessel-owning subsidiaries of Global Ship Lease, Inc.</u>

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<u>Exhibit Number</u>	<u>Description</u>
8.1*	List of Subsidiaries of Global Ship Lease, Inc.
12.1*	Rule 13a-14(a)/15d-14(a) Certification of Global Ship Lease, Inc.'s Chief Executive Officer.
12.2*	Rule 13a-14(a)/15d-14(a) Certification of Global Ship Lease, Inc.'s Chief Financial Officer.
13.1*	Global Ship Lease, Inc. Certification of the Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
13.2*	Global Ship Lease, Inc. Certification of the Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
16.1*	Letter from PricewaterhouseCoopers Audit addressed to the SEC regarding the disclosure provided in Item 16F.
101.1*	The following financial information from Global Ship Lease, Inc.'s Annual Report on Form 20-F for the year ended December 31, 2018, formatted in XBRL includes: (i) Consolidated Balance Sheets at December 31, 2018 and 2017, (ii) Consolidated Statements of Income for the years ended December 31, 2018, 2017 and 2016, (iii) Consolidated Statements of Cash Flows for the years ended December 31, 2018, 2017 and 2016, (iv) Consolidated Statements of Shareholders' Equity for the years ended December 31, 2018, 2017 and 2016, and (v) the Notes to the Consolidated Financial Statements.

* Filed herewith.

GLOSSARY OF SHIPPING TERMS

Unless otherwise stated, references to the following terms have the following meaning as used in this Annual Report:

Address commission. A discount provided directly to a charterer based on a fixed percentage of the agreed upon charter rate

Annual survey. The inspection of a ship pursuant to international conventions, by a classification society surveyor, on behalf of the flag state, that takes place every year.

Backhaul. The weaker leg of a round trip voyage with less volume than the stronger headhaul leg or the return movement of a container—often empty—from a destination of unloading to a point of reloading of cargo.

Ballast. Weight in solid or liquid form, such as seawater, taken on a ship to increase draught, to change trim, or to improve stability or a voyage in which a ship is not laden with cargo.

Bareboat charter. A charter of a ship under which the ship-owner is usually paid a fixed amount of charterhire for a certain period of time during which the charterer is responsible for all ship operating expenses, including expenses for crewing, lubricating oil, insurance, maintenance and drydockings, and for all voyage expenses such as bunker fuel. A bareboat charter is also known as a “demise charter” or a “time charter by demise.”

Bunkers. Heavy fuel and diesel oil used to power a ship’s engines and generators.

Capacity. The nominal carrying capacity of the ship, measured in TEU.

Charter. The hire of a ship for a specified period of time or a particular voyage to carry a cargo from a loading port to a discharging port.

Charterer. The party that hires a ship for a period of time or for a voyage.

Charterhire. A sum of money paid to the ship-owner by a charterer for the use of a ship.

Charter owner. A company that owns containerships and charters out its ships to container shipping companies rather than operating the ships for liner services; also known as ship-owner or lessor.

Charter rate. The rate charged by a Charter owner normally as a daily rate for the use of its containerships by a charterer. Charter rates can be on a time charter or bareboat charter basis.

Classification society. An independent organization that certifies that a ship has been built and maintained according to the organization’s rules for that type of ship and complies with the applicable rules and regulations of the country of the ship’s registry and the international conventions of which that country is a member. A ship that receives its certification is referred to as being “in-class.”

Container shipping company. A shipping company operating liner services using owned or chartered ships with fixed port of call schedules. Also known as a carrier, liner company or an operator.

Drydocking. Placing the ship in a drydock in order to check and repair areas and parts below the water line. During drydockings, which are required to be carried out periodically, certain mandatory classification society inspections are carried out and relevant certifications are issued. Under Classification Society rules, drydockings for containerships are generally required once every three to five years or after an accident resulting in under-water damage.

Freight rate. The amount charged by container shipping companies for transporting cargo, normally as a rate per 20-foot or 40-foot container.

Geared containerships. Self-sustained containerships, which are able to load and discharge containers with their own on-board cranes and derricks.

Gross tonnage. A unit of measurement of the entire internal cubic capacity of the ship expressed in tons at 100 cubic feet to the ton.

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Headhaul. The stronger leg of a round trip voyage with greater volume than the weaker backhaul or the outgoing goods to be delivered from a point of origin.

Hull. The main body of the ship without engines, buildings and cranes.

Liner company or liner. A container shipping company (also referred to as lines or operators).

KG. Kommanditgesellschaft, a closed end fund construct broadly analogous to a limited partnership. It has been employed as an investment vehicle for high net worth individuals (primarily German) in various types of assets, including shipping assets.

IMO. International Maritime Organization, a United Nations agency that issues international standards for shipping.

Intermediate survey. The inspection of a ship by a classification society surveyor that takes place 24 to 36 months after each special survey.

Newbuilding. A ship on order, under construction or just delivered.

Off-hire. The period in which a ship is not available for service under a charter and, accordingly, the charterer generally is not required to pay the hire. Off-hire periods can include days spent on repairs, drydocking and surveys, whether or not scheduled.

Orderbook-to-fleet ratio. The ratio of the orderbook for new vessels yet to be delivered to the existing on-the-water fleet determined on the basis of TEU capacity and expressed as a percentage.

Scrapping. The sale of a ship for conversion into scrap metal.

Ship management. The provision of shore-based ship management services related to crewing, technical and safety management and the compliance with all government, flag state, class certification and international rules and regulations.

Shipper. Someone who prepares goods for shipment or arranges seaborne transportation; essentially a customer of a container shipping company.

Sister ships. Ships of the same class and specification typically built at the same shipyard.

Special survey. The inspection of a ship by a classification society surveyor that takes place every five years, as part of the recertification of the ship by a classification society.

Spot market. The market for immediate chartering of a ship, usually for single voyages or for short periods of time, up to 12 months.

TEU. A 20-foot equivalent unit, the international standard measure for containers and containership capacity.

Time charter. A charter under which the ship-owner hires out a ship for a specified period of time. The ship-owner is responsible for providing the crew and paying vessel operating expenses while the charterer is responsible for paying the voyage expenses such as fuel and additional voyage insurance. The ship-owner is paid charterhire, which accrues on a daily basis.

Time charter and voyage expenses. Expenses incurred including brokerage commission and those for owner's account attributable to a ship's voyage, such as bunkers costs when the vessel is idle or offhire and expenses incurred due to a ship's voyage from a loading port to a discharging port, such as bunkers costs, port expenses, stevedoring costs, agents' fees, canal dues, extra war risk insurance and commissions

Vessel operating expenses. The costs of operating a ship, primarily consisting of crew wages and associated costs, insurance premiums, ship management fees, costs of lubricants and spare parts, and repair and maintenance costs. Vessel operating expenses exclude bunker costs, port expenses, stevedoring costs, agents' fees, canal dues, extra war risk insurance and commissions, which are included in "voyage expenses."

Voyage expenses. Expenses incurred due to a ship's voyage from a loading port to a discharging port, such as bunkers costs, port expenses, stevedoring costs, agents' fees, canal dues, extra war risk insurance and commissions.

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Global Ship Lease, Inc.

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of Global Ship Lease, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Global Ship Lease, Inc. and its subsidiaries (the “Company”) as of December 31, 2018, and the related consolidated statements of income, changes in shareholders’ equity and cash flows for the year then ended, including the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2018, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit of these consolidated financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

Significant Transactions with Related Parties

As discussed in Note 2 (a) to the consolidated financial statements, the Company has entered into significant contracts with CMA CGM, a related party and the main source of the Company’s operating revenue and consequently the Company is highly dependent on the performance by CMA CGM of its obligations under those contracts which will in turn depend partly on CMA CGM’s financial situation.

/s/ PricewaterhouseCoopers S.A.

Athens, Greece

March 29, 2019

We have served as the Company’s auditor since 2018.

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of Global Ship Lease, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Global Ship Lease, Inc. and its subsidiaries (the “Company”) as of December 31, 2017, and the related consolidated statements of income, changes in shareholders’ equity and cash flows for each of the two years in the period ended December 31, 2017, including the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2017, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2017 in conformity with accounting principles generally accepted in the United States of America.

Change in Accounting Principle

As discussed in Note 2 (a) to the consolidated financial statements, the Company changed the manner in which it accounts for certain cash receipts and cash payments in 2018.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits of these consolidated financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

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Significant Transactions with Related Parties

As discussed in Note 2 (a) to the consolidated financial statements, the Company has entered into significant contracts with CMA CGM, a related party and the main source of the Company's operating revenue and consequently the Company is highly dependent on the performance by CMA CGM of its obligations under those contracts which will in turn depend partly on CMA CGM's financial situation.

PricewaterhouseCoopers Audit
/s/ PricewaterhouseCoopers

PricewaterhouseCoopers is represented by PricewaterhouseCoopers Audit, 63 rue de Villiers – 92200 Neuilly-sur-Seine, France

Marseille, France

March 29, 2018, except for the effects of the stock split discussed in Note 1 to the consolidated financial statements and the change in the manner in which the Company accounts for certain cash receipts and cash payments discussed in Note 2 (a) to the consolidated financial statements, as to which the date is March 29, 2019

We served as the Company's auditor from 2007 to 2018.

Global Ship Lease, Inc.

Consolidated Balance Sheets

(Expressed in thousands of U.S. dollars except share data)

	Note	As of	
		December 31, 2018	December 31, 2017
ASSETS			
CURRENT ASSETS			
Cash and cash equivalents		\$ 82,059	\$ 73,266
Restricted cash	3	2,186	—
Accounts receivable, net		1,927	72
Inventories	8	5,769	742
Prepaid expenses and other current assets	7	6,214	1,376
Due from related parties	13	817	1,932
Total current assets		\$ 98,972	\$ 77,388
NON - CURRENT ASSETS			
Vessels in operation	4	\$ 1,112,766	\$ 586,520
Other fixed assets		5	10
Intangible assets - charter agreements	6	5,400	700
Intangible assets - other		—	7
Deferred charges, net	5	9,569	11,259
Other non - current assets		948	—
Restricted cash, net of current portion	3	5,827	—
Total non - current assets		1,134,515	598,496
TOTAL ASSETS		\$ 1,233,487	\$ 675,884
LIABILITIES AND SHAREHOLDERS' EQUITY			
CURRENT LIABILITIES			
Accounts payable	9	\$ 9,586	\$ 1,486
Accrued liabilities	10	15,407	8,788
Current portion of long - term debt	11	64,088	40,000
Deferred revenue		3,118	2,178
Due to related parties	13	3,317	2,813
Total current liabilities		95,516	55,265
LONG - TERM LIABILITIES			
Long - term debt, net of current portion and deferred financing costs	11	\$ 813,130	\$ 358,515
Intangible liability - charter agreements	6	8,470	10,482
Deferred tax liability		9	17
Total non - current liabilities		821,609	369,014
Total liabilities		917,125	424,279
Commitments and Contingencies			
	14	—	—
SHAREHOLDERS' EQUITY			
Class A common shares - authorized 214,000,000 shares with a \$0.01 par value 9,017,205 shares issued and outstanding (2017 – 5,951,217 shares)	15	\$ 90	\$ 60
Class B common shares - authorized 20,000,000 shares with a \$0.01 par value 925,745 issued and outstanding (2017 – 925,745 shares)	15	9	9
Series B Preferred Shares - authorized 16,100 shares with a \$0.01 par value 14,000 shares issued and outstanding (2017 – 14,000 shares)	15	—	—
Series C Preferred Shares - authorized 250,000 shares with a \$0.01 par value 250,000 shares issued and outstanding (2017 - nil)	15	3	—
Additional paid in capital		512,379	387,229
Accumulated deficit		(196,119)	(135,693)
Total shareholders' equity		316,362	251,605
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY		\$ 1,233,487	\$ 675,884

See accompanying notes to Consolidated Financial Statements

Global Ship Lease, Inc.

Consolidated Statements of Income

(Expressed in thousands of U.S. dollars except share data)

	Note	Year ended December 31,		
		2018	2017	2016
OPERATING REVENUES				
Time charter revenue	12	\$ 30,890	\$ 35,334	\$ 37,881
Time charter revenue - related party	12,13	126,207	123,944	128,956
		<u>\$ 157,097</u>	<u>\$ 159,278</u>	<u>\$ 166,837</u>
OPERATING EXPENSES:				
Vessel operating expenses		47,584	41,098	43,757
Vessel operating expenses - related parties	13	1,689	1,599	1,599
Time charter and voyage expenses		1,352	962	705
Time charter and voyage expenses - related party	13	222	—	—
Depreciation and amortization	4, 5	35,455	37,981	42,805
Impairment of vessels	4	71,834	87,624	92,422
General and administrative expenses		9,221	5,367	6,224
Operating Loss		<u>(10,260)</u>	<u>(15,353)</u>	<u>(20,675)</u>
NON OPERATING INCOME/(EXPENSES)				
Interest income		1,425	489	198
Interest and other finance expenses		(48,686)	(59,413)	(44,788)
Other income, net		212	51	216
Total non operating expenses		<u>(47,049)</u>	<u>(58,873)</u>	<u>(44,374)</u>
Loss before income taxes		<u>(57,309)</u>	<u>(74,226)</u>	<u>(65,049)</u>
Income taxes		(55)	(40)	(46)
Net Loss		<u>\$ (57,364)</u>	<u>\$ (74,266)</u>	<u>\$ (65,095)</u>
Earnings allocated to Series B Preferred Shares		(3,062)	(3,062)	(3,062)
Net Loss available to Common Shareholders		<u>\$ (60,426)</u>	<u>\$ (77,328)</u>	<u>\$ (68,157)</u>
Earnings/(Loss) per Share				
Weighted average number of Class A common shares outstanding				
Basic and diluted (including RSU's without service conditions)	17	6,514,390	5,996,986	5,981,794
Net Loss per Class A common share				
Basic and diluted (including RSU's without service conditions)	17	\$ (7.42)	\$ (12.89)	\$ (11.39)
Weighted average number of Class B common shares outstanding				
Basic and diluted	17	925,745	925,745	925,745
Net Loss per Class B common share				
Basic and diluted	17	\$ nil	\$ nil	\$ nil

See accompanying notes to Consolidated Financial Statements

Global Ship Lease, Inc.

Consolidated Statements of Cash Flows

(Expressed in thousands of U.S. dollars)

	Note	Year ended December 31,		
		2018	2017	2016
Cash flows from operating activities:				
Net loss		\$ (57,364)	\$ (74,266)	\$(65,095)
Adjustments to reconcile net loss to net cash provided by operating activities:				
Depreciation and amortization		35,455	37,981	42,805
Vessel impairment	4	71,834	87,624	92,422
Gain on repurchase of secured notes		—	—	(2,865)
Amortization of deferred financing costs		4,629	7,772	3,622
Amortization of original issue discount/premium on repurchase of notes		1,207	11,570	2,184
Amortization of intangible asset/liability - charter agreements	6	(1,305)	(1,807)	(2,104)
Share based compensation	16	50	272	283
Changes in operating assets and liabilities:				
Decrease (increase) in accounts receivable and other assets		5,019	(441)	219
(Increase) decrease in inventories		(2,250)	(188)	57
Decrease in accounts payable and other liabilities		(9,117)	(3,030)	(1,751)
(Decrease) increase in related parties' balances		(625)	1,138	738
Increase in deferred revenue		214	238	1,144
Unrealized foreign exchange (gain) loss		(5)	2	26
Net cash provided by operating activities		47,742	66,865	71,685
Cash flows from investing activities:				
Acquisition of vessels		(11,436)	—	—
Net proceeds from sale of vessels		14,504	—	(254)
Cash paid for vessel improvements		(239)	(255)	—
Cash paid for other assets		—	(8)	(6)
Cash paid for drydockings		(2,636)	(4,632)	(6,681)
Cash acquired in Poseidon Transaction, net of capitalized expenses		24,037	—	—
Net cash provided by/(used in) investing activities		24,230	(4,895)	(6,941)
Cash flows from financing activities:				
Proceeds from issuance of secured notes		—	356,400	—
Repurchase of secured notes	11	(20,400)	(374,835)	(51,530)
Proceeds from drawdown of credit facilities	11	8,125	54,800	—
Repayment of credit facilities	11	(37,771)	(63,575)	(9,500)
Deferred financing costs paid		(2,058)	(12,675)	—
Series B Preferred Shares - dividends paid	15	(3,062)	(3,062)	(3,062)
Net cash used in financing activities		\$ (55,166)	(42,947)	(64,092)
Net increase in cash and cash equivalents and restricted cash		16,806	19,023	652
Cash and cash equivalents and restricted cash at beginning of the year		73,266	54,243	53,591
Cash and cash equivalents and restricted cash at end of the year		\$ 90,072	\$ 73,266	\$ 54,243
Supplementary Cash Flow Information:				
Cash paid for interest		\$ 42,390	43,152	43,134
Cash paid for income taxes		84	46	50
Non-cash investing activities:				
Unpaid capitalized expenses*		(826)	—	—
Working capital acquired		(11,331)	—	—
Vessels and other intangibles acquired		622,925	—	—
Debt acquired		(509,673)	—	—
Non-cash financing activities:				
Issuance of Class A common shares		(23,564)	—	—
Issuance of Series C Preferred Shares		(101,569)	—	—

* Unpaid fees related to the Poseidon Transaction (see note 1)

See accompanying notes to Consolidated Financial Statements

Global Ship Lease, Inc.

Consolidated Statements of Changes in Shareholders' Equity

(Expressed in thousands of U.S. dollars except share data)

	Number of Common Shares at par value \$0.01	Number of Series B Preferred Shares at par value \$0.01	Number of Series C Preferred Shares at par value \$0.01	Common Shares	Series B Preferred Shares	Series C Preferred Shares	Additional paid - in capital	Retained Earnings/ (Accumulated Deficit)	Total Shareholders' Equity
Balance at January 1, 2016	6,868,430	14,000	—	\$ 68	\$ —	\$ —	\$386,906	\$ 9,792	\$ 396,766
Restricted Stock Units (Note 16)	—	—	—	—	—	—	283	—	283
Class A common shares issued (Note 15)	4,266	—	—	1	—	—	—	—	1
Net Loss for the year	—	—	—	—	—	—	—	(65,095)	(65,095)
Series B Preferred Shares dividend (Note 15)	—	—	—	—	—	—	—	(3,062)	(3,062)
Balance at December 31, 2016	6,872,696	14,000	—	\$ 69	\$ —	\$ —	\$387,189	\$ (58,365)	\$ 328,893
Restricted Stock Units (Note 16)	—	—	—	—	—	—	40	—	40
Class A common shares issued (Note 15)	4,266	—	—	—	—	—	—	—	—
Net Loss for the year	—	—	—	—	—	—	—	(74,266)	(74,266)
Series B Preferred Shares dividend (Note 15)	—	—	—	—	—	—	—	(3,062)	(3,062)
Balance at December 31, 2017	6,876,962	14,000	—	\$ 69	\$ —	\$ —	\$387,229	\$ (135,693)	\$ 251,605
Restricted Stock Units (Note 16)	—	—	—	—	—	—	50	—	50
Class A common shares issued (Note 15)	3,065,988	—	—	30	—	—	23,534	—	23,564
Series C Preferred Shares issued (Note 15)	—	—	250,000	—	—	3	101,566	—	101,569
Net Loss for the year	—	—	—	—	—	—	—	(57,364)	(57,364)
Series B Preferred Shares dividend (Note 15)	—	—	—	—	—	—	—	(3,062)	(3,062)
Balance at December 31, 2018	9,942,950	14,000	250,000	\$ 99	\$ —	\$ 3	\$512,379	\$ (196,119)	\$ 316,362

See accompanying notes to Consolidated Financial Statements

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements

(Expressed in thousands of U.S. dollars)

1. Description of Business

On August 14, 2008, Global Ship Lease, Inc. (the “Company”) merged indirectly with Marathon Acquisition Corp. (“Marathon”), a company then listed on The American Stock Exchange. Under the merger agreement, Marathon, a U.S. corporation, first merged with its wholly owned Marshall Islands subsidiary, GSL Holdings, Inc. (“Holdings”), with Holdings continuing as the surviving company. Global Ship Lease, Inc., at that time a subsidiary of CMA CGM S.A. (“CMA CGM”), then merged with Holdings, with Holdings again being the surviving company. Holdings was renamed Global Ship Lease, Inc. and became listed on the New York Stock Exchange on August 15, 2008 (the “Marathon Merger”).

On November 15, 2018, the Company completed the acquisition of 20 containerships, one of which, the Argos, was contracted to be sold which sale was completed in December 2018, from Poseidon Containers Holdings LLC and K&T Marine LLC (together, “Poseidon Containers”) and the transaction (the “Poseidon Transaction”). References herein to “GSL Fleet” are to the 19 vessels that were owned by the Company prior to the consummation of the Poseidon Transaction, and references to “Poseidon Fleet” are to the 19 vessels that were acquired by the Company from Poseidon Containers upon consummation of the Poseidon Transaction, excluding the one additional vessel acquired but held for sale and was delivered to its new owner on December 19, 2018.

On March 25, 2019, the Company’s common shares began trading on a reverse-split-adjusted basis, following approval received from the Company’s shareholders at a Special Meeting held on March 20, 2019 and subsequently approval from the Company’s Board of Directors to reverse split the Company’s common shares at a ratio of one-for-eight. The Class A common shares and Class B common shares per share amounts disclosed in the consolidated financial statements and notes give effect to the reverse stock split retroactively, for all periods presented.

The Company’s business is to own and charter out containerships to leading liner companies. As of December 31, 2018, the Company owned 38 vessels with average age weighted by TEU capacity of 11.0 years.

The following table provides information about the vessels:

Company Name (1)	Fleet (2)	Country of Incorporation	Vessel Name	Capacity in TEUs (4)	Year Built	Earliest Charter Expiry Date
Global Ship Lease 3 Limited	GSL	Cyprus	CMA CGM Matisse	2,262	1999	3Q19
Global Ship Lease 4 Limited	GSL	Cyprus	CMA CGM Utrillo	2,262	1999	3Q19
Global Ship Lease 5 Limited	GSL	Cyprus	GSL Keta	2,207	2003	2Q19
Global Ship Lease 6 Limited	GSL	Cyprus	GSL Julie	2,207	2002	1Q19
Global Ship Lease 7 Limited	GSL	Cyprus	Kumasi	2,207	2002	4Q19
Global Ship Lease 8 Limited	GSL	Cyprus	Marie Delmas	2,207	2002	4Q19
Global Ship Lease 9 Limited	GSL	Cyprus	CMA CGM La Tour	2,272	2001	3Q19
Global Ship Lease 10 Limited	GSL	Cyprus	CMA CGM Manet	2,272	2001	3Q19
Global Ship Lease 12 Limited	GSL	Cyprus	CMA CGM Château d’If	5,089	2007	4Q20
Global Ship Lease 13 Limited	GSL	Cyprus	CMA CGM Thalassa	11,040	2008	4Q25
Global Ship Lease 14 Limited	GSL	Cyprus	CMA CGM Jamaica	4,298	2006	3Q22
Global Ship Lease 15 Limited	GSL	Cyprus	CMA CGM Sambhar	4,045	2006	3Q22
Global Ship Lease 16 Limited	GSL	Cyprus	CMA CGM America	4,045	2006	3Q22
Global Ship Lease 20 Limited	GSL	Hong Kong	GSL Tianjin	8,667	2005	2Q19
Global Ship Lease 21 Limited	GSL	Hong Kong	OOCL Qingdao	8,667	2004	1Q19
Global Ship Lease 22 Limited	GSL	Hong Kong	GSL Ningbo	8,667	2004	2Q19
Global Ship Lease 23 Limited	GSL	Hong Kong	CMA CGM Berlioz	6,621	2001	2Q21
Global Ship Lease 26 Limited	GSL	Hong Kong	GSL Valerie	2,824	2005	2Q19
GSL Alcazar Inc.	GSL	Marshall Islands	CMA CGM Alcazar	5,089	2007	4Q20

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

1. Description of Business (continued)

<u>Company Name (1)</u>	<u>Fleet (3)</u>	<u>Country of Incorporation</u>	<u>Vessel Name</u>	<u>Capacity in TEUs (4)</u>	<u>Year Built</u>	<u>Earliest Charter Expiry Date</u>
Aris Marine LLC	Poseidon	Marshall Islands	Maira	2,506	2000	1Q19
Aphrodite Marine LLC	Poseidon	Marshall Islands	Nikolas	2,506	2000	1Q19
Athena Marine LLC	Poseidon	Marshall Islands	Newyorker	2,506	2001	1Q19
Hephaestus Marine LLC	Poseidon	Marshall Islands	Dolphin II	5,095	2007	2Q19
Pericles Marine LLC	Poseidon	Marshall Islands	Athena	2,762	2003	1Q19
Zeus One Marine LLC	Poseidon	Marshall Islands	Orca I	5,095	2006	2Q19
Leonidas Marine LLC	Poseidon	Marshall Islands	Agios Dimitrios	6,572	2011	3Q19
Alexander Marine LLC	Poseidon	Marshall Islands	Mary	6,927	2013	3Q23
Hector Marine LLC	Poseidon	Marshall Islands	Kristina	6,927	2013	2Q19(6)
Ikaros Marine LLC	Poseidon	Marshall Islands	Katherine	6,927	2013	1Q24
Tasman Marine LLC	Poseidon	Marshall Islands	Tasman	5,936	2000	1Q19
Hudson Marine LLC	Poseidon	Marshall Islands	Dimitris Y	5,936	2000	2Q19
Drake Marine LLC	Poseidon	Marshall Islands	Ian H	5,936	2000	2Q19
Phillipos Marine LLC	Poseidon	Marshall Islands	Alexandra	6,927	2013	1Q19(6)
Aristoteles Marine LLC	Poseidon	Marshall Islands	UASC Bubiyan	6,882	2015	1Q19(6)
Menelaos Marine LLC(5)	Poseidon	Marshall Islands	UASC Yas	6,882	2015	1Q24
Laertis Marine LLC	Poseidon	Marshall Islands	UASC Al Khor	9,115	2015	1Q19
Penelope Marine LLC	Poseidon	Marshall Islands	Maira XL	9,115	2015	2Q20
Telemachus Marine LLC	Poseidon	Marshall Islands	Anthea Y	9,115	2015	2Q20

(1) All subsidiaries are 100% owned, either directly or indirectly;

(2) The GSL Fleet comprises the 19 vessels wholly owned by the Company prior to completion of the Poseidon Transaction;

(3) The Poseidon Fleet comprises the 19 vessels wholly owned by Poseidon Containers as at the completion of the Poseidon Transaction, excluding one additional vessel held for sale;

(4) Twenty-foot Equivalent Units;

(5) Renamed Olivia I, effective March 19, 2019;

(6) Thereafter, five years to CMA CGM at \$25,910 per day.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

2. Summary of Significant Accounting Policies

(a) Basis of Presentation

The accompanying consolidated financial statements are prepared in accordance with United States Generally Accepted Accounting Principles (“U.S. GAAP”). Certain comparative figures have been reclassified to conform to changes in presentation in the current year.

Adoption of new accounting standards

On January 1, 2018, the Company adopted ASU No. 2014-09, “Revenue from Contracts with Customers” and the related amendments (“ASC 606” or “the new revenue standard”) using the modified retrospective method, requiring the Company to recognize the cumulative effect of adopting this guidance as an adjustment to the 2018 opening balance of retained earnings and not retrospectively adjusting prior periods. Under the new guidance, there is a five—step model to apply to revenue recognition. The five—steps consist of: (1) determination of whether a contract, an agreement between two or more parties that creates legally enforceable rights and obligations, exists; (2) identification of the performance obligations in the contract; (3) determination of the transaction price; (4) allocation of the transaction price to the performance obligations in the contract; and (5) recognition of revenue when (or as) the performance obligation is satisfied. The adoption of this standard did not have any effect on the retained earnings or on the financial results for year ended December 31, 2018 of the Company since all the Company’s vessels generated revenues from time charter agreements. The Company expects the impact of the adoption of the new revenue standard to be immaterial to its net income on an ongoing basis.

On January 1, 2018, the Company adopted ASU 2016-18, “Restricted Cash” (“ASU 2016-18”), which updated ASC Topic 230, “Statement of Cash Flows.” ASU 2016-18 required companies to include restricted cash and restricted cash equivalents with cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. The recognition and measurement guidance for restricted cash is not affected. The Company applied this guidance retrospectively to all prior periods presented in the Company’s financial statements. The reclassification of restricted cash in the statements of cash flows does not impact net income as previously reported or any prior amounts reported on the statements of comprehensive income, or balance sheets. There was no effect of the retrospective application of this change in accounting principle on the Company’s statements of cash flows, as the Company did not have restricted cash for the years ended December 31, 2017 or December 31, 2016.

On January 1, 2018, the Company adopted ASU 2016-15, “Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments” (“ASU 2016-15”). The FASB issued ASU 2016-15 to decrease the diversity in practice in how certain cash receipts and cash payments are presented and classified in the statements of cash flows. The amendments in this update provide guidance on eight specific cash flow issues. The effect of the retrospective application of this change in accounting principle on the Company’s statements of cash flows for the years ended December 31, 2017 and 2016 resulted in an increase in net cash provided by operating activities of \$9,047 and \$533, respectively and an increase in net cash used in financing activities of \$9,047 and \$533, respectively.

Counterparty risk

The majority of the Company’s revenues are derived from charters to CMA CGM. The Company is consequently highly dependent on the performance by CMA CGM of its obligations under these charters. The container shipping industry is volatile and is currently experiencing a sustained cyclical downturn. Many container shipping companies have reported financial losses.

If CMA CGM ceases doing business or fails to perform its obligations under the charters, the Company’s business, financial position and results of operations would be materially adversely affected as it is probable that, even if the Company was able to find replacement charters, such replacement charters would be at significantly lower daily rates and shorter durations. If such events occur, there would be significant uncertainty about the Company’s ability to continue as a going concern.

These consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded assets, nor to the amounts and classification of liabilities that may be necessary should the Company be unable to continue as a going concern.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

2. Summary of Significant Accounting Policies (continued)

(b) Principles of Consolidation

The accompanying consolidated financial statements include the financial statements of the Company and its wholly owned subsidiaries; the Company has no other interests. All significant intercompany balances and transactions have been eliminated in the Company's consolidated financial statements.

(c) Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates under different assumptions and/or conditions.

(d) Cash and cash equivalents

Cash and cash equivalents include cash in hand, deposits held at call with banks and other short-term highly liquid investments with original maturities of three months or less.

(e) Restricted cash

Restricted cash consists of retention accounts which are restricted in use and held in order to service debt and interest payments. In addition, restricted cash consists of pledged cash maintained with lenders and amounts built-up for future drydockings.

(f) Insurance claims

Insurance claims consist of claims submitted and/or claims in the process of compilation or submission. They are recorded on an accrual basis and represent the claimable expenses, net of applicable deductibles, incurred through December 31 of each reported period, which are probable to be recovered from insurers. Any outstanding costs to complete the claims are included in accrued liabilities. The classification of insurance claims into current and non-current assets is based on management's expectation as to the collection dates.

(g) Inventories

Inventories consist of bunkers, lubricants, stores and provisions. Inventories are stated at the lower of cost or net realizable value as determined using the first-in, first-out method.

(h) Accounts receivable, net

The Company carries its accounts receivable at cost less, if appropriate, an allowance for doubtful accounts, based on a periodic review of accounts receivable, taking into account past write-offs, collections and current credit conditions. The Company does not generally charge interest on past-due accounts. Allowances for doubtful accounts amount to \$ nil as of December 31, 2018 (2017: \$ nil).

Global Ship Lease, Inc.**Notes to the Consolidated Financial Statements (continued)**

(Expressed in thousands of U.S. dollars)

2. Summary of Significant Accounting Policies (continued)**(i) Vessels in operation**

Vessels are generally recorded at their historical cost, which consists of the acquisition price and any material expenses incurred upon acquisition. Vessels acquired in a corporate transaction accounted for as an asset acquisition are stated at the acquisition price, which consists of consideration paid, plus transaction costs less any negative goodwill, if applicable. Vessels acquired in a corporate transaction accounted for as a business combination are recorded at fair value. Vessels acquired as part of the Marathon Merger in 2008 were accounted for under ASC 805, which required that the vessels be recorded at fair value, less the negative goodwill arising as a result of the accounting for the merger.

Subsequent expenditures for major improvements and upgrades are capitalized, provided they appreciably extend the life, increase the earnings capacity or improve the efficiency or safety of the vessels.

Borrowing costs incurred during the construction of vessels or as part of the prefinancing of the acquisition of vessels are capitalized. There was no capitalized interest for the years ended December 31, 2018 or 2017. Other borrowing costs are expensed as incurred.

Vessels are stated less accumulated depreciation and impairment, if applicable. Vessels are depreciated to their estimated residual value using the straight-line method over their estimated useful lives which are reviewed on an ongoing basis to ensure they reflect current technology, service potential and vessel structure. The useful lives are estimated to be 30 years from original delivery by the shipyard.

For any vessel group which is impaired, the impairment charge is recorded against the cost of the vessel and the accumulated depreciation as at the date of impairment is removed from the accounts.

The cost and related accumulated depreciation of assets retired or sold are removed from the accounts at the time of sale or retirement and any gain or loss is included in the Consolidated Statements of Income.

Vessels acquisitions

The Poseidon Transaction has been accounted for under ASU 2017-01 as an asset acquisition. The vessels acquired on November 15, 2018, described in note 1, were recorded at their fair value, based on valuations obtained from third party independent ship brokers, less negative goodwill arising as a result of the accounting for the overall Poseidon Transaction, allocated pro-rata. The following table summarizes the accounting for the Poseidon Transaction, including the fair value of the stock-based consideration given:

<u>Assets and Liabilities Acquired</u>	<u>Amount</u>
Vessels fair value as of November 15, 2018	\$ 761,248
Negative goodwill allocated pro-rata to the vessels acquired	(143,726)
Vessels fair value recognized as of November 15, 2018 (see note 4)	617,522
Cash and cash equivalents	35,044
Fair value of time charter contracts attached, net of pro-rata allocation of negative goodwill (see note 6)	5,404
Debt assumed	(509,673)
Working capital (excluding cash and cash equivalents)	(11,331)
Total	\$ 136,966
<u>Fair Value of Consideration Given</u>	<u>Amount</u>
Share price as of November 15, 2018 (as adjusted for reverse stock split)	\$ 7.84
Fair value of stock-based consideration	125,133
Capitalized transaction expenses	11,833
Total consideration	\$ 136,966

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

2. Summary of Significant Accounting Policies (continued)

(j) Deferred charges, net

Drydocking costs are reported in the Consolidated Balance Sheets within “Deferred charges, net”, and include planned major maintenance and overhaul activities for ongoing certification. The Company follows the deferral method of accounting for drydocking costs, whereby actual costs incurred are deferred and amortized on a straight—line basis over the period until the next scheduled drydocking, which is generally five years. Any remaining unamortized balance from the previous drydocking is written—off.

The amortization period reflects the estimated useful economic life of the deferred charge, which is the period between each drydocking. Costs incurred during the drydocking relating to routine repairs and maintenance are expensed. The unamortized portion of drydocking costs for vessels sold is included as part of the carrying amount of the vessel in determining the gain or (loss) on sale of the vessel.

(k) Intangible assets and liabilities – charter agreements

When intangible assets or liabilities associated with the acquisition of a vessel are identified, they are recorded at fair value. Fair value is determined by reference to market data and the discounted amount of expected future cash flows. Where charter rates are higher than market charter rates, an asset is recorded, being based on the difference between the acquired charter rate and the market charter rate for an equivalent vessel. Where charter rates are less than market charter rates, a liability is recorded, being based on the difference between the acquired charter rate and the market charter rate for an equivalent vessel. The determination of the fair value of acquired assets and assumed liabilities requires the Company to make significant assumptions and estimates of many variables including market charter rates, expected future charter rates, the level of utilization of the Company’s vessels and the Company’s weighted average cost of capital. The use of different assumptions could result in a material change in the fair value of these items, which could have a material impact on the Company’s financial position and results of operations.

(l) Impairment of Long—lived assets

Tangible fixed assets, such as vessels, are reviewed individually for impairment when events or changes in circumstances indicate that their carrying amounts may not be recoverable. Undiscounted projected operating cash flows are determined for each vessel group, which comprises of the vessel, the unamortized portion of deferred drydocking related to the vessel and the related carrying value of the intangible asset or liability (if any) with respect to the time charter attached to the vessel at its purchase, if applicable (together the “vessel group”) and compared to the carrying value of the vessel group (step one). Within the shipping industry, vessels can be purchased with a charter attached. The value of the charter may be favorable or unfavorable when comparing the contracted charter rate to then current market rates. An impairment charge is recognized when the sum of the expected undiscounted future cash flows from the vessel group over its estimated remaining useful life is less than its carrying amount (step one) and is recorded equal to the amount by which the vessel group’s carrying amount exceeds its fair value, including any applicable charter. Fair value is determined with the assistance from valuations obtained from third party independent ship brokers (step two).

The assumptions used involve a considerable degree of estimation. Actual conditions may differ significantly from the assumptions and thus actual cash flows may be significantly different to those estimated with a material effect on the recoverability of each vessel’s carrying amount. The most significant assumptions made for the determination of expected cash flows are (i) charter rates on expiry of existing charters, which are based on forecast charter rates, where relevant, in the four years from the date of the impairment test and a reversion to the historical mean for each vessel thereafter (ii) off-hire days, which are based on actual off-hire statistics for the Company’s fleet (iii) operating costs, based on current levels escalated over time based on long term trends (iv) dry docking frequency, duration and cost (v) estimated useful life, which is assessed as a total of 30 years from original delivery by the shipyard and (vi) scrap values.

Whilst charter rates in the spot market and asset values saw overall improvements through 2018, taking into account the seasonal as well as cyclical nature of the container shipping industry, the recovery was not considered to have been sufficiently sustained not to undertake a fleet-wide review for impairment as at December 31, 2018 for the 19 vessels in the GSL Fleet.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

2. Significant Accounting Policies (continued)

(l) Impairment of Long-lived assets (continued)

As a result, our management performed step one of the impairment assessment of each of the vessel groups in the GSL Fleet by comparing the undiscounted projected net operating cash flows for each vessel group to the carrying value of the vessel group.

During the three months ended December 31, 2018, our assessment concluded that step two of the impairment analysis was required for three of our vessels groups that were held and used, as the undiscounted projected net operating cash flows did not exceed the carrying value. As a result, an impairment loss of \$71,834 was recorded for three vessels, shown as "Impairment of vessels" in the Consolidated Statements of Income, being the difference between the fair value of the vessel group (which included the charter attached) and the vessel group's carrying value.

No impairment test was performed for the vessels comprising the Poseidon Fleet as at December 31, 2018, as no events or circumstances existed indicating that their carrying value may not be recoverable. The carrying value of the vessels at December 31, 2018 was significantly lower than their fair value, mainly as a result of the allocation of negative goodwill arising from the accounting for the Poseidon Transaction.

The assessment performed for 2017 and 2016 resulted in impairment charges of \$87,624 and \$92,422, respectively.

(m) Deferred financing costs

Costs incurred in connection with obtaining long-term debt and in obtaining amendments to existing facilities are recorded as deferred financing costs and are amortized to interest expense using the effective interest method over the estimated duration of the related debt. Such costs include fees paid to the lenders or on the lenders' behalf and associated legal and other professional fees. Debt issuance costs, other than any up-front arrangement fee for revolving credit facilities, related to a recognized debt liability are presented as a direct deduction from the carrying amount of that debt. Arrangement fees for revolving credit facilities are shown within "Other non-current assets".

(n) Preferred shares

The Series B Preferred Shares have been included within Equity in the Consolidated Balance Sheets, from their issue in August 2014, and the dividends are presented as a reduction of Retained Earnings or addition to Accumulated Deficit in the Consolidated Statements of Shareholders' Equity as their nature is similar to that of an equity instrument rather than a liability. Holders of these redeemable perpetual preferred shares, which may only be redeemed at the discretion of the Company, are entitled to receive a dividend equal to 8.75% on the original issue price and rank senior to the common shares with respect to dividend rights and rights upon liquidation, dissolution or winding up of the Company.

The Series C Preferred Shares have been included within Equity in the Consolidated Balance Sheets, from their issue on November 15, 2018. The Class C Preferred Shares are convertible in certain circumstances to Class A common shares and they are entitled to a dividend only should such a dividend be declared on the Class A common shares.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

2. Significant Accounting Policies (continued)

(o) Other comprehensive income/ (loss)

Other comprehensive income/ (loss), which is reported in the Consolidated Statements of Shareholders' Equity, consists of net income (loss) and other gains and losses affecting equity that, under U.S. GAAP, are excluded from net income (loss). Under ASU 2011-05, an entity reporting comprehensive income in a single continuous financial statement shall present its components in two sections, net income and other comprehensive income. As the Company does not, to date, have other comprehensive income, the accompanying Consolidated Financial Statements only include Consolidated Statements of Income.

(p) Revenue recognition and related expense

The Company charters out its vessels on time charters which involves placing a vessel at a charterer's disposal for a specified period of time during which the charterer uses the vessel in return for the payment of a specified daily hire rate. Such charters are accounted for as operating leases and therefore revenue is recognized on a straight—line basis as the average revenues over the rental periods of such charter agreements, as service is performed. Cash received in excess of earned revenue is recorded as deferred revenue. If a time charter contains one or more consecutive option periods, then subject to the options being exercisable solely by the Company, the time charter revenue will be recognized on a straight—line basis over the total remaining life of the time charter, including any options which are more likely than not to be exercised. Any difference between the charter rate invoiced and the time charter revenue recognized is classified as, or released from, deferred revenue within the Consolidated Balance Sheets.

Revenues are recorded net of address commissions, which represent a discount provided directly to the charterer based on a fixed percentage of the agreed upon charter rate.

Charter revenue received in advance which relates to the period after a balance sheet date is recorded as deferred revenue within current liabilities until the respective charter services are rendered.

Under time charter arrangements the Company, as owner, is responsible for all the operating expenses of the vessels, such as crew costs, insurance, repairs and maintenance, and such costs are expensed as incurred and are included in vessel operating expenses.

Commission paid to brokers to facilitate the agreement of a new charter are included in time charter and voyage expenses as are certain expenses related to a voyage, such as the costs of bunker fuel consumed when a vessel is off—hire or idle.

(q) Foreign currency transactions

The Company's functional currency is the U.S. dollar as substantially all revenues and a majority of expenditures are denominated in U.S. dollars. Monetary assets and liabilities denominated in foreign currencies are translated at the rate of exchange at the balance sheet dates. Expenses paid in foreign currencies are recorded at the rate of exchange at the transaction date. Exchange gains and losses are included in the determination of net income (loss).

(r) Share based compensation

The Company may award restricted stock units to its management and Directors as part of their compensation.

The fair value of restricted stock unit grants is determined by reference to the share price on the date of grant, adjusted for estimated dividends forgone until the restricted stock units vest. Compensation expense is recognized based on a graded expense model over the expected vesting period.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

2. Significant Accounting Policies (continued)

(s) Income taxes

The Company and its Marshall Island subsidiaries are exempt from taxation in the Marshall Islands. The Company's vessels are liable for tax based on the tonnage of the vessel, under the regulations applicable to the country of incorporation of the vessel owning company, which is included within vessels' operating expenses.

The Cyprus and Hong Kong subsidiaries are also liable for income tax on any interest income earned from non—shipping activity.

The Company has one subsidiary in the United Kingdom, where the principal rate of corporate income tax is 19% (2017: 19%, 2016: 20%).

The Company accounts for deferred income taxes using the liability method which requires the determination of deferred tax assets and liabilities, based upon temporary timing differences that arise between the financial statement and tax bases of recorded assets and liabilities, using enacted tax rates in effect for the year in which differences are expected to reverse. The net deferred tax asset is adjusted by a valuation allowance where appropriate, if, based on the weight of available evidence, it is more likely than not that some portion or all of the net deferred tax asset will not be realized. At December 31, 2018 a deferred tax liability of \$9 (2017: \$17) was recognized relating to stock based compensation costs charged to the Consolidated Statements of Income in respect of unvested shares and timing differences between the carrying amounts of assets for financial reporting purposes and their tax bases.

The Company recognizes uncertain tax positions only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based solely on the technical merits of the position.

(t) Dividends

Dividends are recorded in the period in which they are declared by the Company's Board of Directors. Dividends to be paid are presented in the Consolidated Balance Sheets in the line item "Dividends payable".

(u) Earnings/ (Loss) per share

Basic earnings/ (loss) per common share are based on income/ (loss) available to common shareholders divided by the weighted average number of common shares outstanding during the period, excluding unvested restricted stock units. Diluted income/ (loss) per common share are calculated by applying the treasury stock method. All unvested restricted stock units that have a dilutive effect are included in the calculation. The basic and diluted earnings per share for the period are presented for each category of participating common shares under the two—class method.

(v) Risks Associated with Concentration

The Company is exposed to certain concentration risks that may adversely affect the Company's financial position in the near term:

- (i) The Company derives its revenue from CMA CGM and other liner companies which are exposed to the cyclical nature of the container shipping industry.
- (ii) There is a concentration of credit risk with respect to cash and cash equivalents at December 31, 2018, to the extent that substantially all of the amounts are deposited with eight banks (2017; three banks). However, the Company believes this risk is remote as the banks are high credit quality financial institutions.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

2. Significant Accounting Policies (continued)

(w) Segment Reporting

The Company reports financial information and evaluates its operations by charter revenues and not by the length of ship employment for its customers. The Company does not use discrete financial information to evaluate operating results for each type of charter. Management does not identify expenses, profitability or other financial information by charter type. As a result, management reviews operating results solely by revenue per day and operating results of the fleet and thus the Company has determined that it operates under one reportable segment.

(x) Fair Value Measurement and Financial Instruments

Financial instruments carried on the balance sheet include cash and cash equivalents, restricted cash, trade receivables and payables, other receivables and other liabilities and long-term debt. The particular recognition methods applicable to each class of financial instrument are disclosed in the applicable significant policy description of each item, or included below as applicable.

Fair value measurement: Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (i.e. the “exit price”) in an orderly transaction between market participants at the measurement date. The hierarchy is broken down into three levels based on the observability of inputs as follows:

Level 1 — Valuations based on quoted prices in active markets for identical assets or liabilities that the Company has the ability to access. Valuation adjustments and block discounts are not applied to Level 1 instruments. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of these products does not entail a significant degree of judgment.

Level 2 — Valuations based on one or more quoted prices in markets that are not active or for which all significant inputs are observable, either directly or indirectly.

Level 3 — Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

As at December 31, 2018, the Company’s three vessel groups that were held and used with a total aggregate carrying amount of \$165,334 were written down to their fair value of \$93,500 resulting in a non-cash impairment charge of \$71,834 which was allocated to the respective vessels’ carrying values (see note 4) and was included in Consolidated Statements of Income for the year ended December 31, 2018. The estimated fair value, measured on a non-recurring basis, of the Company’s relevant three vessel groups that are held and used is calculated with the assistance of valuation obtained by third party independent ship brokers. Therefore, the Company has categorized the fair value of these vessels as Level II in the fair value hierarchy.

Financial Risk Management: The Company activities expose it to a variety of financial risks including fluctuations in, time charter rates, credit and interest rates risk. Risk management is carried out under policies approved by executive management. Guidelines are established for overall risk management, as well as specific areas of operations.

Credit risk: The Company closely monitors its credit exposure to customers and counter-parties for credit risk. The Company has entered into commercial management agreement with Conchart Commercial Inc. (“Conchart”), pursuant to which Conchart has agreed to provide commercial management services to the Company, including the negotiation, on behalf of the Company, vessel employment contracts (see note 13). Conchart has policies in place to ensure that it trades with customers and counterparties with an appropriate credit history.

Financial instruments that potentially subject the Company to concentrations of credit risk are accounts receivable and cash and cash equivalents. The Company does not believe its exposure to credit risk is likely to have a material adverse effect on its financial position, results of operations or cash flows.

Liquidity Risk: Prudent liquidity risk management implies maintaining sufficient cash and marketable securities, the availability of funding through an adequate amount of committed credit facilities and the ability to close out market positions. The Company monitors cash balances appropriately to meet working capital needs.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

2. Significant Accounting Policies (continued)

(x) Fair Value Measurement and Financial Instruments (continued)

Foreign Exchange Risk: Foreign currency transactions are translated into the measurement currency rates prevailing at the dates of transactions. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation of monetary assets and liabilities denominated in foreign currencies are recognized in the Consolidated Statements of Income.

(y) Recently issued accounting standards

In February 2016, the FASB issued Accounting Standards Update No. 2016-02, “Leases (Topic 842)” (“ASU 2016-02”). ASU 2016-02 will apply to both types of leases – capital (or finance) leases and operating leases. According to the new Accounting Standard, lessees will be required to recognize assets and liabilities on the balance sheet for the rights and obligations created by all leases with terms of more than 12 months. ASU 2016 – 02 is effective for fiscal years which began after December 15, 2018, including interim periods within those fiscal years. Early application was permitted. This guidance requires companies to identify lease and non-lease components of a lease agreement. Lease components relate to the right to use the leased asset and non—lease components relate to payments for goods or services that are transferred separately from the right to use the underlying asset. Total lease consideration is allocated to lease and non-lease components on a relative standalone basis. The recognition of revenues related to lease components will be governed by ASC 842 while revenue related to non-lease components will be subject to ASC 606. In March 2018, the FASB tentatively approved a proposed amendment to ASU 842, that would provide an entity the optional transition method to initially account for the impact of the adoption with a cumulative adjustment to retained earnings on the effective date of the ASU, January 1, 2019 rather than January 1, 2017, which would eliminate the need to restate amounts presented prior to January 1, 2019. In addition, lessors can elect, as a practical expedient, not to allocate the total consideration to lease and non—lease components based on their relative standalone selling prices. As adopted by the Accounting Standards Update No. 2018-11 in July 2018, this practical expedient will allow lessors to elect and account for the combined component based on its predominant characteristic.

ASC 842 provides practical expedients that allow entities to not (i) reassess whether any expired or existing contracts are considered or contain leases; (ii) reassess the lease classification for any expired or existing leases; and (iii) reassess initial direct costs for any existing leases. In July 2018, the FASB issued Accounting Standards Update No. 2018-10, “Codification Improvements to Topic 842, Leases” and in December 2018 the Accounting Standards Update No. 2018-20 “Narrow—scope improvements for lessors”, which further improve and clarify ASU 2016-02. The Company plans to adopt the standard as of January 1, 2019 and expects to elect the use of all practical expedients. Based on a preliminary assessment, the Company is expecting that the adoption will not have a material effect on its consolidated financial statements since the Company is primarily a lessor and the changes to the lessor model are fairly minor.

The Company currently does not have any other miscellaneous leases that are greater than 12 months and the Company is the lessee that would be impacted by the adoption of this standard.

In June 2016, the FASB issued ASU 2016-13, “Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments” (“ASU 2016-13”), which amends the impairment model by requiring entities to use a forward-looking approach based on expected losses to estimate credit losses on certain types of financial instruments, including trade receivables. In December 2018, the FASB issued Accounting Standards Update No. 2018-19 “Codification improvements to Topic 326”, which clarifies that impairment of receivables arising from operating leases should be accounted for in accordance with Topic 842, Leases. The ASU 2016-13 is effective for public entities for fiscal years beginning after December 15, 2019, with early adoption permitted. The Company is currently evaluating the impact of the new standard on the Company’s consolidated financial statements.

The Company does not believe that any other recently issued, but not yet effective, accounting pronouncements would have a material impact on its consolidated financial statements.

Global Ship Lease, Inc.
Notes to the Consolidated Financial Statements (continued)
(Expressed in thousands of U.S. dollars)

3. Restricted Cash

Restricted cash as of December 31, 2018 and 2017 consisted of the following:

	December 31, 2018	December 31, 2017
Retention accounts	\$ 2,186	\$ —
Total Current Restricted Cash	\$ 2,186	\$ —
Cash Collateral	\$ 5,190	\$ —
Blocked bank deposits	637	—
Total Non - Current Restricted Cash	5,827	—
Total Current and Non - Current Restricted Cash	\$ 8,013	\$ —

4. Vessels in Operation

Vessels in Operation as of December 31, 2018 and 2017 consisted of the following:

	Vessel Cost, as adjusted for impairment charges	Accumulated Depreciation	Net Book Value
As of January 1, 2017	\$ 916,809	\$ (209,481)	\$ 707,328
Additions	310	—	310
Depreciation	—	(33,494)	(33,494)
Impairment loss	(182,585)	94,961	(87,624)
As of December 31, 2017	\$ 734,534	\$ (148,014)	\$ 586,520
Additions	11,675	—	11,675
Acquisitions through the Poseidon Transaction	617,522	—	617,522
Depreciation	—	(31,117)	(31,117)
Impairment loss	(139,354)	67,520	(71,834)
As of December 31, 2018	\$ 1,224,377	\$ (111,611)	\$ 1,112,766

On June 18, 2018, the Company took delivery of a 2005-built, 2,824 TEU containership, now named GSL Valerie, for a total cost of \$11,436.

On November 15, 2018, the Company completed the Poseidon Transaction, acquiring 20 containerships, one of which, the Argos, was contracted to be sold which sale was completed in December 2018. The Poseidon vessels were recorded at their fair value, less negative goodwill arising as a result of the accounting for the Poseidon Transaction, allocated pro-rata at that date. The vessel contracted to be sold at the date of the transaction was classified as an asset held-for-sale and was held at a fair value which equaled the agreed sale price. As a result, no gain or loss has been recognized in the Company's Consolidated Statements of Income.

Whilst charter rates in the spot market and asset values saw overall improvements through 2018, taking into account the seasonal as well as cyclical nature of the container shipping industry, the recovery was not considered to have been sufficiently sustained not to undertake a review of the GSL Fleet for impairment as at December 31, 2018. The impairment review resulted in an impairment charge on three vessels, totaling \$71,834, being recognized during the year ended December 31, 2018.

Global Ship Lease, Inc.**Notes to the Consolidated Financial Statements (continued)**

(Expressed in thousands of U.S. dollars)

4. Vessels in Operation (continued)

No impairment test was performed for the vessels comprising the Poseidon Fleet as at December 31, 2018, as no events or circumstances existed indicating that their carrying value may not be recoverable. The carrying value of the vessels at December 31, 2018, was significantly lower than their fair value, in part as a result of the allocation of negative goodwill arising from the accounting for the Poseidon Transaction.

The impairment review as at December 31, 2017 and 2016 gave rise to an impairment charge of \$87,624 and \$92,422 on five and six vessels, respectively in the GSL Fleet.

As of December 31, 2018, 18 vessels of the GSL Fleet were pledged as collateral under the 2022 Notes and the Citi Super Senior Term Loan (“Citi Credit Facility”), and one vessel of the GSL Fleet was pledged as collateral under the Hayfin Credit Facility. Additionally, the loan facilities of Poseidon Fleet are collateralized by preferred mortgages over the 19 Poseidon vessels (see note 11).

5. Deferred charges, net

Deferred charges, net as of December 31, 2018 and 2017 consisted of the following:

	Dry - docking Costs
As of January 1, 2017	\$ 11,782
Additions	3,949
Amortization	(4,472)
As of December 31, 2017	\$ 11,259
Additions	2,635
Amortization	(4,200)
Write - off	(125)
As of December 31, 2018	\$ 9,569

The Company follows the deferral method of accounting for dry—docking costs in accordance with accounting for planned major maintenance activities, whereby actual costs incurred are deferred and amortized on a straight—line basis over the period until the next scheduled dry—docking, which is generally five years. Any remaining unamortized balance from the previous dry-docking are written—off.

Global Ship Lease, Inc.**Notes to the Consolidated Financial Statements (continued)**

(Expressed in thousands of U.S. dollars)

6. Intangible Assets/Liabilities – Charter Agreements

Intangible Liabilities – Charter Agreements as of December 31, 2018 and 2017 consisted of the following:

	<u>December 31,</u> <u>2018</u>	<u>December 31,</u> <u>2017</u>
Opening balance	\$ 10,482	\$ 12,527
Amortization in period	(2,012)	(2,045)
Closing balance	<u>\$ 8,470</u>	<u>\$ 10,482</u>

Intangible liabilities relate to management's estimate of the fair value of below—market charters on August 14, 2008, the date of the Marathon Merger (see note 1). These intangible liabilities, which are related to five vessels as at December 31, 2018, are being amortized over the remaining term of the relevant charter, giving rise to an increase in time charter revenue.

Intangible Assets – Charter Agreements as of December 31, 2018 and 2017 consisted of the following:

	<u>December 31,</u> <u>2018</u>	<u>December 31,</u> <u>2017</u>
Opening balance	\$ 700	\$ 937
Additions through the Poseidon Transaction	5,404	—
Amortization in the year	(704)	(237)
Closing balance	<u>\$ 5,400</u>	<u>\$ 700</u>

Intangible assets relate to management's estimate of the fair value of two above—market charters on August 14, 2008, the date of the Marathon Merger (see note 1). These intangible assets are amortized over the remaining term of the relevant charters, giving rise to a reduction in time charter revenue.

In addition, following the completion of the Poseidon Transaction (see note 1) on November 15, 2018, intangible assets were recognized. These assets were derived from the management's estimate of the fair value of above—market charters. These intangible assets, which are related to two vessels, are being amortized over the remaining term of the relevant charter, giving rise to a reduction in time charter revenue. The unamortized balance of the intangible assets recognized following the Poseidon Transaction as of December 31, 2018, will be fully amortized during the second quarter of 2020.

Global Ship Lease, Inc.**Notes to the Consolidated Financial Statements (continued)**

(Expressed in thousands of U.S. dollars)

7. Prepaid Expenses and Other Current Assets

Prepaid Expenses and Other Current Assets as of December 31, 2018 and December 31, 2017 consisted of the following:

	December 31, 2018	December 31, 2017
Insurance and other claims	\$ 1,761	\$ 348
Advances to suppliers and other assets	2,128	68
Prepaid vessel expenditure	840	327
Prepaid insurances	787	418
Other	698	215
Total	\$ 6,214	\$ 1,376

8. Inventories

Inventories as of December 31, 2018 and December 31, 2017 consisted of the following:

	December 31, 2018	December 31, 2017
Bunkers	\$ 443	\$ —
Lubricants	4,958	742
Stores	192	—
Victualling	176	—
Total	\$ 5,769	\$ 742

9. Accounts Payable

Accounts payable as of December 31, 2018 and 2017 consisted of the following:

	December 31, 2018	December 31, 2017
Suppliers, repairers	\$ 8,561	\$ 1,207
Insurers, agents and brokers	358	—
Payables to charterers	368	—
Other creditors	299	279
Total	\$ 9,586	\$ 1,486

10. Accrued Liabilities

Accrued liabilities as of December 31, 2018 and 2017 consisted of the following:

	December 31, 2018	December 31, 2017
Accrued expenses	\$ 7,154	\$ 2,764
Accrued interest	8,253	6,024
Total	\$ 15,407	\$ 8,788

Global Ship Lease, Inc.**Notes to the Consolidated Financial Statements (continued)**

(Expressed in thousands of U.S. dollars)

11. Long—Term Debt

Long- term debt as of December 31, 2018 and 2017 consisted of the following:

<u>Facilities</u>	<u>December 31,</u> <u>2018</u>	<u>December 31,</u> <u>2017</u>
2022 Notes	\$ 360,000	\$ 360,000
Less repurchase of Notes	(20,000)	—
Less original issue discount	(3,600)	(3,600)
Accumulated amortization of original issue discount	941	133
2022 Notes (a)	\$ 337,341	\$ 356,533
Poseidon - DVB Credit Facility (b)	51,063	—
Poseidon - Credit Agricole Credit Facility (c)	53,069	—
Poseidon - Blue Ocean Credit Facility (d)	23,830	—
Poseidon - ABN-AMRO Credit Facility (e)	62,189	—
Poseidon - ATB Credit Facility (f)	17,100	—
Poseidon - Credit Agricole Credit Facility (g)	80,000	—
Poseidon - Blue Ocean Credit Facility (h)	38,500	—
Poseidon - Deutsche, CIT, Entrust Credit Facility (i)	180,500	—
Citi Credit Facility (j)	34,800	54,800
Hayfin Credit Facility (k)	8,125	—
Less: Deferred financing costs (n)	(9,299)	(12,818)
Total	\$ 877,218	\$ 398,515
Less: Current portion of 2022 Notes (a)	(20,000)	—
Less: Current portion of Poseidon - DVB Credit Facility (b)	(2,231)	—
Less: Current portion of Poseidon - Credit Agricole Credit Facility (c)	(405)	—
Less: Current portion of Poseidon - ABN - AMRO Credit Facility (e)	(129)	—
Less: Current portion of Poseidon - ATB Credit Facility (f)	(1,628)	—
Less: Current portion of Poseidon - Credit Agricole Credit Facility (g)	(6,000)	—
Less: Current portion of Poseidon - Deutsche, CIT, Entrust Credit Facility (i)	(13,695)	—
Less: Current portion of Citi Credit Facility (j)	(20,000)	(40,000)
Non—current portion of Long - Term Debt	\$ 813,130	\$ 358,515

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

11. Long—Term Debt (continued)

a) 9.875% First Priority Secured Notes due 2022

On October 31, 2017, the Company completed the sale of \$360,000 in aggregate principal amount of its 9.875% First Priority Secured Notes (the “2022 Notes”) which mature on November 15, 2022. Proceeds after the deduction of the original issue discount, but before expenses, amounted to \$356,400.

Interest on the 2022 Notes is payable semi—annually on May 15 and November 15 of each year, commencing on May 15, 2018. As at December 31, 2018 the 2022 Notes were secured by first priority ship mortgages on the 18 vessels in the GSL Fleet and by assignments of earnings and insurances, pledges over certain bank accounts, as well as share pledges over each subsidiary owning a Mortgaged Vessel. In addition, the 2022 Notes are fully and unconditionally guaranteed, jointly and severally, by the Company’s 18 vessel owning subsidiaries and Global Ship Lease Services Limited.

The Company is required to have a minimum cash balance of \$20,000 on each test date, being March 31, June 30, September 30 and December 31 in each year.

The original issue discount is being amortized on an effective interest rate basis over the life of the 2022 Notes.

The Company is required to repay \$40,000 each year for the first three years and \$35,000 thereafter, across both the 2022 Notes and the new Citi Credit Facility – see 12(j) below. The Citi Credit Facility has minimum fixed amortization whereas as long as amounts are outstanding under that Facility amortization of the 2022 Notes is at the option of the noteholders, who can accept or reject an annual tender offer the Company is obliged to make. In December 2018, the tender offer was accepted in full and the Company repurchased \$20,000 of the 2022 Notes at a purchase price of 102%. Around the second anniversary of the issue of the 2022 Notes, the Company will further offer to redeem \$20,000 of the 2022 Notes at a purchase price of 102%. Any such offer not accepted will be applied to repay the Citi Credit Facility at par. Should the amount outstanding under the Citi Credit Facility be insufficient to absorb the total amount to be repaid, the excess will be mandatorily redeemed against the 2022 Notes at 102%. Around the third anniversary of the issue of the 2022 Notes, the Company will mandatorily redeem \$40,000 of the 2022 Notes at a purchase price of 102%, less any amount remaining under the Citi Credit Facility. Around the fourth anniversary of the issue of the 2022 Notes, the Company will mandatorily redeem \$35,000 of the 2022 Notes at a purchase price of 102%.

On December 20, 2018, the Company entered into a first supplemental indenture for the 2022 Notes according to which the date beginning on which the Company is permitted to pay dividends to common shareholders in an aggregate amount per year equal to 50% of the consolidated net profit after taxes of the Company for the preceding financial year, was brought forward from January 1, 2021 to January 1, 2020. Also, certain restrictions were agreed in the increase in the permitted transfer basket and the immediate increase in dividend capacity as a result of completing the Poseidon Transaction, and certain other provisions of the Indenture, among other things, the restricted payment covenant, the arm’s length transaction covenant and the reporting covenant were amended.

As of December 31, 2018, the outstanding balance was \$337,341, net of the outstanding balance of the original issue discount.

b) \$52.6 Million DVB Credit Facility

In connection with the Poseidon Transaction, the Company assumed debt from the four vessel owning companies of Maira, Nikolas, Newyorker and Mary, on the date of completion of the transaction of \$51,063 with DVB Bank SE (“DVB”). The agreement is dated July 18, 2017, with initial drawdown amount of \$52,625 and final maturity of December 31, 2020.

The facility has a repayment schedule along with a cash sweep clause, whereby the excess cash flows will be used against the outstanding balance of the facility and will be specifically applied to the prepayment of the balloon instalment up to a specific amount. Tranches A and B each amounting to \$5,500 is scheduled to be repaid in four consecutive quarterly instalments of \$267 starting from March 31, 2020 and a balloon payment of \$4,429 payable in December 31, 2020.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

11. Long—Term Debt (continued)

b) \$52.6 Million DVB Credit Facility (continued)

Tranche C amounting to \$5,800 is scheduled to be repaid in four consecutive quarterly instalments of \$267 starting from March 31, 2020 and a balloon payment of \$4,734 payable in December 31, 2020. Tranche D of the remaining \$35,800 is scheduled to be repaid in four consecutive quarterly instalments of \$1,083 starting from March 31, 2020 and a balloon payment of \$31,500 payable also in December 31, 2020. In addition to the repayment schedule of all tranches and the cash sweep mechanism, certain financial covenants will apply starting from January 1, 2020.

The facility bears interest at LIBOR plus a margin of 2.85% per annum.

As of December 31, 2018, the outstanding balance on this facility was \$51,063.

c) \$55.7 Million Credit Agricole Credit Facility

In connection with the Poseidon Transaction, the Company assumed debt from the three vessel owning companies of Dolphin II, Kristina and Athena, on the date of completion of the transaction of \$54,025 with Credit Agricole Corporate and Investment Bank (“Credit Agricole”). The agreement is dated August 11, 2017, with initial drawdown amount of \$55,650 and final maturity of December 31, 2020.

The facility has a repayment schedule along with a cash sweep clause, whereby the excess cash flows will be used against the outstanding balance of the facility and will be specifically applied to the prepayment of the balloon instalment up to a specific amount. Tranche A amounting to \$19,400 is scheduled to be repaid in four consecutive quarterly instalments of \$350 starting from March 31, 2020 and a balloon payment of \$18,000 payable in December 31, 2020. Tranche B amounting to \$10,500 is scheduled to be repaid in four consecutive quarterly instalments of \$200 starting from March 31, 2020 and a balloon payment of \$9,700 payable in December 31, 2020. Tranche C amounting to \$25,750 is scheduled to be repaid in four consecutive quarterly instalments of \$850 starting from March 31, 2020 and a balloon payment of \$22,350 payable also in December 31, 2020. In addition to the repayment schedule of all tranches and the cash sweep mechanism, certain financial covenants will apply starting from January 1, 2020.

This facility bears interest at LIBOR plus a margin of 2.75% per annum.

As of December 31, 2018, the outstanding balance on this facility was \$53,069.

d) \$24.5 Million Blue Ocean Credit Facility

In connection with the Poseidon Transaction, the Company assumed debt from the vessel owning company of Agios Dimitrios on the date of completion of the transaction of \$24,231 with Blue Ocean Income Fund LP, Blue Ocean Onshore Fund LP, Blue Ocean Investments SPC One and Blue Ocean Investments SPC Three (together, “Blue Ocean”). The agreement is dated August 11, 2017, with initial drawdown amount of \$24,500 and final maturity of December 31, 2020.

The facility has a following repayment schedule along with a cash sweep clause, whereby the excess cash flows will be used against the outstanding balance on the facility and will be specifically applied to the prepayment of the balloon instalment up to a specific amount. The facility is scheduled to be repaid in four consecutive quarterly instalments of \$650 starting from March 31, 2020 and a balloon payment of \$21,900 payable in December 31, 2020.

This facility bears interest on \$18.8 million of principal at LIBOR plus a margin of 4.0% per annum.

As of December 31, 2018, the outstanding balance on this facility was \$23,830.

e) \$65.3 Million ABN AMRO Credit Facility

In connection with the Poseidon Transaction, the Company assumed debt from the two vessel owning companies of Orca II and Katherine, on the date of completion of the transaction of \$64,254 with ABN AMRO Bank N.V. The agreement is dated August 30, 2017, with initial drawdown amount of \$65,300 and final maturity of December 31, 2020.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

11. Long—Term Debt (continued)

e) \$65.3 Million ABN AMRO Bank Credit Facility (continued)

The facility has a following repayment schedule along with a cash sweep clause, whereby the excess cash flows will be used against the outstanding balance on the facility and will be specifically applied to the prepayment of the balloon instalment up to a specific amount. The facility is scheduled to be repaid in four consecutive instalments in the amount of \$1,125 starting from March 31, 2020 plus a balloon instalment of \$60,800 at the maturity date, December 31, 2020.

This facility bears interest at LIBOR plus a margin of 3.42% per annum up to March 31, 2019 and afterwards 3.50% per annum.

As of December 31, 2018, the outstanding balance on this facility was \$62,189.

f) \$17.1 Million Amsterdam Trade Bank (“ATB”) Credit Facility

In connection with the Poseidon Transaction, the Company assumed debt from THD Maritime Co. Limited, a holding company of the three vessel owning companies of Tasman, Dimitris Y and Ian H, on the date of completion of the transaction of \$17,100 with Amsterdam Trade Bank N.V. The agreement is dated October 9, 2018 with initial drawdown amount of \$17,100 divided in three tranches of \$5,700 each and final maturity of December 31, 2020.

The facility has a following repayment schedule along with a cash sweep clause, whereby the excess cash flows will be used against the outstanding balance on the facility and will be specifically applied to the prepayment of the balloon instalment up to a specific amount. Each Tranche is scheduled to be repaid in four consecutive quarterly instalments of \$110 each, with the first being due on March 31, 2020 and the final together with a balloon payment of \$5,260 on December 31, 2020.

This facility bears interest at LIBOR plus a margin of 3.90% per annum.

As of December 31, 2018, the outstanding balance on this facility was \$17,100.

g) \$80.0 Million Credit Agricole Credit Facility

In connection with the Poseidon Transaction, the Company assumed debt from the three vessel owning companies of Alexandra, UASC Bubiyan and UASC Yas on the date of completion of the transaction of \$80,000 with Credit Agricole. The agreement is dated October 3, 2018, with initial drawdown amount of \$80,000 and final maturity of June 30, 2020.

The Facility shall be repaid in seven equal quarterly instalments of \$1,500 each, the first such instalment due three months from the utilization date, plus a final balloon of \$69,500 payable together with the last 7th instalment.

This facility bears interest at LIBOR plus a margin of 3.00% per annum for the first 6 months, 3.25% for the following 12 months and 3.50% thereafter payable quarterly in arrears.

As of December 31, 2018, the outstanding balance on this facility was \$80,000.

h) \$38.5 Million Blue Ocean Credit Facility

In connection with the Poseidon Transaction, the Company assumed debt from the three vessel owning companies of Alexandra, UASC Bubiyan and UASC Yas on the date of completion of the transaction of \$38,500 with Blue Ocean. The agreement is dated October 3, 2018, with initial drawdown amount of \$38,500 and final maturity of October 3, 2023.

The Facility is scheduled to be repaid in one instalment at maturity date and bears interest at 10.0% fixed payable quarterly in arrears.

As of December 31, 2018, the outstanding balance on this facility was \$38,500.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

11. Long—Term Debt (continued)

i) \$180.5 Million Deutsche, CIT, Entrust Credit Facility

In connection with the Poseidon Transaction, the Company assumed debt from the three vessel owning companies of UASC Al Khor, Maira XL and Anthea Y on the date of completion of the transaction of \$180,500 with Deutsche Bank AG. The agreement is dated November 9, 2018, with initial drawdown amount of \$180,500 and final maturity of June 30, 2022.

On December 31, 2018, the Company entered into a deed of amendment and restatement with the bank. Based on this restatement there was a re-tranche of the existing facility such that it was split into a senior facility in an amount of \$141,900 (“Senior Facility”) and a junior facility in an amount of \$38,600 (“Junior Facility”). The Lenders of the Senior Facility are Deutsche Bank AG and CIT Bank N.A and the Lenders of the Junior Facility are Deutsche Bank AG, Blue Ocean Income Fund LP, Blue Ocean Onshore Fund LP, Entrustpermal ICAV, Blue Ocean Investments SPC one and Blue Ocean Investments SPC for three. The final maturity of both Facilities (Senior and Junior) will be June 30, 2022. In addition to the repayment schedule a cash sweep mechanism based on a DSCR ratio of 1.10:1 (DSCR ratio is the ratio of Cash Flow to the Cash Flow Debt Service) will apply pro rata against the Senior Facility and the Junior Facility.

Senior Facility

The Senior Facility comprised of three Tranches. Tranche A relates to Al Khor and is scheduled to be repaid in 14 instalments of \$868, the first such instalment due three months from the utilization date, and a final instalment of \$35,148. Tranche B relates to Anthea Y and is scheduled to be repaid in 14 instalments of \$863, the first such instalment due three months from the utilization date, and a final instalment of \$35,218. Tranche C relates to Maira XL and is scheduled to be repaid in 14 instalments of \$858, the first such instalment due three months from the utilization date, and a final instalment of \$35,288.

The Senior Facility bears interest at LIBOR plus 3.0% payable quarterly in arrears.

As of December 31, 2018, the outstanding balance on the Senior Facility was \$141,900.

Junior Facility

The Junior Facility comprised of three Tranches. Tranche A relates to Al Khor and is scheduled to be repaid in 14 instalments of \$236, the first such instalment due three months from the utilization date, and a final instalment of \$9,563. Tranche B relates to Anthea Y and is scheduled to be repaid in 14 instalments of \$235, the first such instalment due three months from the utilization date, and a final instalment of \$9,577. Tranche C relates to Maira XL and is scheduled to be repaid in 14 instalments of \$233, the first such instalment due three months from the utilization date, and a final instalment of \$9,604.

The Junior Facility bears interest at LIBOR plus 10.0% payable quarterly in arrears.

As of December 31, 2018, the outstanding balance on the Junior Facility was \$38,600.

j) \$54.8 Million Citi Credit Facility

On October 26, 2017, and in connection with the 2022 Notes, the Company entered into a new \$54,800 loan with Citibank N.A. The loan was drawn down in full on October 31, 2017 and matures no later than October 31, 2020. The interest rate is USD LIBOR plus a margin of 3.25% and is payable at least quarterly.

Amortization, which may be increased as described in note 11(a) above, is payable semi-annually and is a minimum of \$20,000 in each of the first and second years with the balance to be repaid in the third year.

The collateral provided to the 2022 Notes also secures on a first priority basis the Citi Credit Facility. The Company is required to have a minimum cash balance of \$20,000 on each test date, being March 31, June 30, September 30 and December 31 in each year.

As of December 31, 2018, the outstanding balance on this facility was \$34,800.

Global Ship Lease, Inc.**Notes to the Consolidated Financial Statements (continued)**

(Expressed in thousands of U.S. dollars)

11. Long—Term Debt (continued)**k) \$65.0 Million Hayfin Credit Facility**

On September 7, 2018, the Company and certain subsidiaries entered into a facility agreement with Hayfin Services LLP (the “Lenders”) which provides for a secured term loan facility of up to \$65,000. The Hayfin Credit Facility is to be borrowed in tranches and is to be used in connection with the acquisition of vessels as specified in the Hayfin Credit Facility or as otherwise agreed with the Lenders. Hayfin Credit Facility, which is non-amortizing, is available for drawing until May 10, 2019 and has a final maturity date of July 16, 2022. The interest rate is USD LIBOR plus a margin of 5.5% and is payable at each quarter end date. A commitment fee of 2.0% per annum is due on the undrawn commitments until May 10, 2019.

Any debt drawn under the Hayfin Credit Facility will be secured by first priority ship mortgage on the acquired vessel (the “Facility Mortgaged Vessel”) and by assignments of earnings and insurances, pledges over certain bank accounts, as well as share pledges over each subsidiary owning a Facility Mortgaged Vessel. In addition, the Hayfin Credit Facility is fully and unconditionally guaranteed, jointly and severally, by the Company, GSL Holdings, Inc. and Facility Mortgaged Vessel owning subsidiaries. An initial tranche of \$8,125 was drawn on September 10, 2018 in connection with the acquisition of the GSL Valerie. Any future tranche cannot exceed 65% of the charter free market value of the vessel to be acquired. The Company is required to have a minimum cash balance of \$20,000, on a consolidated basis, on each test date, being March 31, June 30, September 30 and December 31 in each year. The Company is also required to hold, at all times, a cash balance of \$500 per Facility Mortgaged Vessel and a reserve for dry docking costs of the Facility Mortgaged Vessels; these are both shown in the Balance Sheets as Restricted Cash.

As of December 31, 2018, the outstanding balance of this facility was \$8,125.

l) \$14.35 Million DVB Argos Credit Facility

On November 14, 2018, the vessel owning company of Argos entered into a deed of amendment and restatement of a loan agreement on a \$14,300 facility with DVB Bank. This facility was fully repaid on December 19, 2018 following the sale of Argos.

m) Repayment Schedule

Maturities of long—term debt for the years subsequent to December 31, 2018 are as follows:

Payment due by period ended	December 31, 2018
2019	\$ 64,088
2020	330,033
2021	48,176
2022	408,379
2023	38,500
	\$ 889,176

Global Ship Lease, Inc.**Notes to the Consolidated Financial Statements (continued)**

(Expressed in thousands of U.S. dollars)

11. Long—Term Debt (continued)**n) Deferred Financing Costs**

	<u>December 31,</u> <u>2018</u>	<u>December 31,</u> <u>2017</u>
Opening balance	\$ 12,818	\$ 7,100
Expenditure in the period	307	13,177
Amortization included within interest expense	(3,826)	(7,459)
Closing balance	<u>\$ 9,299</u>	<u>\$ 12,818</u>

Costs amounting to \$307 were incurred in connection with the Hayfin Credit Facility for the acquisition of GSL Valerie. These are being amortized on an effective interest rate basis over the life of the financings for which they were incurred. In addition, fees amounting to \$2,055 were incurred in connection with the above mentioned loan and the unamortized balance is presented within “Other non—current assets”.

o) Debt covenants—securities

Amounts drawn under the facilities listed above are secured by first priority mortgages on the Company’s vessels and other collateral. The majority of the credit facilities contain a number of restrictive covenants that limit the Company from, among other things: incurring or guaranteeing indebtedness; charging, pledging or encumbering the vessels; changing the flag, class, management or ownership of the vessel owning entities. The credit facilities also require the vessels to comply with the ISM Code and ISPS Code and to maintain valid safety management certificates and documents of compliance at all times. Additionally, specific credit facilities require compliance with a number of financial covenants including debt ratios and minimum liquidity and corporate guarantor requirements. Among other events, it will be an event of default under the credit facilities if the financial covenants are not complied with.

As of December 31, 2018 and 2017, the Company was in compliance with its debt covenants.

Global Ship Lease, Inc.**Notes to the Consolidated Financial Statements (continued)**

(Expressed in thousands of U.S. dollars)

12. Time charter revenue

Time charter revenue as of December 31, 2018, 2017 and 2016 consisted of the following:

	December 31, 2018	December 31, 2017	December 31, 2016
Time charter revenue	\$ 30,890	\$ 35,334	\$ 37,881
Time charter revenue - related party	126,207	123,944	128,956
	<u>\$ 157,097</u>	<u>\$ 159,278</u>	<u>\$ 166,837</u>

Operating revenue from significant customers (constituting more than 10% of total time charter revenue) was as follows:

Charterer	Year Ended December 31,		
	2018	2017	2016
CMA CGM	80.41%	77.82%	77.28%
OOCL	Under 10%	22.18%	22.72%

13. Related Party Transactions

CMA CGM is presented as a related party due to the fact that on December 31, 2018, 2017 and 2016 it was a significant shareholder of the Company, owning Class A and Class B common shares representing 15.55%, 44.4% and 44.4%, respectively of voting rights in the Company. Amounts due to and from CMA CGM companies are shown within amounts due to or from related parties in the Consolidated Balance Sheets.

Time Charter Agreements

A number of the Company's time charter arrangements are with CMA CGM. Under these time charters, hire is payable in advance and the daily rate is fixed for the duration of the charter. Revenues generated from charters to CMA CGM are shown separately in the Consolidated Statements of Income. The outstanding receivables due from CMA CGM are presented in the Consolidated Balance Sheets under "Due from related parties" totaling \$817 and \$1,932 as of December 31, 2018 and 2017, respectively.

Ship Management Agreements

Technomar Shipping Inc. ("Technomar") is presented as a related party, as the Company's Executive Chairman is a significant shareholder. The Company has a number of ship management agreements with Technomar under which the ship manager is responsible for all day—to—day ship management, including crewing, purchasing stores, lubricating oils and spare parts, paying wages, pensions and insurance for the crew, and organizing other vessel operating necessities, including the arrangement and management of drydocking. For the 19 vessels of Poseidon Fleet, the ship management agreements were effective at the date of the completion of the Poseidon Transaction, while for the GSL Fleet, the agreements will be effective upon the transfer of management of each vessel to Technomar.

At December 31, 2018, the Company outsourced day—to—day technical management of seven of its vessels in the GSL Fleet to CMA Ships Limited ("CMA Ships"), a wholly owned subsidiary of CMA CGM. The Company pays CMA Ships an annual management fee of \$123 per vessel (2017: \$123, 2016: \$123) and reimburses costs incurred by CMA Ships on its behalf, mainly being for the provision of crew, lubricating oils and routine maintenance. Such reimbursement is subject to a cap per day per vessel, depending on the vessel. The impact of the cap is determined annually on a vessel by vessel basis for so long as the initial charters remain in place; no claims have been made under the cap agreement.

The management fees charged to the Company by Technomar and CMA Ships for the year ended December 31, 2018 amounted to \$722 and \$967, respectively (2017: CMA Ships—\$1,599) and are shown in vessel operating expenses – related parties in the Consolidated Statements of Income. As of December 31, 2018, these outstanding fees due to Technomar and CMA Ships are presented in the Consolidated Balance Sheets under "Due to related parties" totaling \$1,362 and \$1,829 respectively (2017: CMA Ships—\$2,813).

Global Ship Lease, Inc.**Notes to the Consolidated Financial Statements (continued)**

(Expressed in thousands of U.S. dollars)

13. Related Party Transactions (continued)

Conchart Commercial Inc. (“Conchart”) provides commercial management services to the Company and is presented as a related party, as the Company’s Executive Chairman is a significant shareholder. Under the management agreements, Conchart, is responsible for (i) marketing of the Company’s vessels, (ii) seeking and negotiating employment of the Company’s vessels, (iii) advise the Company on market developments, developments of new rules and regulations, (iv) assisting in calculation of hires, freights, demurrage and/or dispatch monies and collection any sums related to the operation of vessels, (v) communicating with agents, and (vi) negotiating sale and purchase transactions. For the 19 vessels of Poseidon Fleet, the agreements were effective from the date of the completion of the Poseidon Transaction; for the GSL Fleet, the agreements will come into effect when new charters are entered into and applied to two vessels during 2018.

The fees charged to the Company by Conchart for the year ended December 31, 2018 amounted to \$222 and are disclosed within time charter and voyage costs – related parties in the Consolidated Statements of Income.

These outstanding fees due to Conchart are presented in the Consolidated Balance Sheets under “Due to related parties” totaling \$126 and \$nil as of December 31, 2018 and 2017, respectively.

14. Commitments and Contingencies**Charter Hire Receivable**

The Company has entered time charters for its vessels. The charter hire is fixed for the duration of the charter. The minimum contracted future charter hire receivable, net of address commissions, not allowing for any offhire, assuming expiry at earliest possible dates and assuming options callable by the Company included in the charters are not exercised, for the 38 vessels as at December 31, 2018 is as follows:

	<u>Amount</u>
2019	206,682
2020	141,577
2021	104,775
2022	91,783
2023 and thereafter	103,418
Total minimum lease revenue, net of address commissions	<u>648,235</u>

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars)

15. Share Capital

On March 25, 2019, the Company effected a one-for-eight reverse stock split of the Company's issued Class A common shares (Note 1). The reverse stock split ratio and the implementation and timing of the reverse stock split were determined by the Company's Board of Directors, following approval of shareholders at a Special Meeting on March 20, 2019. The reverse stock split did not change the authorized number of shares or par value of the Company's common shares.

At December 31, 2018, the Company had two classes of common shares. The rights of holders of Class B common shares were identical to those of holders of Class A common shares, except that the dividend rights of holders of Class B common shares were subordinated to those of holders of Class A common shares. As a consequence of the completion of the Poseidon Transaction, the outstanding shares of Class B common shares converted to Class A common shares on a one-for-one basis on January 2, 2019 and were also retrospectively adjusted for the one-for-eight reverse stock split.

On completion of the Poseidon Transaction on November 15, 2018, the Company issued 3,005,603 Class A common shares and 250,000 new Series C Preferred Shares of par value \$0.01. Each Series C Preferred Share carries 38.75 votes and are convertible in certain circumstances to a total of 12,955,187 Class A common shares. They are entitled to a dividend only should such a dividend be declared on the Class A common shares. As a consequence of the completion of the Poseidon Transaction, all outstanding restricted stock units vested on November 15, 2018 and as a result a total of 60,425 Class A common shares were also issued.

On August 20, 2014, the Company issued 1,400,000 depositary shares, each of which represents 1/100th of one share of the Company's 8.75% Series B Cumulative Redeemable Perpetual Preferred Shares (the "Series B Preferred Shares"). The net proceeds from the offering were \$33,497. Dividends are payable at 8.75% per annum in arrears on a quarterly basis. At any time after August 20, 2019 (or within 180 days after the occurrence of a fundamental change), the Series B Preferred Shares may be redeemed, at the discretion of the Company, in whole or in part, at a redemption price of \$2,500.00 per share (equivalent to \$25.00 per depositary share). These shares are classified as Equity in the Consolidated Balance Sheets. The dividends payable on the Series B Preferred Shares are presented as a reduction of Retained Earnings in the Consolidated Statements of Equity, when and if declared by the Board of Directors. An initial dividend was declared on September 22, 2014 for the third quarter 2014. Subsequent dividends have been declared for all quarters.

Restricted stock units have been granted periodically to the Directors and management, under the Company's Equity Incentive Plans, as part of their compensation arrangements (see note 16). During each of the years ended December 31, 2017 and 2016, 4,266 Class A common shares were issued under the 2015 Plan, representing 20% of directors' base fee for 2017 and 2016, respectively. The number of shares to be issued was determined on the basis of a notional value per share of \$32.00 rather than market values.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars except share data)

16. Share—Based Compensation

In August 2015, the Company's Board adopted the 2015 Equity Incentive Plan (the "2015 Plan"), which enabled management, consultants and Directors of the Company and its subsidiaries to receive options, stock appreciation rights, stock grants, stock units and dividend equivalents.

Under the 2015 Plan, restricted stock units were granted to four members of management on March 3, 2016 and were divided into two tranches. The first tranche (12,500 restricted stock units) would vest when the individual left employment, provided that this was after December 31, 2016 and was not for cause. The second tranche (12,500 restricted stock units) also vested after December 31, 2016 on the same terms, but, in addition, only if and when the stock price had been at or above \$40.00 for 20 consecutive trading days and provided that this had occurred before December 31, 2019.

Restricted stock units were granted to five members of management on January 8, 2018 under the 2015 Plan, as part of their 2017 remuneration, divided into two tranches. The first tranche (12,500 restricted stock units) would vest when the individual left employment, provided that this was after March 31, 2018 and was not for cause. The second tranche (12,500 restricted stock units) would also vests after March 31, 2018 on the same terms, but, in addition, only if and when the share price had been at or above \$24.00 for 20 consecutive trading days and provided that this had occurred before December 31, 2020.

Restricted stock units were granted to five members of management on March 1, 2018 under the 2015 Plan, as part of their 2018 remuneration, divided into two tranches. The first tranche (12,500 restricted stock units) would vest when the individual leaves employment, provided that this was after March 31, 2019 and was not for cause. The second tranche (12,500 restricted stock units) would also vests after March 31, 2019 on the same terms, but, in addition, only if and when the share price had been at or above \$24.00 for 20 consecutive trading days and provided that this had occurred before December 31, 2021.

No restricted stock units were granted during 2017.

As a consequence of the completion of the Poseidon Transaction, all outstanding restricted stock units vested on November 15, 2018 and as a result a total of 60,425 Class A common shares were issued.

On February 4, 2019, the 2019 Omnibus Incentive Plan (the "2019 Plan") was adopted, and the 2015 Plan and its predecessor plan from 2008 were terminated.

The 2019 Plan is administered by the compensation committee of the Board. The maximum aggregate number of Class A common shares that may be delivered pursuant to awards granted under the 2019 Plan during its 10-year term is 1,812,500. The maximum number of Class A common shares with respect to which awards may be granted to any non-employee director in any one calendar year is 12,500 shares or \$100,000. No awards have been made under the 2019 Plan.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars except share data)

16. Share—Based Compensation (continued)

Share based awards since January 1, 2016, are summarized as follows:

	Restricted Stock Units		Weighted Average Fair Value on Grant Date	Actual Fair Value on Vesting Date
	Number of Units			
	Management	Directors		
Unvested as at January 1, 2016	37,500	—	\$ 26.00	n/a
Granted in March 3, 2016	25,000	—	9.44	n/a
Unvested as at December 31, 2016	62,500	—	\$ 19.36	n/a
Granted in 2017	—	—	—	n/a
Unvested as at December 31, 2017	62,500	—	\$ 19.36	n/a
Granted in January 8, 2018	25,000	—	9.28	n/a
Granted in March 1, 2018	25,000	—	9.04	n/a
Vested on November 15, 2018	(112,500)	—	n/a	7.92
Unvested as at December 31, 2018	—	—	\$ —	—

Using the graded vesting method of expensing the restricted stock unit grants, the weighted average fair value of the stock units is recognized as compensation costs in the Consolidated Statements of Income over the vesting period. The fair value of the restricted stock units for this purpose is calculated by multiplying the number of stock units by the fair value of the shares at the grant date, which is discounted for dividends forfeited over the vesting period. The Company has not factored any anticipated forfeiture into these calculations based on the limited number of participants.

On November 15, 2018, as a consequence of the completion of the Poseidon Transaction, all 112,500 unvested restricted stock units vested and as a result, 60,425 Class A common shares were issued, with the balance being retained by the Company to fund individual's personal tax liabilities under UK tax legislation, based on a fair value per share of \$7.92.

During each of the years ended December 31, 2017 and 2016, 4,266 shares were issued under the 2015 Plan, representing 20% of directors' base fee for 2017 and 2016 respectively. The number of shares to be issued was determined based on a notional value per share of \$32.00 rather than market values.

During the year ended December 31, 2018, the company recognized a total of \$50 (2017: \$272, 2016: \$283) in respect of stock based compensation.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars except share data)

17. Earnings/(Loss) per Share

Basic earnings/(loss) per common share is presented under the two—class method and is computed by dividing the earnings/(loss) available to common shareholders by the weighted average number of common shares outstanding for the period.

Under the two—class method, net income/(loss), if any, is first reduced by the amount of dividends declared in respect of common shares for the current period, if any, and the remaining earnings are allocated to common shares and participating securities to the extent that each security can share the earnings assuming all earnings for the period are distributed. The Class B common shareholders' dividend rights are subordinated to those of holders of Class A common shares (see note 15). Net income/(loss) for the relevant period is allocated based on the contractual rights of each class of security and as there was insufficient net income to allow any dividend on the Class B common shares no earnings were allocated to Class B common shares. The net loss allocated to Class A and Series C share was based on an as converted basis utilizing the two—class method.

Losses are only allocated to participating securities in a period of net loss if, based on the contractual terms, the relevant common shareholders have an obligation to participate in such losses. No such obligation exists for Class B common shareholders and, accordingly, losses would only be allocated to the Class A common shareholders and Series C preferred shareholders. Net loss should only be allocated to Class A common shareholders and Series C preferred shareholders.

At December 31, 2018, there were no unvested awards under any of the Company's incentive Plans. As at December 31, 2017, there were 62,500 restricted stock units granted and unvested as part of management's equity incentive plan. As of December 31, 2018, only Class A and B common shares and Series C preferred shares were participating securities.

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars except share data)

17. Earnings/(loss) per Share (continued)

<i>Numerator:</i>	December 31, 2018	December 31, 2017	December 31, 2016
Net loss attributable to common shareholders	\$ (60,426)	\$ (77,328)	\$ (68,157)
Undistributed loss attributable to Series C participating preferred shares	12,110	—	—
Net loss available to common shareholders, basic and diluted	(48,316)	(77,328)	(68,157)
Net Loss available to:			
Class A, basic and diluted	(48,316)	(77,328)	(68,157)
Class B, basic and diluted	—	—	—
Denominator:			
Class A Common shares			
Basic weighted average number of common shares outstanding	\$ 6,514,390	\$ 5,946,986	\$ 5,944,294
Weighted average number of RSUs without service conditions	—	50,000	37,500
Common share and common share equivalents, basic and diluted	6,514,390	5,996,986	5,981,794
Class B Common shares			
Basic weighted average number of common shares outstanding	925,745	925,745	925,745
Common shares, basic and diluted	\$ 925,745	\$ 925,745	\$ 925,745
Basic and diluted common loss per share:			
Class A	(7.42)	(12.89)	(11.39)
Class B	—	—	—
Series C Preferred Shares—basic and diluted loss per share:			
Undistributed loss attributable to Series C participating preferred shares	(12,110)	—	—
Basic and diluted weighted average number of Series C Preferred shares outstanding, as converted	\$ 1,632,709	—	—
Basic and diluted loss per share	(7.42)	—	—

Global Ship Lease, Inc.

Notes to the Consolidated Financial Statements (continued)

(Expressed in thousands of U.S. dollars except share data)

18. Subsequent events

On January 2, 2019, as a consequence of completing the Poseidon Transaction, all outstanding Class B common shares converted one—for—one to Class A common shares.

On February 4, 2019, the 2019 Omnibus Incentive Plan was adopted and the 2015 Plan and 2008 Plan were terminated (see note 16).

On February 28, 2019, a dividend of \$0.546875 per Series B Preferred Share was announced for the first quarter 2019.

On March 25, 2019, the Company effected a one-for-eight reverse stock split of its Class A common shares, which was authorized at a special meeting of shareholders held on March 20, 2019. There was no change to the trading symbol, number of authorized shares, or par value of the Class A common shares in connection with the reverse stock split. All share and per share amounts disclosed in these financial statements give effect to the reverse stock split retroactively, for all periods presented, which resulted in the number of issued and outstanding common shares reducing from 79,543,921 as at December 31, 2018 to 9,942,950.

STATEMENT OF DESIGNATIONS

OF

GLOBAL SHIP LEASE, INC.
Reg. No. 28891

Pursuant to Section 35(5) of the Business Corporations Act

REPUBLIC OF THE MARSHALL ISLANDS

REGISTRAR OF CORPORATIONS

DUPLICATE COPY

The original of this Document was

FILED ON

NON RESIDENT

November 12, 2018

/s/ Christine Kahler
Christine Kahler
Deputy Registrar



**CERTIFICATE OF DESIGNATION
SERIES C PERPETUAL PREFERRED SHARES**

pursuant to § 35 of the Marshall Islands Business Corporations Act, Classes and series of shares

The undersigned, Mr. Ian Webber, does hereby certify:

1. That he is the duly elected and acting Chief Executive Officer of Global Ship Lease, Inc., a Marshall Islands corporation (the “*Corporation*”).
2. That the Corporation’s Board of Directors, at a special meeting held on October 25, 2018, adopted the following resolution creating a series of Preferred Shares (this and other capitalized terms shall have the same meaning as in the Articles of Incorporation, unless defined in Section 9 hereof or as otherwise specified in this Certificate of Designation or unless the context otherwise requires) of the Corporation designated as “Series C Perpetual Preferred Shares.”

RESOLVED, a series of Preferred Shares, par value US\$0.01 per share, of the Corporation be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or special rights and qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

Section 1 Designation.

The Board of Directors of the Corporation hereby designates and creates a series of Preferred Shares to be designated as “Series C Perpetual Preferred Shares,” and fixes the preferences, rights, powers and duties of the holders of the Series C Perpetual Preferred Shares as set forth in this Certificate of Designation. Each share of Series C Perpetual Preferred Shares shall be identical in all respects to every other share of Series C Perpetual Preferred Shares.

Section 2 Shares.

The authorized number of Series C Perpetual Preferred Shares shall be 250,000 shares. The Corporation shall be required to issue fractions of Series C Perpetual Preferred Shares and shall not (i) arrange for the disposition of fractional interests, (ii) pay in cash the fair value of fractions of Series C Perpetual Preferred Shares or (iii) issue scrip or warrants therefor; provided that the Corporation shall not be required to issue fractional Series C Perpetual Preferred Shares in increments less than 0.000001 Series C Perpetual Preferred Shares (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Perpetual Preferred Shares), and any fraction of a Series C Perpetual Preferred Share less than 0.000001 Series C Perpetual Preferred Shares (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Perpetual Preferred Shares) shall result in the Corporation paying to the holder of such fraction of a Series C Perpetual Preferred Share the fair value of such fraction of a Series C Perpetual Preferred Share, such fair value to be determined in good faith by the Board of Directors.

Series C Perpetual Preferred Shares that are repurchased or otherwise acquired by the Corporation shall be cancelled and shall revert to the status of authorized but unissued Preferred Shares of the Corporation, undesignated as to series.

Section 3 Dividends.

If the Board of Directors shall declare a dividend or other distribution upon the then-outstanding Class A Common Shares, then the holders of Series C Perpetual Preferred Shares shall be entitled to receive the amount of dividends as would be payable in respect of the number of Class A Common Shares into which such Series C Perpetual Preferred Shares would be convertible (ignoring all conditions precedent to conversion in Section 6) at such time, such amount to be determined as of the record date for determination of holders of Class A Common Shares entitled to receive such dividend or distribution or, if no such record date is established, as of the date of such dividend or distribution.

Section 4 Liquidation Rights.

Upon the occurrence of any Liquidation Event, the holders of Series C Perpetual Preferred Shares shall be entitled to receive out of the assets of the Corporation or proceeds thereof legally available for distribution to shareholders of the Corporation, (i) after satisfaction of all liabilities, if any, to creditors of the Corporation, (ii) after all applicable distributions of such assets or proceeds being made to or set aside for the holders of any other class or series of Preferred Shares of the Corporation then outstanding in respect of such Liquidation Event, and (iii) concurrently with any applicable distributions of such assets or proceeds being made to or set aside for holders of Class A Common Shares then outstanding in respect of such Liquidation Event, a liquidating distribution in an amount equal to the amount payable in respect of the number of Class A Common Shares into which such Series C Perpetual Preferred Shares would be convertible (ignoring all conditions precedent to conversion in Section 6) at such time, such amount to be determined as of the record date for determination of holders of Class A Common Shares entitled to receive such distribution or, if no such record date is established, as of the date of such distribution.

Section 5 Voting Rights.

The holders of Series Perpetual Preferred Shares shall have the following voting rights:

Each Series C Perpetual Preferred Share shall entitle the holder thereof to 310 votes (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Class A Common Shares) on all matters submitted to a vote of shareholders. Except as otherwise provided herein or required by law, the Series C Perpetual Preferred Shares shall vote together with the Common Shares as one class in the election of directors of the Company and on all other matters submitted to a vote of the shareholders.

However, as long as any Series C Perpetual Preferred Shares are outstanding, the Corporation shall not, without the affirmative vote of the holders of a majority of the then outstanding Series C Perpetual Preferred Shares, (a) alter or change adversely the powers, preferences or rights given to the Series C Perpetual Preferred Shares or alter or amend this Certificate of Designation, (b) amend its Articles of Incorporation or other charter documents in any manner that adversely affects the powers, preferences or rights of the Series C Perpetual Preferred Shares, (c) increase the number of authorized Series C Perpetual Preferred Shares, or (d) enter into any agreement with respect to any of the foregoing.

Except as otherwise provided herein or required by law, holders of Series C Perpetual Preferred Shares shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Class A Common Shares as set forth herein) for taking any corporate action.

Section 6 Conversion.

Upon a transfer of any Series C Perpetual Preferred Shares to any Person which is not an Affiliate of the initial holder thereof, such Series C Perpetual Preferred Shares shall automatically convert into a number of Class A Common Shares equal to the number of Series C Perpetual Preferred Shares transferred to such Person multiplied by 414.566 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Class A Common Shares), with any resulting fraction of a Class A Common Share rounded down to the nearest whole Class A Common Share.

On the date when the Corporation's 9.875% First Priority Secured Notes due 2022 are no longer outstanding, the Series C Perpetual Preferred Shares held by each holder shall be convertible at the option of such holder into a number of Class A Common Shares equal to the number of Series C Perpetual Preferred Shares held by such holder multiplied by 414.566 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Class A Common Shares), with any resulting fraction of a Class A Common Share rounded to the nearest whole Class A Common Share (with 0.5 being rounded up).

The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued Class A Common Shares for the sole purpose of issuance upon conversion of the Series C Perpetual Preferred Shares, free from preemptive rights or any other actual contingent purchase rights of Persons other than the holders of the Series C Perpetual Preferred Shares, not less than such aggregate number of Class A Common Shares as shall be issuable (taking into account any adjustments as provided herein) upon the conversion of all outstanding Series C Perpetual Preferred Shares. The Corporation covenants that all Class A Common Shares that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

Upon conversion as set forth in this Section 6: (i) the Series C Perpetual Preferred Shares being converted shall be deemed converted into Class A Common Shares at 5:00 p.m. New York City time and (ii) the holder's rights as a holder of such Series C Perpetual Preferred Shares shall cease and terminate, excepting only the right to receive certificates for or electronic delivery of such Class A Common Shares and to any remedies provided herein or otherwise available at law or in equity to such holder because of a failure by the Corporation to comply with the terms of this Certificate of Designation. In all cases, the holder shall retain all of its rights and remedies for the Corporation's failure to convert Series C Perpetual Preferred Shares. Prior to conversion pursuant to this Section 6, the holders of Series C Perpetual Preferred Shares shall have no rights as a holder of Class A Common Shares and shall have the rights, preferences and privileges set forth herein.

Section 7 Maturity; Redemption.

The Series C Perpetual Preferred Shares shall be perpetual and shall not be subject to mandatory redemption, sinking fund or other similar provisions.

Section 8 Fundamental Transaction.

If, at any time while any Series C Perpetual Preferred Shares are outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions, effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any direct or indirect purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Class A Common Shares are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Shares, (iv) the Corporation, directly or indirectly, in one or more related transactions, effects any reclassification, reorganization or recapitalization of the Class A Common Shares or any compulsory share exchange pursuant to which the Class A Common Shares are effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions, consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding Class A Common Shares (not including any Class A Common Shares held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "*Fundamental Transaction*"), then (x) immediately prior to the occurrence of such Fundamental Transaction, the Series C Perpetual Preferred Shares held by each holder shall be convertible at the option of such holder into a number of Class A Common Shares equal to the number of Series C Perpetual Preferred Shares held by such holder multiplied by 414.566 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Class A Common Shares), with any resulting fraction of a Class A Common Share rounded to the nearest whole Class A Common Share (with 0.5 being rounded up), and (y) each holder thereof shall receive as a result of such Fundamental Transaction, for each Class A Common Share issued upon such conversion, the number of shares of common stock (as applicable) of the successor or acquiring entity or the number of other securities (equity or debt) or amount of cash, property or other consideration (the "*Alternate Consideration*") receivable as a result of such Fundamental Transaction by a holder of one Class A Common Share.

If holders of Class A Common Shares are entitled to elect the proportion of securities, cash, property or other consideration to be received in a Fundamental Transaction, then each holder of Series C Perpetual Preferred Shares shall be given the same choice as to the proportion of securities, cash, property or other consideration as a holder of the number of Class A Common Shares for which such holder's Series C Perpetual Preferred Shares are convertible immediately prior to such Fundamental Transaction is given. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation in respect of a new series of preferred shares of the successor or acquiring entity, or the Corporation, if it is the surviving entity, (i) setting forth the same rights, preferences, privileges and other terms in respect of such new series of preferred shares as the rights, preferences, privileges and other terms contained in this Certificate of Designation in respect of the Series C Perpetual Preferred Shares, including, without limitation, the provisions contained in this Section 8, and (ii) evidencing, among other things, the holders' right to convert each share of such new series of preferred shares into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the surviving entity (the "Successor Entity") to assume in writing all of the obligations of the Corporation under this Certificate of Designation in accordance with the provisions of this Section 8 pursuant to written agreements in form and substance reasonably satisfactory to the holders of a majority of the Series C Perpetual Preferred Shares and approved by the holders of a majority of the Series C Perpetual Preferred Shares prior to such Fundamental Transaction and shall, at the option of a holder of Series C Perpetual Preferred Shares, deliver to such holder in exchange for such holder's Series C Perpetual Preferred Shares a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Series C Perpetual Preferred Shares which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the number of Class A Common Shares acquirable and receivable upon conversion of the Series C Perpetual Preferred Shares immediately prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the Class A Common Shares pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of the Series C Perpetual Preferred Shares immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the holder(s) thereof. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of, the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation with the same effect as if such Successor Entity had been named as the Corporation herein.

Section 9 Definitions.

"*Affiliate*" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question, or any other Person that is managed or governed by the same management company or investment adviser. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"*Articles of Incorporation*" means the Amended and Restated Articles of Incorporation of the Corporation, as they may be amended from time to time in a manner consistent with this Certificate of Designation, and shall include this Certificate of Designation.

"*BCA*" means the Business Corporations Act of the Republic of the Marshall Islands.

"*Board of Directors*" means the board of directors of the Corporation or, to the extent permitted by the Articles of Incorporation and the BCA, any authorized committee thereof.

"*Bylaws*" means the bylaws of the Corporation, as they may be amended from time to time.

"*Certificate of Designation*" means this Certificate of Designation relating to the Series C Perpetual Preferred Shares, as it may be amended from time to time in a manner consistent with this Certificate of Designation, the Articles of Incorporation, the Bylaws and the BCA.

"*Class A Common Shares*" means the Class A Common Shares of the Corporation, par value US\$0.01 per share.

“*Common Shares*” means the Class A Common Shares and any other outstanding class of common shares of the Corporation.

“*Liquidation Event*” means the occurrence of a liquidation, dissolution, winding up of the affairs of the Corporation, whether voluntary or involuntary. Neither the sale of all or substantially all of the property or business of the Corporation nor the consolidation or merger of the Corporation with or into any other Person, individually or in a series of transactions, shall be deemed a Liquidation Event.

“*Person*” means an individual or a corporation, firm, limited liability company, partnership, joint venture, trust, unincorporated organization, association, governmental agency or political subdivision thereof or other entity.

Section 9 Notices.

All notices or communications in respect of the Series C Perpetual Preferred Shares shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designation, in the Articles of Incorporation, the Bylaws or by applicable law.

I further declare under penalty of perjury that the matters set forth in this Certificate of Designation are true and correct of my own knowledge.

Executed in London, England on November 12, 2018.

/s/ Ian Webber

Name: Ian Webber

Title: Chief Executive Officer

[Signature Page to the Certificate of Designation]

Dated 30 August 2017

**ZEUS ONE MARINE LLC
IKAROS MARINE LLC
TASMAN MARINE LLC
HUDSON MARINE LLC and
DRAKE MARINE LLC**
as joint and several Borrowers

and

THE BANKS AND FINANCIAL INSTITUTIONS
listed in Schedule 1
as Lenders

and

ABN AMRO BANK N.V.
as Agent, Arranger, Swap Bank
and Security Trustee

LOAN AGREEMENT

relating to a secured term loan facility of US\$82,459,678.29
to refinance certain existing indebtedness and secured on
m.vs. "ORCA I", "KATHERINE", "TASMAN",
"DIMITRIS Y" and "IAN H"

WATSON FARLEY
&
WILLIAMS

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THIS AGREEMENT is made on 30 August 2017

BETWEEN

- (1) **ZEUS ONE MARINE LLC, IKAROS MARINE LLC, TASMAN MARINE LLC, HUDSON MARINE LLC and DRAKE MARINE LLC,** as joint and several **Borrowers**;
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**;
- (3) **ABN AMRO BANK N.V.,** as **Agent**;
- (4) **ABN AMRO BANK N.V.,** as **Arranger**;
- (5) **ABN AMRO BANK N.V.,** as **Security Trustee**; and
- (6) **ABN AMRO BANK N.V.,** as **Swap Bank**.

BACKGROUND

- (A) The Lenders have agreed to make available to the Borrowers a term loan facility of \$82,459,678.29 in two Tranches, each such Tranche in the relevant Tranche Amount, for the purpose of refinancing the Existing Indebtedness secured on the Ships (as each such term is defined below).
- (B) The Swap Bank has agreed to enter into interest rate swap transactions with the Borrowers (at the Borrowers' option) from time to time to hedge the Borrowers' exposure under this Agreement to interest rate fluctuations and/or exchange rate risks.
- (C) The Lenders and the Swap Bank have agreed to share pari passu in the security to be granted to the Security Trustee pursuant to this Agreement.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 Definitions

Subject to Clauses 1.2 through 1.4, in this Agreement:

"Accounts" means, together, the Earnings Accounts and the Retention Account and, in the singular, means any of them;

"Accounts Pledge" means a deed creating security in respect of the Earnings Accounts and the Retention Account in the Agreed Form;

"Affected Lender" has the meaning given in Clause 5.7;

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

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

"Agent" means ABN AMRO Bank N.V., acting in such capacity through its office at 93 Coolsingel, 3012 AE, Rotterdam, The Netherlands, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

“Agreed Form” means in relation to any document, that document in the form approved in writing by the Agent or as otherwise approved in accordance with any other approval procedure specified in any relevant provisions of any Finance Document;

“Annex VI” means Annex VI (Regulations for the Prevention of Air Pollution from Ships) to the International Convention for the Prevention of Pollution from Ships 1973 (as modified in 1978 and 1997);

“Applicable Percentage” means during the period commencing on:

- (a) 1 June 2018 (inclusive) and ending on 31 December 2018 (inclusive), 110 per cent.; and
- (b) 1 January 2019 (inclusive) and ending on 31 December 2019 (inclusive), 120 per cent.;

“Approved Broker” means any of Barry Rogliano Salles, Breamar Seascope Ltd., Fearnleys A/S, H. Clarkson & Company Limited, Howe Robinson, Kontiki Shipbrokers, Maersk Brokers and Simpson Spence & Young or any other independent and reputable sale and purchase broker nominated by the Borrowers and, approved and appointed by the Agent and, in the plural, means any or all of them;

“Approved Flag” means the Marshall Islands flag, the Liberian flag, the Panama flag or any other flag which the Agent may approve as the flag on which a Ship may be registered;

“Approved Flag State” means the Marshall Islands, Liberia, Panama or any other state in which the Agent may at the request of the Borrowers, approve that a Ship be registered;

“Approved Manager” means, in relation to each Ship, Conchart Commercial Inc., a corporation incorporated and existing under the laws of the Marshall Islands, having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as commercial manager (the **“Commercial Manager”**) and Technomar Shipping Inc., a corporation incorporated and existing under the laws of the Republic of Liberia, having its registered office at 80 Broad Street, Monrovia, Liberia and each with management office at 3-5 Menandrou Street, Kifissia 145 61, Athens, Greece as technical manager (the **“Technical Manager”**), or any other company which the Agent may, at the request of the Borrower owning that Ship, approve from time to time as the technical and/or commercial manager of that Ship and, in the plural, means both of them;

“Approved Manager’s Undertaking” means, in relation to each Ship, a letter of undertaking executed or to be executed by each Approved Manager in favour of the Security Trustee, agreeing certain matters in relation to the management of the relevant Ship and subordinating its rights against that Ship and the Borrower owning that Ship to the rights of the Lenders under the Finance Documents, in the Agreed Form and, in the plural, means both of them;

“Arranger” means ABN AMRO Bank N.V., acting in such capacity through its office at 93 Coolsingel, 3012 AE, Rotterdam, The Netherlands, or any successor;

“Availability Period” means the period commencing on the date of this Agreement and ending on 31 August 2017 (or such later date as the Agent may, with the authorisation of all the Lenders, approve) or, if earlier, the date on which the Total Commitments are fully borrowed, fully (or partially as the case may be) cancelled or terminated;

“Bail-In Action” means the exercise of any Write-down and Conversion Powers;

“Bail-In Legislation” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation;

“Balloon Instalment” has the meaning given in Clauses 8.1(a) and 8.1(b);

“Basel III” means:

- (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and
- (b) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”;

“Book Leverage Ratio” shall have the meaning given to this term in the Corporate Guarantee;

“Borrower” means each of Borrower A, Borrower B, Borrower C, Borrower D and Borrower E and, in the plural, means any or all of them;

“Borrower A” means Zeus One Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“Borrower B” means Ikaros Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“Borrower C” means Tasman Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“Borrower D” means Hudson Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“Borrower E” means Drake Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“Business Day” means a day on which banks are open in London, Athens, and Rotterdam and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City;

“CACIB Facility Agreement” means the facility agreement dated 11th August 2017 entered into by Pericles Marine LLC, Hephaestus Marine LLC and Hector Marine LLC, as joint and several borrowers with Credit Agricole Corporate and Investment Bank, as lender for the purpose of refinancing the existing indebtedness under the facility agreement dated 4 May 2011 entered into by Credit Agricole Corporate and Investment Bank (as lender) and Hector Marine LLC, Pericles Marine LLC and Hephaestus Marine LLC (as joint and several borrowers), as the same may be amended and/or supplemented from time to time;

“Cash Sweep Period” has the meaning given in Clause 8.14;

“Change of Control” has the meaning given in Clause 8.13;

“Charter” means, in relation to a Ship, any charter or other contract of employment or any consecutive voyage charter or contract of affreightment in respect of that Ship having a duration (or capable of exceeding a duration) of at least 12 months;

“Charterparty Assignment” means, in relation to a Ship, a specific assignment of the rights of the Borrower who is the owner of that Ship under the Charter relative thereto executed or to be executed by that Borrower in favour of the Security Trustee in the Agreed Form and, in the plural, means any or all of them;

“Code” means the United States Internal Revenue Code of 1986;

“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 Certificate” has the meaning given in the Corporate Guarantee;

“Confidential Information” means all information relating to the Loan, any Borrower, any Security Party, any member of the Group or the Finance Documents of which the Creditor Parties becomes aware in its capacity as Creditor Party or which is received by the Creditor Parties in relation to the Finance Documents from any member of the Group or any of its advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by a Creditor Party of Clause 31; or
- (b) is identified in writing at the time of delivery as non-confidential by any Borrower, member of the Group or Security Party or any of its advisers; or
- (c) is known by the Creditor Parties before the date the information is disclosed to it or is lawfully obtained by the Creditor Parties after that date, from a source which is, as far as the Creditor Parties are aware, unconnected with the Group and which, in either case, as far as the Creditor Parties are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality;

“Confirmation” and **“Early Termination Date”**, in relation to any continuing Designated Transaction, have the meanings given in the Master Agreement;

“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 Guarantee” means a corporate guarantee executed or, as the context may require, to be executed by the Corporate Guarantor of the obligations of the Borrowers under this Agreement and the other Finance Documents to which each Borrower is a party in the Agreed Form;

“Corporate Guarantor” means Poseidon Containers Holdings LLC, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro, Marshall Islands, MH96960;

“Corresponding Debt” means any amount which a Borrower owes to a Creditor Party under or in connection with the Finance Documents;

“CRD IV” means Directive 2013/36/EU of the European Union on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;

“CRR” means and Regulation (EU) No 575/2013 of the European Union on prudential requirements for credit institutions and investment firms;

“Creditor Party” means the Agent, the Arranger, the Security Trustee, any Lender or the Swap Bank, whether as at the date of this Agreement or at any later time;

“Debt Service” has the meaning given in Clause 8.14(b);

“Designated Transaction” means a Transaction which fulfills the following requirements:

- (a) it is entered into by the Borrowers pursuant to the Master Agreement with the Swap Bank;
- (b) its purpose is the hedging of all or part of the Borrowers’ exposure under this Agreement to fluctuations in LIBOR arising from the funding of the Loan (or any part thereof) for a period expiring no later than the last Final Maturity Date; and
- (c) it is designated by the Borrowers, by delivery by the Borrowers to the Agent of a notice of designation in the form set out in Schedule 4, as a Designated Transaction for the purposes of the Finance Documents;

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

“Drawdown Date” means, in relation to a Tranche, the date requested by the Borrowers for the Tranche to be made available to the Borrowers, or (as the context requires) the date on which the Tranche is actually made available to the Borrowers;

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

“DVB Facility Agreement” means the facility agreement dated 18 July 2017 entered into by, *inter alios*, the banks and financial institutions listed therein (as lenders), DVB Bank SE (as arranger, facility agent, security agent and account bank) and Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC (as joint and several borrowers), as the same may be amended and/or supplemented from time to time;

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

- (a) all freight, hire and passage moneys, compensation payable to that Borrower or the Security Trustee in the event of requisition of that 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 that Ship;

- (b) all moneys which are at any time payable under any Insurances in respect of loss of hire, (if applicable under the Insurances); and
- (c) if and whenever that Ship is employed on terms whereby any moneys falling within paragraphs (a) or (b) 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 the Ship;

“Earnings Account” means, in relation to a Ship, an account in the name of the Borrower owning that Ship with the Agent in Rotterdam designated “[name of relevant Borrower]-Earnings Account”, or any other account (with that or another office of the Agent) which is designated by the Agent as the Earnings Account in relation to that Ship for the purposes of this Agreement and, in the plural, means any or all of them;

“EEA Member Country” means any member state of the European Union, Iceland, Liechtenstein and Norway;

“EnTrust Facility Agreement” means the facility agreement dated 11 August 2017 entered into by, *inter alios*, the financial institutions listed therein (as lenders), Wilmington Trust, National Association (as agent and security agent) and Leonidas Marine LLC (as borrower), as the same may be amended and/or supplemented from time to time;

“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:

- (a) any release of Environmentally Sensitive Material from a Ship; or
- (b) any incident in which Environmentally Sensitive Material is released from a vessel other than a Ship as a result of a collision between a Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which a Ship is actually or potentially liable to be arrested, attached, detained or enjoined and/or a Ship and/or any Borrower and/or any operator or manager of a 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 any Borrower and/or any operator or manager of a 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;

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor thereto;

“ERISA Affiliate” means each person (as defined in Section 3(9) of ERISA) which together with the Borrowers or any of them would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Uniform Commercial Code (as from time to time in effect in any applicable jurisdiction);

“Equity Undertaking” means the undertaking executed or, as the context may require, to be executed by each of the Poseidon Shareholders in favour of the Security Trustee in the Agreed Form;

“EU Bail-In Legislation Schedule” means the document described as such and published by the Loan Market Association (or any successor person) from time to time;

“Event of Default” means any of the events or circumstances described in Clause 19.1;

“Excess Cash Flow Date” has the meaning given in Clause 8.14;

“Excess Cash Flow Notice” has the meaning given in Clause 8.14;

“Existing Facility Agreement” means the facility agreement dated 14 November 2016 and made between (i) the Lenders, (ii) the Borrowers, (iii) ABN AMRO Bank N.V. as agent, security trustee, the swap bank and arranger, in respect of a loan facility of up to (originally) \$106,417,500;

“Existing Indebtedness” means the outstanding Financial Indebtedness of the Borrowers under the Existing Facility Agreement on the Drawdown Date;

“Existing Indebtedness Grace Period” means the period commencing on the date of this Agreement and ending on the Drawdown Date;

“FATCA” means sections 1471 through 1474 of the Code and any US Treasury regulations thereunder;

“FATCA Deduction” means a deduction or withholding from a payment under any Finance Document required by or under FATCA;

“FATCA Exempt Party” means a party to a Finance Document that is entitled under FATCA to receive payments free from any FATCA Deduction;

“Final Maturity Date” means in respect of:

- (a) Tranche A, 31 December 2020; and
- (b) Tranche B, 30 June 2018;

“Finance Documents” means:

- (a) this Agreement;

- (b) the Master Agreement;
- (c) the Agency and Trust Agreement;
- (d) the Master Agreement Assignment;
- (e) the Corporate Guarantee;
- (f) the General Assignments;
- (g) the Mortgages;
- (h) the Accounts Pledge;
- (i) the Shares Security Deeds;
- (j) any Charterparty Assignments;
- (k) each Approved Manager's Undertakings;
- (l) any Subordination Agreement;
- (m) any other document (whether creating a Security Interest or not) which is executed at any time by any Borrower, the Corporate Guarantor, either Shareholder, either Approved Manager or any other person as security for, or to establish any form of subordination or priorities arrangement in relation to, any amount payable to the Lenders and/or the Swap Bank under this Agreement or any of the other documents referred to in this definition; and
- (n) any other document designated as such by the Agent and the Borrowers.

“Financial Indebtedness” means any indebtedness for or in relation to:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with IFRS, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);

(h) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“Financial Year” means, in relation to each Borrower and the Corporate Guarantor, each period of 1 year commencing on 1 January in respect of which its annual (audited, in the case of the Corporate Guarantor only) accounts are or ought to be prepared;

“Fleet Vessels” means all of the vessels (including, but not limited to, the Ships) from time to time wholly owned by members of the Group (each a **“Fleet Vessel”**);

“General Assignment” means, in relation to a Ship, a first priority general assignment of the Earnings, the Insurances and any Requisition Compensation in the Agreed Form and, in the plural, means all of them;

“Green Award” means The Green Award Foundation, an independent foundation, established 1994 on the initiative of the Rotterdam Municipal Port Management and the Dutch Ministry of Transport;

“Green Award Incentive Provider” means the name of any entity that has been appointed as such by the Green Award Foundation;

“Group” means the Corporate Guarantor and its Subsidiaries (including but not limited to the Borrowers) from time to time during the Security Period and **“member of the Group”** shall be construed accordingly;

“Group Facility Agreement” means each of:

- (a) the DVB Facility Agreement;
- (b) the CACIB Facility Agreement; and
- (c) the EnTrust Facility Agreement,

and, in the plural, means all of them.

“Holding Company” means, in relation to a person, any other person in respect of which it is a Subsidiary;

“IACS” means the International Association of Classification Societies;

“IAPPC” means a valid international air pollution prevention certificate issued under Annex VI;

“IFRS” means International Financial Reporting Standards promulgated by the International Accounting Standards Board, as amended from time to time, together with its pronouncements thereon from time to time;

“Initial Lender” means ABN AMRO Bank N.V., acting in such capacity through its office at Coolingsingel 93, 3012 AG Rotterdam, The Netherlands, or any successor;

“Insurances” means, in relation to a Ship:

- (a) all policies and contracts of insurance, including entries of the Ship in any protection and indemnity or war risks association, effected in respect of the Ship, the Earnings or otherwise in relation to a Ship whether before, on or after the date of this Agreement; 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 and any rights in respect of any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement;

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

“IPO” means the initial public offering of part or all of the share capital of the Corporate Guarantor and the subsequent listing of such share capital at a stock exchange acceptable to the Lenders;

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

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

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

“K&T Loan Agreement” means the loan facility agreement dated 4 May 2016 (as the same is amended and/or supplemented from time to time) between K&T Marine as lender and the Corporate Guarantor as borrower relating to a loan facility of up to \$12,211,552.74 in the Agreed Form;

“K&T Marine” means K&T Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“K&T Subordination Agreement” means an agreement to be made between K&T Marine (as lender), the Corporate Guarantor (as borrower) and the Security Trustee in respect of the K&T Loan Agreement;

“Legal Reservations” means:

- (a) the limitations on enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; and
- (b) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered as a condition precedent under this Agreement;

“Lender” means 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 26.14) or its transferee, successor or assign and, in the plural, means all of them;

“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 the Screen Rate; or

- (b) if no rate is quoted on the Screen Rate, the rate per annum determined by the Agent to be the rate per annum notified to the Agent by the Reference Bank as the rate at which deposits in Dollars are offered to the Reference Bank by leading banks in the London Interbank Market at the Reference Bank'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,

and, if any such rate is below zero, LIBOR will be deemed to be zero;

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

"Major Casualty" means, in relation to a Ship, any casualty to the 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 a Tranche has been made, Lenders whose Commitments total 66.66 per cent, of the Total Commitments; and
(b) after a Tranche has been made, Lenders whose Contributions total 66.66 per cent, of the Loan;

"Mandatory Cost" means any cost calculated by the Agent pursuant to Clause 21.9;

"Margin" means, in respect of:

- (a) Tranche A:
(i) commencing on the Drawdown Date up to and including 31 March 2019, 3.42 per cent, per annum; and
(ii) at all times thereafter, 3.50 per cent, per annum; and
(b) Tranche B
(i) commencing on the Drawdown Date up to and including 31 March 2019, 3.92 per cent, per annum; and
(ii) at all times thereafter, 4.00 per cent, per annum;

"Market Value" means, in relation to:

- (a) each Ship and each other Fleet Vessel (if not subject to a mortgage), the market value thereof determined in accordance with Clause 15.3; and
(b) each Fleet Vessel (other than the Ships and the Fleet Vessels referred to in paragraph (a) above), the market value thereof determined in accordance with the relevant provisions of the loan agreement financing such Fleet Vessel;

"Master Agreement" means the master agreement (on the 2002 ISDA (Multicurrency-Crossborder) form) in the Agreed Form made between the Borrowers and the Swap Bank and includes all Designated Transactions from time to time entered into and Confirmations from time to time exchanged under the master agreement;

"Master Agreement Assignment" means the assignment of the Master Agreement in the Agreed Form;

“Material Adverse Change” means any event or series of events which, in the reasonable opinion of the Majority Lenders, has or could reasonably be expected to have a Material Adverse Effect;

“Material Adverse Effect” means, in the reasonable opinion of the Majority Lenders, a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospect of any Borrower, the Corporate Guarantor and/or the Group taken as a whole; or
- (b) the ability of a Borrower or the Corporate Guarantor to perform its obligations under the Finance Documents; and
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security Interest granted or purported to be granted pursuant to any of the Finance Documents or the rights or remedies of any Creditor Party under any of the finance Documents;

“Minimum Liquidity Amount” has the meaning given in Clause 11.18;

“Minimum PIK Security Cover Ratio” means, at each PIK Calculation Date, (and notwithstanding anything to the contrary provided in Clause 15 (*Security Cover*), the aggregate of (i) the aggregate of the Market Value of the Mortgaged Ships, (ii) the net realisable value of any additional security provided at that time under Clause 15 and (iii) the aggregate of the Minimum Liquidity Amount maintained in the Earnings Accounts of all Mortgaged Ships in accordance with Clause 11.18 at the relevant time, being at least 130 per cent, of the aggregate amount of (i) the Loan and (ii) the Swap Exposure;

“Mortgage” means, in relation to a Ship, the first priority or, as the case may be, preferred ship mortgage on that Ship (and, if required pursuant to the laws of the applicable Approved Flag State, a deed of covenant collateral thereto) in the Agreed Form and, in the plural, means any or all of them;

“Mortgaged Ship” means a Ship which is subject to a Mortgage at the relevant time;

“Negotiation Period” has the meaning given in Clause 5.10;

“Net Worth” has the meaning given to it in the Corporate Guarantee;

“Notifying Lender” has the meaning given in Clause 23.1 or Clause 24.1 as the context requires;

“Operating Expenses” means, in respect of each Ship during a Cash Sweep Period, the aggregate expenditure necessarily incurred by the Borrower which is the owner of that Ship during that Cash Sweep Period in operating, insuring, maintaining, repairing and generally trading its Ship (including, but not limited to, any expenses in respect of dry-docking, special survey (including any projected costs for dry-docking and special surveys during the next 3 month period) and general and administrative expenses paid in respect of the Ship, any voyage expenses, as well as any other capitalised expenses as same are defined as per IFRS);

“Original Financial Statements” means annual audited consolidated financial statements of the Corporate Guarantor for the year ending 31 December 2016;

“Parallel Debt” means any amount which a Borrower owes to the Security Trustee under Clause 3.7;

“Participating Member State” means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;

“Party” means a party to this Agreement;

“PATRIOT Act” means the United States Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Improvement and Reauthorization Act of 2005 (H.R. 3199);

“Payment Currency” has the meaning given in Clause 21.5;

“Permitted Loan” means:

- (a) a loan made to a Borrower by any Affiliate, Holding Company or Subsidiary of the Corporate Guarantor or any other person:
 - (i) which is unsecured;
 - (ii) in relation to which no interest, fees, costs or expenses are payable during the Security Period;
 - (iii) in relation to which no repayment or prepayment of principal is capable of being made to the relevant lender in accordance with its terms and conditions during the Security Period;
 - (iv) which is fully subordinated in all respects to the Secured Liabilities; and
 - (v) any creditor’s rights thereunder have been assigned in favour of the Creditor Parties; and
- (b) the loan made to the Corporate Guarantor pursuant to the K&T Loan Agreement,

and, in the plural means, any or all of them;

“Permitted Security Interests” means:

- (a) Security Interests created by the Finance Documents;
- (b) liens for unpaid master’s and crew’s wages;
- (c) liens for salvage;
- (d) liens arising by operation of law for not more than 2 months’ prepaid hire under any charter in relation to a Ship not prohibited by this Agreement;
- (e) liens for master’s disbursements incurred in the ordinary course of trading and any other lien arising by operation of law or otherwise in the ordinary course of the trading, chartering, operation, repair or maintenance of a Ship, provided such liens do not secure amounts more than 30 days overdue (unless the overdue amount is being contested by the relevant Borrower in good faith by appropriate steps) and subject, in the case of liens for repair or maintenance, to Clause 14.12(g);
- (f) any Security Interest created in favour of a plaintiff or defendant in any action of the court or tribunal before whom such action is brought as security for costs and expenses while a Borrower is prosecuting or defending such action in good faith by appropriate steps;

- (g) a right of pledge (and set-off) under and pursuant to the general conditions of ABN AMRO Bank N.V.; and
- (h) for the duration of the Existing Indebtedness Grace Period only, any Security Interests created under and pursuant to the terms of the Existing Facility Agreement;

“Pertinent Document” means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause 13 or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to a Servicing Bank in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c);

“Pertinent Jurisdiction”, in relation to a company, means:

- (a) England and Wales;
- (b) the country under the laws of which the company is incorporated or formed;
- (c) a country in which the company has the centre of its main interests or 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 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 a main or territorial or ancillary proceedings, or which would have such jurisdiction if their assistance were requested by the courts of a country referred to in paragraphs (b) or (c);

“Pertinent Matter” means:

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

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

“PIK Amount” means, if at any PIK Calculation Date, the actual Security Cover Ratio on that PIK Calculation Date is less than the Minimum PIK Security Cover Ratio (such amount is evidenced in the PIK Compliance Certificates provided by the Borrowers pursuant to Clause 11.6(d) utilising the most recent semi-annual valuations provided under Clause 11.6(d) or, as the case may be, at the option of the Borrowers, the additional valuations provided pursuant to Clause 15.8), 2 per cent, of the amount of the Loan which would be required to be prepaid so as to eliminate the shortfall in the Minimum PIK Security Cover Ratio;

“PIK Calculation Date” means the date on which each PIK Compliance Certificate is due to be provided by the Borrowers to the Agent pursuant to Clause 11.6(d);

“PIK Compliance Certificate” means the compliance certificate evidencing the PIK Amount to be provided in accordance with Clause 11.6(d) in the form set out in Schedule 6;

“Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA that is subject to Title IV of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed to by any Creditor Party or any of their respective ERISA Affiliates;

“Poseidon Shareholders” means each of the shareholders being the direct legal and beneficial owners of the limited liability company interests in the Corporate Guarantor as disclosed to the Agent at the date of this Agreement;

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

“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 which is 2 Business Days before the first day of that Interest Period or any other period, unless market practice differs in the London Interbank Market for a currency, in which case the Quotation Date will be determined by the Agent in accordance with market practice in the London Interbank Market (and if quotations would normally be given by leading banks in the London Interbank Market on more than one day, the Quotation Date will be the last of those days);

“Reference Banks” means, subject to Clause 26.16, the branch of ABN AMRO Bank N.V. at 93 Coolingsingel, 3012 AE, Rotterdam, The Netherlands and the London branch or any other bank or financial institution selected by the Agent;

“Refinancing Date” means, in relation to the Existing Facility Agreement, the date on which the Existing Indebtedness is refinanced by the Loan;

“Refinancing Period” means the period commencing on the date of this Agreement and ending on 31 August 2017 (or such later period as may be agreed by the Agent acting with the authorisation of the Majority Lenders);

“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;

“Repayment Instalment” has the meaning given in Clause 8.1(a);

“Representative” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian;

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

“Resolution Authority” means any body which has authority to exercise any Write-down and Conversion Powers;

“Restricted Person” means a person that is (i) listed on, or owned or controlled by a person listed on any Sanctions List; (ii) located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country-wide Sanctions; or (iii) otherwise a target of Sanctions;

“Retention Account” means, in relation to the Borrowers, a joint account in the names of the Borrowers with the Agent in Rotterdam designated “*name of Borrowers - Retention Account*”, or any other account (with that or another office of the Agent or with a bank or financial institution other than the Agent) which is designated by the Agent as the Retention Account for the purposes of this Agreement and, in the plural means any or all of them;

“Sanctions” means any economic or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (i) the United States government; (ii) the United Nations; (iii) the European Union or its Member States; (iv) the United Kingdom; (v) any country to which the Borrower, the Corporate Guarantor, any other Security Party, any member of the Group or any Affiliate of any of them is bound; or (vi) the respective governmental institutions and agencies of any of the foregoing, including without limitation, the Office of Foreign Assets Control of the US Department of Treasury (**OFAC**), the United States Department of State and Her Majesty’s Treasury (**HMT**) (together **“Sanctions Authorities”**);

“Sanctions List” means the “Specially Designated Nationals and Blocked Persons” list issued by OFAC, the “Consolidated List of Financial Sanctions Targets and Investment Ban List” issued by HMT or any similar list issued or maintained or made public by any of the Sanctions Authorities.

“Screen Rate” means the London interbank offered rate administered by the ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for Dollars for the relevant period displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrowers and the Lenders;

“Secured Liabilities” means all liabilities which the Borrowers, the Corporate Guarantor, 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 Cover Ratio” means, at any relevant time, the aggregate of (i) the aggregate of the Market Value of the Mortgaged Ships (determined in accordance with Clause 15.3), (ii) the net realisable value of any additional security provided at that time under Clause 15 and (iii) the aggregate of the Minimum Liquidity Amount maintained in the Earnings Accounts of all Mortgaged Ships in accordance with Clause 11.18 at the relevant time, at that time expressed as a percentage of the aggregate amount of (i) the Loan and (ii) the Swap Exposure;

“Security Interest” means:

- (a) a mortgage, charge (whether fixed or floating) or pledge, any maritime or other lien or any other security interest of any kind;

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

“Security Party” means the Corporate Guarantor, either Shareholder, either Approved Manager and any other person (other than any Poseidon Shareholder, K&T Marine or any 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 final paragraph of the definition of “Finance Documents”;

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

- (a) all amounts which have become due for payment by any 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 a Borrower nor any Security Party has any future or contingent liability under Clauses 20, 21 or 22 or any other provision of this Agreement or another Finance Document; and
- (d) the Agent, the Arranger, the Security Trustee and the Majority Lenders do not consider that there is a significant risk that any payment or transaction under a Finance Document would be set aside, or would have to be reversed or adjusted, in any present or possible future bankruptcy of 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 Property” means:

- (a) the Transaction Security expressed to be granted in favour of the Security Trustee as trustee for, or for the benefit of, the Creditor Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Borrower or any other Security Party to pay amounts in relation to the Secured Liabilities to the Security Trustee as trustee for, or for the benefit of, the Creditor Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Borrower or any Security Party or any other person in favour of the Security Trustee as trustee for, or for the benefit of, the Creditor Parties;
- (c) the Security Trustee’s interest in any turnover trust created under the Finance Documents;
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Trustee is required by the terms of the Finance Documents to hold as trustee on trust for, or for the benefit of, the Creditor Parties,

except:

- (i) rights intended for the sole benefit of the Security Trustee; and
- (ii) any moneys or other assets which the Security Trustee has transferred to the Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement.

“Security Trustee” means ABN AMRO Bank N.V., acting in such capacity through its office at 93 Coolsingel, 3012 AE, Rotterdam, The Netherlands, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

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

“Shareholder” means:

- (a) in relation to Borrower B, Odysseus Marine LLC, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro, Marshall Islands, MH96960; and
- (b) in relation to the other Borrowers (other than Borrower B), the Corporate Guarantor.

“Shares Security Deed” means, in relation to each Borrower, a deed creating Security Interests over the limited liability company interests in that Borrower to be executed by the relevant Shareholder in the Agreed Form and, in the plural, means all of them;

“Ship” means each of Ship A, Ship B, Ship C, Ship D and Ship E and, in the plural, means any or all of them;

“Ship A” means the 2007-built container vessel of 5,100 TEU currently registered in the ownership of Borrower A with IMO No. 9318113 under the Panamanian flag with the name “ORCA I”;

“Ship B” means the 2013-built container vessel of 6,700 TEU currently registered in the ownership of Borrower B with IMO No. 9641235 under the Marshall Islands flag with the name “KATHERINE”;

“Ship C” means the 2000-built container vessel of 5,468 TEU currently registered in the ownership of Borrower C with IMO No. 9189342 under the Marshall Islands flag with the name “TASMAN”;

“Ship D” means the 2000-built container vessel of 5,468 TEU currently registered in the ownership of Borrower D with IMO No. 9189354 under the Liberian flag with the name “DIMITRIS Y”;

“Ship E” means the 2000-built container vessel of 5,468 TEU currently registered in the ownership of Borrower E with IMO No. 9189500 under the Liberian flag with the name “IAN H”;

“Shortfall Amount” means an amount (if any) which when aggregated with the excess Earnings applied towards prepayment of part of the Loan during the period commencing on 1 January 2019 and ending on 31 December 2019 pursuant to Clause 8.14 is equal to \$1,300,000;

“Subordination Agreement” means (i) an agreement to be made between the creditor under a Permitted Loan, the Borrower or Borrowers who have received credit under such Permitted Loan and the Security Trustee and (ii) the K&T Subordination Agreement;

“Subsidiary” means a subsidiary within the meaning of section 1159 of the Companies Act 2006;

“Swap Bank” means ABN AMRO Bank N.V., acting in such capacity through its office at Gustav Mahlerlaan 10, NL-1082 PP, Amsterdam, The Netherlands;

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

“Tasman Borrower” means each of Borrower C, Borrower D and Borrower E that are joint and several borrowers under the Tasman Existing Facility Agreement and, in the plural, means any or all of them;

“Tasman Ship” means each of Ship C, Ship D and Ship E and, in the plural, means all of them;

“Total Loss” means, in relation to a 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 30 days (or within any such longer period as may be requested by the Borrowers and approved by the Agent acting with the authorisation of the Majority Lenders) redelivered to the full control of the Borrower owning that Ship;
- (c) any condemnation of that Ship by any tribunal or by any person or person claiming to be a tribunal whose decision or judgement is enforceable; and
- (d) any arrest, capture, seizure or detention of that Ship (including any hijacking or theft) unless it is within 45 days (or within any such longer period as may be requested by the Borrowers and approved by the Agent acting with the authorisation of the Majority Lenders) redelivered to the full control of the Borrower owning that Ship;

“Total Loss Date” means, in relation to a 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 owning that Ship 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;

“**Tranche**” means each of Tranche A and Tranche B;

“**Tranche Amount**” means, in respect of:

- (a) Tranche A, \$ 65,292,500; and
- (b) Tranche B, \$17,167,178.29;

“**Tranche A**” means an amount of \$65,292,500 or, as the context may require, the principal amount outstanding in respect of that Tranche A from time to time (as that outstanding amount may be increased by the aggregate PIK Amounts in accordance with Clause 8.1(a)(ii)(A));

“**Tranche B**” means amount of \$17,167,178.29 or, as the context may require, the principal amount outstanding in respect of that Tranche B from time to time;

“**Transaction**” has the meaning given in the Master Agreement;

“**Transaction Security**” means the Security Interests created or evidenced or expressed to be created or evidenced under the Finance Documents.

“**Transfer Certificate**” has the meaning given in Clause 26.2;

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

“**Value Adjusted Leverage Ratio**” has the meaning given to it in the Corporate Guarantee;

“**Waiver Period**” means the period commencing on the Drawdown Date and ending on (inclusive) 31 December 2019; and

“**Write-down and Conversion Powers**” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

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 (including, but not limited to, any governmental or third party 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 or fax;

“excess risks” means, in relation to a Ship, the proportion of claims for general average, salvage and salvage charges not recoverable under the hull and machinery policies in respect of the Ship in consequence of its insured value being less than the value at which the 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 a Ship, all insurances effected, or which the Borrower owning the Ship is obliged to effect, under Clause 13 or any other provision of this Agreement or another Finance Document;

“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 (either having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

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

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

“war risks” includes the risk of mines, blocking and trapping, terrorism, piracy and confiscation and all other 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 23 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 General Interpretation

In this Agreement:

- (a) references to, or to a provision of, a Finance Document or any other document are references to it as amended or supplemented, whether before the date of this Agreement or otherwise;
- (b) references to, or to a provision of, any law include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (c) words denoting the singular number shall include the plural and vice versa; and
- (d) Clauses 1.1 to 1.4 apply unless the contrary intention appears.

1.5 Headings

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

1.6 Accounting Terms

All accounting terms not specifically defined herein or in any other Finance Document shall be construed in accordance with IFRS and all financial data submitted pursuant to this Agreement or any other Finance Document shall be prepared in accordance with IFRS; **Provided however that** if the Corporate Guarantor notifies the Agent that it wishes to amend any covenant or any related definition to eliminate the effect of any change in IFRS occurring after the date of this Agreement on the determination of such covenant (or if the Agent notifies the Corporate Guarantor that the Majority Lenders wish to amend the covenants or any related definition for such purpose), then the Corporate Guarantor's compliance with such covenant shall be determined on the basis of IFRS in effect immediately before the relevant change in IFRS became effective until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Corporate Guarantor and the Majority Lenders **Provided that** if such notice is not withdrawn or such covenant is not amended within 45 Business Days following the service of such notice then the Corporate Guarantor's compliance with such covenant shall be determined on the basis of IFRS as in effect at the relevant time.

2 FACILITY

2.1 Amount of facility

Subject to the other provisions of this Agreement, the Lenders shall make available to the Borrowers a loan facility, in two Tranches, not exceeding in aggregate the amount of \$82,459,678.29 and in respect of each Tranche, not exceeding the relevant Tranche Amount in respect of that Tranche.

2.2 Lenders' participations in Tranches

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

2.3 Purpose of Tranches

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

3 POSITION OF THE LENDERS, THE SWAP BANK AND THE MAJORITY LENDERS

3.1 Interests of Lenders and Swap Bank several

The rights of the Lenders and the Swap Bank under this Agreement and the Master Agreement are several; accordingly:

- (a) each Lender shall be entitled to sue for any amount which has become due and payable by the Borrowers to it under this Agreement; and
- (b) the Swap Bank shall be entitled to sue for any amount which has become due and payable by the Borrowers to it under the Master Agreement, without joining the Agent, the Security Trustee, any other Lender and the Swap Bank as additional parties in the proceedings.

3.2 Proceedings by individual Lender or Swap Bank

However, without the prior consent of the Majority Lenders, no Lender nor the Swap Bank may bring proceedings in respect of:

- (a) any other liability or obligation of any Borrower or a Security Party under or connected with a Finance Document; or
- (b) any misrepresentation or breach of warranty by any Borrower or a Security Party in or connected with a Finance Document.

3.3 Obligations several

The obligations of the Lenders and the Swap Bank under this Agreement and of the Swap Bank under the Master Agreement are several; and a failure of a Lender or the Swap Bank to perform its obligations under this Agreement or of the Swap Bank to perform its obligations under the Master Agreement shall not result in:

- (a) the obligations of the other Lenders or (as the case may be) the Swap Bank being increased; nor
- (b) any Borrower, any Security Party or any other Creditor Party being discharged (in whole or in part) from its obligations under any Finance Document,

and in no circumstances shall a Lender or the Swap Bank have any responsibility for a failure of another Lender or the Swap Bank to perform its obligations under this Agreement or the Master Agreement.

3.4 Parties bound by certain actions of Majority Lenders

Every Lender, the Swap Bank, 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 (subject always to Clause 27.2); and
- (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.

3.5 Reliance on action of Agent

However, each Borrower 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.

3.6 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.

3.7 Parallel debt

- (a) Each Borrower irrevocably and unconditionally undertakes to pay to the Security Trustee amounts equal to, and in the currency or currencies of, its Corresponding Debt.

- (b) The Parallel Debt of a Borrower:
 - (i) shall become due and payable at the same time as its Corresponding Debt;
 - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For the purposes of this Clause 3.7, the Security Trustee:
 - (i) is the independent and separate creditor of all the Parallel Debt;
 - (ii) acts in its own name and not as agent, representative or trustee of the Creditor Parties and its claims in respect of the Parallel Debt shall not be held on trust; and
 - (iii) shall have the independent and separate right to demand payment of any or all the Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).
- (d) The Parallel Debt of a Borrower shall be:
 - (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Corresponding Debt has increased.
- (e) The Corresponding Debt of a Borrower shall be:
 - (i) decreased to the extent that its Parallel Debt has been irrevocable and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Parallel Debt has increased,in each case provided that the Parallel Debt of a Borrower shall never exceed its Corresponding Debt.
- (f) All amounts received or recovered by the Security Trustee in connection with this Clause 3.7, to the extent permitted by applicable law, shall be applied in accordance with Clause 17 (Application of Receipts).

3.8 Lender incorporated or having its registered office in the Federal Republic of Germany

On any matter referred to in Clause 11.20 in respect of which the Lenders are to vote but in respect of which a Lender incorporated or having its registered office in the Federal Republic of Germany to whom Clause 11.20(d) applies shall not vote in accordance with such paragraph:

- (a) for the purposes of determining whether approval of the Majority Lenders is obtained the references in the definition of "Majority Lenders" to 66.66 per cent, of the Total Commitments and to 66.66 per cent, of the Loan shall for this purpose be construed to refer to 66.66 per cent, of the Total Commitments or, as the case may be, the Loan only taking account of the other Commitments of, or as the case may be, the participation in the Loan of, the Lenders and ignoring the Commitment of or, as the case may be, the participation in the Loan of, the Lender incorporated or having its registered office in the Federal Republic of Germany; and an action taken by the Majority Lenders as such definition is modified by this paragraph (a) shall be valid in the applicable circumstances and binding on all parties; and

- (b) for the purposes of determining whether the approval of all Lenders is obtained, all Lenders shall be construed to mean all the other Lenders other than any Lender incorporated or having its registered office in the Federal Republic of Germany and an action taken by all Lenders as modified by this paragraph (b) shall be valid in the applicable circumstances and binding on all the parties of this Agreement.

4 DRAWDOWN

4.1 Request for Tranche

Subject to the following conditions, the Borrowers may request a Tranche to be made available by ensuring that the Agent receives a completed Drawdown Notice not later than 11.00 a.m. (Rotterdam time) 2 (two) Business Days prior to the intended Drawdown Date or within such shorter period as the Agent may approve.

4.2 Availability

The conditions referred to in Clause 4.1 are that:

- (a) a Drawdown Date has to be a Business Day during the Availability Period;
- (b) both Tranches shall be advanced simultaneously on the same Drawdown Date;
- (c) the amount of each Tranche shall not exceed the relevant Tranche Amount; and
- (d) the aggregate amount of the Tranches shall not exceed the Total Commitments.

4.3 Notification to Lenders of receipt of a Drawdown Notice

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

- (a) the amount of the Tranche and the Drawdown Date;
- (b) the amount of that Lender's participation in the Tranche; and
- (c) the duration of the first Interest Period.

4.4 Drawdown Notice irrevocable

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

4.5 Lenders to make available Contributions

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

4.6 Disbursement of Tranche

Subject to the provisions of this Agreement, the Agent shall on the 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 of ABN AMRO Bank N.V. (acting as agent under the Existing Facility Agreement relevant to the Tranche being advanced) which the Borrowers specify in the Drawdown Notice; and

(b) in the like funds as the Agent received the payments from the Lenders.

4.7 Disbursement of Tranche to third party

The payment by the Agent under Clause 4.6 shall constitute the making of the Tranche and the Borrowers shall at that time become indebted, as principal and direct obligors, to each Lender in an amount equal to that Lender's Contribution.

5 INTEREST

5.1 Payment of normal interest

Subject to Clause 5.3 and the other provisions of this Agreement, interest on each Tranche or the Loan in respect of each Interest Period applicable thereto 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 Tranche or the Loan in respect of an Interest Period shall be the aggregate of (i) the applicable Margin, (ii) the Mandatory Cost (if any) and (iii) LIBOR for that Interest Period.

5.3 Payment of accrued interest

In the case of an Interest Period longer than 3 months, accrued interest shall be paid every 3 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 Reference Banks to quote

A Reference Bank which is a Lender shall use all reasonable efforts to supply the quotation required of it for the purposes of fixing a rate of interest under this Agreement.

5.6 Absence of quotations by Reference Banks

If any Reference Bank fails to supply a quotation, 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) no screen rate is quoted in the Screen Rate and the Reference Banks (or, if there is only one Reference Bank at the relevant time, that Reference Bank) do not or, as the case may be, does not, before 1.00 p.m. (London time) on the Quotation Date for an Interest Period, provide quotations to the Agent in order to fix LIBOR; or

- (b) at least 1 Business Day before the start of an Interest Period, a Lender may notify the Agent that LIBOR fixed by the Agent would not accurately reflect the cost to that Lender of funding its respective Contribution (or any part of it) during the Interest Period in the London Interbank Market at or about 11.00 a.m. (London time) on the Quotation Date for the Interest Period; or
- (c) at least 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 and the Swap Bank 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 a Tranche is made:

- (a) in a case falling within Clauses 5.7(a) or 5.7(b), the Lenders’ obligations to make the Tranche; and
- (b) in a case falling within Clause 5.7(c), the Affected Lender’s obligation to participate in the Tranche, shall be suspended while the circumstances referred to in the Agent’s notice continue.

5.10 Negotiation of alternative rate of interest

If the Agent’s notice under Clause 5.8 is served after a Tranche is made, the Borrowers, the Agent, the Lenders or (as the case may be) the Affected Lender and the Swap Bank shall use reasonable endeavours to agree, within 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 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, not exceeding 3 months, 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 plus the applicable Margin and the Mandatory Cost (if any) applicable to each Lender’s or (as the case may be) to the Affected Lender’s Contribution in that Tranche; and the procedure provided for by this Clause 5.12 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 5.12, the Borrowers may give the Agent not less than 30 days’ notice of their intention to prepay the Loan 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 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 applicable Margin and the Mandatory Cost (if any) applicable to the Affected Lender's Contribution.

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 a Tranche shall commence on the Drawdown Date in respect of such Tranche 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 shall be:

- (a) 3 months; or
- (b) in the case of the first Interest Period applicable to the second Tranche drawn, a period ending on the last day of the Interest Period applicable to the first Tranche drawn then current, whereupon all Tranches shall be consolidated and treated as the Loan; or
- (c) such other period requested by the Borrowers to the Agent not later than 11.00 a.m. (Rotterdam time) 2 Business Days before the commencement of the Interest Period as the Agent may, with the authorisation of all the Lenders, 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. (Rotterdam 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 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 7.3(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 applicable to it); and
- (b) the aggregate of the applicable Margin and the Mandatory Cost (if any) 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 (after consultation with the Reference Banks) determines that Dollar deposits for any such period are not being made available to any Reference Bank 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 Reference Banks from such other sources as the Agent (after consultation with the Reference Banks) 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 7.3(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.

7.7 Application to Master Agreement

For the avoidance of doubt, this Clause 7 does not apply to any amount payable under the Master Agreement in respect of any continuing Transaction as to which section 2(e) (Default Interest and Compensation) of the Master Agreement shall apply.

8 REPAYMENT AND PREPAYMENT

8.1 Amount of repayment instalments

The Borrowers shall repay:

(a) Tranche A by:

- (i) 4 equal consecutive quarterly instalments in the amount of \$1,125,000 each (each a **“Repayment Instalment”**); and
- (ii) a balloon instalment in the amount of \$60,792,500 (as such amount may be adjusted in accordance with Clause 8.10(b), the **“Tranche A Balloon Instalment”**) (as such amount may be reduced pursuant to Clause 8.14 (*Prepayment out of excess Earnings*) and 8.15 (*Additional mandatory prepayment event*),

Provided that:

- (A) if on each PIK Calculation Date the Security Cover Ratio at that date is less than 130 per cent., the principal amount outstanding under Tranche A (and respectively under the Loan) shall be increased on that PIK Calculation Date by an amount equal to the PIK Amount and the Tranche A Balloon Instalment shall be increased accordingly; and
 - (B) the Tranche A Balloon Instalment may be further increased or reduced in accordance with Clause 8.10(b); and
- (b) Tranche B by one balloon instalment in the amount of \$17,167,178.29 (the **“Tranche B Balloon Instalment”** and together, the **“Balloon Instalments”** and each a **“Balloon Instalment”**).

8.2 Repayment Dates

- (a) In respect of Tranche A, the first Repayment Instalment shall be repaid on 31 March 2020, each subsequent Repayment Instalment shall be repaid at three-monthly intervals thereafter and the last Repayment Instalment for Tranche A together with the Tranche A Balloon Instalment in respect thereof shall be repaid not later than the relevant Final Maturity Date; and

- (b) In respect of Tranche B, the Tranche B Balloon Instalment in respect thereof shall be repaid on the relevant Final Maturity Date.

8.3 Final Repayment Date

On the later Final Maturity 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 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 \$250,000 or a higher integral multiple of \$250,000;
- (b) the Agent has received from the Borrowers at least (i) 15 Business Days' prior written indicative notice and (ii) 10 Business Days' prior written confirmative and irrevocable notice, in each case specifying the amount to be prepaid and the date on which the prepayment is to be made (such date shall be the last day of the Interest Period then current);
- (c) the Borrowers have provided evidence satisfactory to the Agent that any consent required by any Borrower or any Security Party in connection with the prepayment has been obtained and remains in force, and that any requirement relevant to this Agreement which affects any Borrower or any Security Party has been complied with; and
- (d) the Borrowers have complied with Clause 8.12 on or prior to the date of prepayment under Clauses 8.4 and 8.5.

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 the Majority 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.

8.8 Mandatory prepayment

The Borrowers shall be obliged to prepay the Relevant Amount (subject to Clauses 8.9 and 8.12) if a Ship is sold (including, without limitation, if it is sold for scrap) or becomes a Total Loss:

- (a) in the case of a sale, on the earlier of (a) the date on which the sale is completed by delivery of that Ship to the buyer and (b) the date of receipt by the relevant Borrower or the Security Trustee of the sale proceeds relating to such Ship,

- any such sale shall be subject to the prior written consent (such consent not to be unreasonably withheld) of the Agent (acting with the authorisation of all Lenders) if an Event of Default has occurred and is continuing on the date of the Borrowers' request to sell that Ship and/or on the date of the sale of that Ship (prior to the transfer of ownership to the buyer and to the discharge of the relevant Mortgage); or
- (b) in the case of a Total Loss, on the earlier of (a) the date falling 120 days after the Total Loss Date and (b) the date of receipt by the Security Trustee of the proceeds of insurance or the Requisition Compensation relating to such Total Loss.

In this Clause 8.8, "**Relevant Amount**" means:

- (i) in respect of a sale of Ship A or any of the Tasman Ships which has been initiated by the Lenders in accordance with Clause 11.25 (*Sale of Ship A*) or Clause 11.27 (*Sale of Tasman Ships*), as applicable, and, at the time of the sale of Ship A or any of the Tasman Ships, Ship B is no longer a Mortgaged Ship, the total amount of sale proceeds of Ship A or such Tasman Ship or Tasman Ships being sold; and
- (ii) in respect of any other sale or Total Loss of either Ship A or, subject to Clause 8.10(b), any of the Tasman Ships, which has not been initiated in the manner described under paragraph (i) above:
- (A) in the event that Ship B is, at the time of such Total Loss or sale, a Mortgaged Ship, the total amount of sale or, as the case may be, insurance proceeds of the Ship being sold or having become a Total Loss; and
- (B) in the event that Ship B is, at the time of such Total Loss or sale, no longer a Mortgaged Ship (and, in respect of a sale of Ship A, should that sale have been initiated by Borrower A and at such Borrower A's discretion), the greater of (a) the total amount of sale or, as the case may be, insurance proceeds of that Ship being sold or having become a Total Loss and (b) the total amount which after the application of prepayment to be made pursuant to this Clause 8.8, results in the Security Cover Ratio being equal to (i) for the duration of the Waiver Period (A) from the Drawdown Date until 31 December 2017, 105 per cent, (B) from 1 January 2018 until 31 December 2018, 120 per cent. and (C) from 1 January 2019 until 31 December 2019, 125 per cent., and (ii) after the duration of the Waiver Period, the percentage required pursuant to Clause 15.1 (*Minimum required security cover*);
- (iii) in respect of a sale or Total Loss of Ship B, the greater of (i) the total amount of sale or, as the case may be, insurance proceeds of that Ship and (ii) the total amount which after the application of prepayment to be made pursuant to this Clause 8.8, results in the Security Cover Ratio being equal to (A) for the duration of the Waiver Period (i) from the Drawdown Date until 31 December 2017, 105 per cent., (ii) from 1 January 2018 until 31 January 2018, 120 per cent, and (iii) from 1 January 2019 until 31 December 2019, 125 per cent. and (B) after the duration of the Waiver Period, the percentage required pursuant to Clause 15.1 (*Minimum required security cover*).

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 Application of partial prepayment

- (a) Each partial prepayment made pursuant to:
 - (i) Clause 8.4 shall be applied first against the Balloon Instalment of the Tranche being prepaid as specified in Clause 8.1 and then against the then outstanding Repayment Instalments (in the case of Tranche A) in inverse order of maturity;
 - (ii) Clause 8.8 shall be applied in repayment of the Tranche relevant to the Ship which has been sold or has become a Total Loss, first in or towards the relevant Balloon Instalment under such Tranche and subsequently, in the case of Tranche A, in or towards the then outstanding Repayment Instalments in inverse order of maturity, and any balance shall be applied against the remaining Tranche, first in or towards the relevant Balloon Instalment and, in the case of Tranche A, subsequently in or towards the then outstanding Repayment Instalments in inverse order of maturity; and
- (b) If following the disposal of the last of the Tasman Ships, the aggregate sale proceeds (or, in the case of Total Loss, the aggregate insurance proceeds) arising from such disposals (or Total Loss) is:
 - (i) greater than \$17,167,178.29, then any such excess amount shall be applied in or towards prepayment of the Tranche A Balloon Instalment; and
 - (ii) less than \$17,167,178.29, then an amount equal to such shortfall shall be added to the Tranche A Balloon Instalment and the amount of the Tranche A Balloon Instalment set out in Clause 8.1 shall be adjusted accordingly.

8.11 No reborrowing

No amount repaid or prepaid may be reborrowed.

8.12 Unwinding of Designated Transactions

On or prior to any repayment or prepayment of the Loan under this Clause 8 or any other provision of this Agreement, each Borrower shall, on a joint and several basis, wholly or partially reverse, offset, unwind or otherwise terminate one or more of the continuing Designated Transactions so that the notional principal amount of the continuing Designated Transactions thereafter remaining does not and will not in the future (taking into account the scheduled amortisation) exceed the amount of the Loan as reducing from time to time thereafter pursuant to Clause 8.1.

8.13 Mandatory Prepayment in case of Change of Control

If a Change of Control occurs, the Agent may, and on the instructions of all the Lenders shall, serve on the Borrowers a notice demanding the Borrowers to prepay the Loan and all other amounts then outstanding under the Finance Documents and upon receipt of which:

- (a) the Borrowers shall be obliged to prepay the Loan and pay all other amounts then outstanding under the Finance Documents in full within 15 days; and
- (b) any obligations of the Lenders to the Borrowers under this Agreement (including without limitation the obligation to make available the Loan) shall terminate and any undrawn Commitments shall be cancelled.

In this Clause 8.13 “**Change of Control**” means if any of the following occurs in relation to the Borrowers or the Corporate Guarantor (as applicable):

- (i) subject to paragraph (ii) below, without the prior consent of the Lenders, a change has occurred after the date of this Agreement in the direct or ultimate, legal or beneficial ownership of any of the limited liability company interests in any of the Borrowers or in the direct or ultimate control of the voting rights attaching to any of those interests; or

- (ii) other than in the case of any initial public offering of the limited liability company interests of the Corporate Guarantor on any stock exchange (with the Agent's prior written consent (to be given with the authorisation of the Majority Lenders) such consent not to be unreasonably withheld) the members disclosed to the Agent prior to the date of this Agreement as owning the whole of the limited liability interests of the Corporate Guarantor cease to own in aggregate at least 50 per cent, of the limited liability company interests (with a right to vote) of the Corporate Guarantor; or
- (iii) Mr George Giouroukos ceases to have a key position (as determined by the Agent, acting on the instructions of all the Lenders) in the executive management of the Corporate Guarantor; or
- (iv) any Borrower ceases to be a wholly-owned subsidiary of the relevant Shareholder.

8.14 Prepayment out of excess Earnings

If on an Excess Cash Flow Date, the aggregate of the daily Earnings of the Mortgaged Ships (for the avoidance of doubt, not inclusive of any commission or brokerage fees which are not otherwise included in the Operating Expenses of such Mortgaged Ships and are payable to a third party) for the preceding Cash Sweep Period exceeds the aggregate of:

- (a) the aggregate of the Operating Expenses in respect of the Ships for that Cash Sweep Period; and
- (b) the sums incurred by the Borrowers in respect of the payment of principal of, and accrued interest on, the Loan pursuant to this Agreement and any sums paid by the Borrowers pursuant to the Master Agreement (the "**Debt Service**"), during such three-month period ending on the last day of that Cash Sweep Period; and
- (c) the aggregate Minimum Liquidity Amount held in the Borrowers' Earnings Accounts in respect of all Mortgaged Ships (plus any amounts necessary to cover any shortfall on the aggregate Minimum Liquidity Amount),

the Borrowers shall pay such excess amount (the "**Excess Cash Flow**"), as evidenced in the relevant Excess Cash Flow Notice, to the Agent, on the next Repayment Date falling due after receipt of such relevant Excess Cash Flow Notice (and, during the Waiver Period, at the end of the next Interest Period after receipt of such relevant Excess Cash Flow Notice), such amount shall be applied (notwithstanding anything to the contrary provided in Clause 8.10 hereof) in prepayment of the outstanding Repayment Instalments and Balloon Instalments in order of maturity.

In this Clause 8.14:

"Cash Sweep Period" means, in relation to each Ship, each three-month period commencing on 1 January, 1 April, 1 July and 1 October in each financial year of the Borrowers, during the period commencing on 1 July 2017 and at all times thereafter.

"Excess Cash Flow Date" means the last day of each Cash Sweep Period; and

"Excess Cash Flow Notice" means a certificate to be provided by the Borrowers to the Agent within 45 days from each Excess Cash Flow Date evidencing the Excess Cash Flow available on such date.

8.15 Additional mandatory prepayment event

If the aggregate of the excess Earnings applied in prepayment of the Loan pursuant to Clause 8.14 above is less than \$1,300,000 for the duration of the period commencing on 1 January 2019 until the Cash Sweep Period ending on 31 December 2019, the Corporate Guarantor shall procure that part of the shareholders' equity (as provided in Schedule 3, Part B, paragraph 6 and clause 11.29 of the Corporate Guarantee) is injected, and the Borrowers shall be obliged to utilise such equity to prepay the Shortfall Amount to the Lenders on the next Repayment Date falling due after receipt of the Excess Cash Flow Notice relevant to that Cash Sweep Period. Such Shortfall Amount shall be applied in or towards prepayment of the then outstanding Repayment Instalments and Balloon Instalments in order of maturity.

9 CONDITIONS PRECEDENT

9.1 Documents, fees and no default

Each Lender's obligation to contribute to a Tranche is subject to the following conditions precedent:

- (a) that, on or before the service of the first Drawdown Notice, the Agent receives the documents described in Part A of Schedule 3 in form and substance satisfactory to the Agent and its lawyers;
- (b) that, on the Drawdown Date but prior to the making of any Tranche to be advanced on the Drawdown Date, the Agent receives or is satisfied that it will receive on the making of such Tranche the documents described in Part B of Schedule 3 in form and substance satisfactory to it and its lawyers;
- (c) that both at the date of each Drawdown Notice and at the Drawdown Date:
 - (i) no Event of Default or Potential Event of Default has occurred and is continuing or would result from the borrowing of the relevant Tranche (excluding, for the Refinancing Period up until the Refinancing Date, any Events of Default having occurred and being continuing in connection with and under the Existing Facility Agreement);
 - (ii) the representations and warranties in Clause 10 and those of any 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; and
 - (v) 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 the Majority Lenders, request by notice to the Borrowers prior to the Drawdown Date.

9.2 Waiver of conditions precedent

If the Majority Lenders, at their discretion, permit a Tranche 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 10 Business Days after the Drawdown Date (or such longer period as the Agent may, with the authorisation of the Majority 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 a limited liability company duly formed and validly existing in good standing under the laws of the Marshall Islands.

10.3 Limited Liability Company Interests and ownership

As of the date of this Agreement, each Borrower is authorized to issue 500 limited liability company interests, all of which have been issued to the relevant Shareholder and are owned free of any Security Interest or other claim except, during the Existing Indebtedness Grace Period, for Security Interests created under the Existing Facility Agreement and for the Security Interests created in favour of the Security Trustee under the Finance Documents.

10.4 Limited Liability Company power

Each Borrower has the limited liability capacity, and has taken all limited liability company action and obtained all consents necessary for it:

- (a) to carry out its business carried on or to be carried out by it and own its assets owned or to be owned by it;
- (b) to execute the Finance Documents to which that Borrower is a party; and
- (c) to borrow under this Agreement, to enter into Designated Transactions under the Master Agreement and to make all the payments contemplated by, and to comply with, those Finance Documents to which it 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 each 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) are in full force and effect;
- (b) constitute that Borrower's legal, valid and binding obligations enforceable against that Borrower in accordance with their respective terms; and
- (c) 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 the Legal Reservations.

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 a Borrower is a party:

- (a) each Borrower which is a party to that Finance Document 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 to which it is a party will not involve or lead to a contravention of:

- (a) any applicable 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, which in each case has, or could reasonably be expected to have, a Material Adverse Effect.

10.9 No withholding taxes

All payments which each Borrower is liable to make under the Finance Documents to which it is a party may be made without deduction or withholding for or on account of any tax payable under any law of any Pertinent Jurisdiction. No Finance Document is subject to any filing or stamp duty in any Pertinent Jurisdiction.

10.10 No default

No Event of Default (excluding, for the duration of the Refinancing Period up until the Refinancing Date, any Events of Default having occurred and being continuing in connection with and under the Existing Facility Agreement) has occurred and is continuing.

10.11 Information

All information which has been provided in writing by or on behalf of the Borrowers or any Security Party or K&T Marine 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 there has been no Material Adverse Change.

10.12 No litigation

Other than as previously disclosed to the Agent, no legal or administrative action against any Borrower (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 legal or administrative action has or could reasonably be expected to have a Material Adverse Effect.

10.13 Compliance with certain undertakings

At the date of this Agreement, the Borrowers are in compliance with Clauses 11.2, 11.4, 11.9, 11.13 and 11.20.

10.14 Taxes paid

Each Borrower has paid all taxes applicable to, or imposed on or in relation to that Borrower, its business or the Ship owned by it.

10.15 ISM Code and ISPS Code compliance

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

10.16 No money laundering; anti-bribery

- (a) Without prejudice to the generality of Clause 2.3, in relation to the borrowing by each Borrower, the performance and discharge of its obligations and liabilities under the Finance Documents, and the transactions and other arrangements affected or contemplated by the Finance Documents to which each Borrower is a party, each Borrower confirms (i) it is acting for its own account; (ii) it will use the proceeds of the Loan for its own benefit, under its full responsibility and exclusively for the purposes specified in this Agreement; and (iii) that the foregoing will not involve or lead to a contravention of any law, official requirement or other regulatory measure or procedure implemented to combat "money laundering" (as defined in Article 1 of Directive (2005/60/EC) of the European Parliament and of the Council).
- (b) Each Borrower will promptly inform the Agent by written notice, if it is not or ceases to be the beneficiary and will provide in writing the name and address of the beneficiary.
- (c) The Agent shall promptly notify the Lenders of any written notice it receives under this Clause 10.16.

10.17 No immunity

None of the Borrowers, nor any of their assets are entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding (which shall include, without limitation, suit attachment prior to judgement, execution or other enforcement).

10.18 Pari passu ranking

The obligations of each Borrower, each Security Party and K&T Marine under the Finance Documents to which it is a party rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

10.19 Patriot Act and anti-terrorism laws

To the extent applicable each Borrower is in compliance with (i) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, (ii) the PATRIOT Act and Executive Order No. 13224 on Terrorist Financing, effective 24 September 2001. No part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

10.20 Repetition

The representations and warranties in this Clause 10 shall be deemed to be repeated by the Borrowers:

- (a) on the date of service of each Drawdown Notice;
- (b) on the Drawdown Date; and
- (c) with the exception of Clauses 10.9, 10.10, 10.11 and 10.12, on the first day of each Interest Period and on the date of any Compliance Certificate issued pursuant to clause 11.20 of the Corporate Guarantee,
as if made with reference to the facts and circumstances existing on each such day.

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 in writing (and in the case of Clauses 11.3 and 11.13 such permission not to be unreasonably withheld or delayed).

11.2 Title; negative pledge

Each Borrower will:

- (a) hold the legal title to, and own the entire beneficial interest in the Ship owned by it, her Insurances and Earnings, free from all Security Interests (except during the Existing Indebtedness Grace Period Security Interests created under the Existing Facility Agreement) and other interests and rights of every kind, except for those created by the Finance Documents and the effect of assignments contained in the Finance Documents and except for Permitted Security Interests;
- (b) not create or permit to arise any Security Interest (except for Permitted Security Interests) over any other asset, present or future (including, but not limited to, that Borrower's rights against the Swap Bank under the Master Agreement or all or any part of that Borrower's interest in any amount payable to that Borrower by the Swap Bank under the Master Agreement); 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 and unsubordinated liabilities, except for liabilities which are mandatorily preferred by law.

11.3 No disposal of assets

None of the Borrowers will transfer, lease or otherwise dispose of (without the Agent's prior written consent, but always subject to Clause 8.8(a) of this Agreement):

- (a) all or a substantial part of its assets, whether by one transaction or a number of transactions, whether related or not; or
- (b) any debt payable to it or any other right (present, future or contingent right) to receive a payment, including any right to damages or compensation, but paragraph (a) does not apply to any charter of a Ship as to which Clause 14.12 applies.

11.4 No other liabilities or obligations to be incurred

None of the Borrowers will incur any liability or obligation, including, without limitation, giving or allowing to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person, except:

- (a) liabilities and obligations under the Existing Facility Agreement (up until the Drawdown Date) and the Finance Documents to which it is a party;
- (b) liabilities or obligations reasonably incurred in the normal course of its business of trading, operating and chartering the Ship owned by it;
- (c) in respect of the Designated Transactions; and
- (d) liabilities or obligations under any Permitted Loans.

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

Each Borrower will send or procure that are sent to the Agent:

- (a) as soon as available, but in no event later than 180 days after the end of each Financial Year of the Corporate Guarantor, the annual audited (consolidated in respect of the Corporate Guarantor) financial statements of the Corporate Guarantor for that Financial Year (commencing with the financial statements for the year ended 31 December 2016);
- (b) as soon as available, but in no event later than 90 days after the end of the 6-month period ending on 30 June in each Financial Year of the Corporate Guarantor and each Borrower, the unaudited (consolidated in respect of the Corporate Guarantor) financial statements of the Corporate Guarantor and each Borrower in respect of the preceding 6-month period (commencing with the 6-month period ending 30 June 2017) which are certified as to their correctness by an authorised officer of the Corporate Guarantor and each Borrower (as the case may be);
- (c) as soon as available, but in no event later than 60 days after the end of the 3-month period ending on 30 September and 31 March in each Financial Year of the Corporate Guarantor and each Borrower, the unaudited (consolidated in respect of the Corporate Guarantor) financial statements of the Corporate Guarantor and each Borrower in respect of the preceding 3-month period (commencing with the 3-month period ending 30 June 2017) which are certified as to their correctness by an authorised officer of the Corporate Guarantor and each Borrower (as the case may be);
- (d) at the end of each 3-month period in each Financial Year of the Borrowers (commencing with the 3-month period ending on 30 June 2017), the PIK Compliance Certificate (together with the set of valuations to determine the Market Value of each Ship and the PIK Amount, such set of valuations to be provided on a semi-annual basis commencing with the 3-month period ending on 31 March 2017 and thereafter, at the option of the Borrowers, as provided for and in accordance with the provisions of Clause 15.8) which is to be certified as to its correctness by an authorised officer of the Borrowers;
- (e) on or prior to the 10th Business Day of each quarter in each Financial Year of the Corporate Guarantor (commencing with the quarter starting on 1 July 2017), a cash flow forecast in an Agreed Form evidencing all anticipated income and expenses in respect of the Fleet Vessels and the aggregate cash balances held or to be held by members of the Group in restricted and unrestricted accounts on a consolidated and projected basis for the 12-week period commencing as from the date on which the cash flow forecast is determined; and

- (f) promptly after each request by the Agent, such further information regarding the financial condition, business and operation of the Borrowers, the Ships and the Corporate Guarantor as the Agent may reasonably require,

and each Borrower shall, and shall procure that the Corporate Guarantor shall, ensure that all cash flow forecasts of the Corporate Guarantor received pursuant to paragraph (e) of this Clause for the duration of the Waiver Period shall evidence a positive balance in respect of the Group for that Financial Year that is satisfactory to the Agent.

11.7 Form of financial statements

All accounts delivered under Clause 11.6 will:

- (i) be prepared in accordance with all applicable laws and IFRS consistently applied and, in respect of the Corporate Guarantor, financial reference periods consistent with those applied in preparation of the Original Financial Statements unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in IFRS, the accounting practices or reference periods and its auditors deliver to the Agent:
 - (A) a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
 - (B) sufficient information, upon request by the Agent, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether clause 11.19 of the Corporate Guarantee has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

Any reference in the Corporate Guarantee to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared;

- (b) give a true and fair view of the state of affairs of the relevant Borrower and the Corporate Guarantor at the date of those accounts and of its profit for the period to which those accounts relate; and
- (c) fully disclose or provide for all significant liabilities of the relevant Borrower and the Corporate Guarantor.

11.8 Shareholder and creditor notices

Upon the occurrence of an Event of Default each Borrower will send to the Agent, at the same time as they are despatched, copies of all communications which are despatched to that Borrower's members or creditors or any class of them.

11.9 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 that Borrower to perform its obligations under any Finance Document to which it is a party;
- (b) for the validity or enforceability under any Finance Document to which it is a party; and
- (c) for that Borrower to continue to own and operate the Ship owned by it,

and that Borrower will comply with the terms of all such consents.

11.10 Maintenance of Security Interests

Each Borrower will:

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

11.11 Notification of litigation

Each Borrower will provide the Agent with details of any legal or administrative action involving that Borrower or the Ship owned by it, the Earnings or the Insurances or either Shareholder 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 that the legal or administrative action cannot be considered material in the context of any relevant Finance Document and the Borrowers shall procure that reasonable measures are taken to defend any such legal or administrative action.

11.12 No amendment to Master Agreement

None of the Borrowers will agree to any amendment or supplement to, or waive or fail to enforce, the Master Agreement or any of its provisions.

11.13 Principal place of business

Each Borrower will maintain a place of business, and keep its corporate documents (or copies thereof) and records (or copies thereof), at the address stated in Clause 28.2(a); and none of the Borrowers will establish, or do anything as a result of which it would be deemed to have, a place of business in any country other than Greece and, in respect of the Corporate Guarantor, the United States of America.

11.14 Confirmation of no default

Each Borrower will, within 5 Business Days after service by the Agent of a written request, serve on the Agent a notice which is signed by the authorised representative or senior officer of that Borrower and which:

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

The Agent may serve requests under this Clause 11.14 from time to time but only if asked to do so by a Lender or Lenders having Contributions exceeding 10 per cent, of the Loan or (if no Tranches have been made) Commitments exceeding 10 per cent, of the Total Commitments; and this Clause 11.14 does not affect the Borrowers' obligations under Clause 11.15.

11.15 Notification of default

Each Borrower will notify the Agent as soon as that Borrower becomes aware of:

- (a) the occurrence of an Event of Default or a Potential Event of Default; or
- (b) any matter which indicates that an Event of Default or a Potential Event of Default may have occurred, and will keep the Agent fully up-to-date with all developments.

11.16 Provision of further information

- (a) Each Borrower will, as soon as practicable after receiving the request, provide the Agent with any additional financial or other information relating:
 - (i) to the Borrowers, the Group, the Ships, the other Fleet Vessels, their Insurances or their Earnings (including, but not limited to, any sales or purchases of any Fleet Vessels, the incurrence of Financial Indebtedness by members of the Group, the refinancing or restructuring of any loan or credit facilities to which any members of the Group are a party (to the extent permitted to disclose information under the terms of such loan or credit facilities) as the Agent may reasonably require; or
 - (ii) to any other matter relevant to, or to any provision of, a Finance Document, which may be requested by the Agent, the Security Trustee or any Lender at any time; and
- (b) Each Borrower will immediately notify the Agent if, prior to the delivery of the Compliance Certificate pursuant to clause 11.20 of the Corporate Guarantee, it becomes aware that the financial covenants included in clause 11.19 of the Corporate Guarantee will not be complied with.

11.17 Provision of copies and translation of documents

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

11.18 Minimum Liquidity

Each Borrower undertakes to maintain in its Earnings Account from the Drawdown Date of the Tranche related to its Ship and at all times thereafter throughout the Security Period, a credit balance of not less than \$500,000 (the “**Minimum Liquidity Amount**”).

11.19 “Know your customer” checks

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of any Borrower, any Shareholder or any Approved Manager after the date of this Agreement; or

- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer, obliges the Agent or any Lender (or, in the case of paragraph (c), any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrowers shall promptly upon the request of the Agent or the Lender concerned supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or the Lender concerned (for itself or, in the case of the event described in paragraph (c), on behalf of any prospective new Lender) in order for the Agent, the Lender concerned or, in the case of the event described in paragraph (c), any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents, including without limitation obtaining, verifying and recording certain information and documentation that will allow the Agent and each of the Lenders to identify each of the Borrowers, the Shareholders and the Approved Managers (as the case may be) in accordance with the requirements of the PATRIOT Act.

11.20 Sanctions and compliance with laws

- (a) Compliance with laws

Each Borrower shall, and shall procure that the Corporate Guarantor and each other member of the Group and each Affiliate of any of them shall, comply in all respect with all Sanctions.

- (b) Sanctions

- (i) Each Borrower undertakes that it, and shall procure that the Corporate Guarantor and any other member of the Group or any Affiliate of any of them, or any director, officer, agent, employee or person acting on behalf of the foregoing, is not a Restricted Person and does not act directly or indirectly on behalf of a Restricted Person.
- (ii) Each Borrower shall not, and shall procure that neither the Corporate Guarantor nor any other member of the Group or any Affiliate of any of them shall not, use any revenue or benefit derived from any activity or dealing with a Restricted Person in discharging any obligation due or owing to the Creditor Parties.
- (iii) Each Borrower shall, and shall procure that the Corporate Guarantor shall, procure that no proceeds from any activity or dealing with a Restricted Person are credited to any bank account held with any Creditor Party in its name or in the name of any Borrower, the Corporate Guarantor or any other member of the Group or any Affiliate of any of them.
- (iv) Each Borrower shall, and shall procure that the Corporate Guarantor and each other member of the Group shall, to the extent permitted by law promptly upon becoming aware of them supply to the Agent details of any claim, action, suit, proceedings or investigation against it with respect to Sanctions by any Sanctions Authority.

- (c) Use of proceeds

The Borrowers shall not, and shall procure that neither the Corporate Guarantor nor any other member of the Group and any Affiliate of any of them shall not, permit or authorise any other person to, directly or indirectly, make available, all or any part of the proceeds of the Loan or other transactions contemplated by this Agreement to fund or facilitate trade, business or other activities: (a) involving or for the benefit of any Restricted Person; or (b) in any other manner that could result in any Borrower, the Corporate Guarantor or a Creditor Party being in breach of any Sanctions or becoming a Restricted Person.

- (d) Each party to this Agreement acknowledges and agrees that the Borrower does not undertake under paragraphs (a) to (c) (inclusive) above in favour of any Lender incorporated or having its registered office in the Federal Republic of Germany and no such Lender shall have any right thereunder and shall be deemed not to be a party to the provisions of this Clause 11.20.

11.21 Subordination and assignment of Permitted Loans

Each Borrower shall cause (i) all Permitted Loans to be fully subordinated to the Secured Liabilities and (ii) any creditor's rights under any such Permitted Loans to any Borrower(s) to be assigned in favour of the Creditor Parties.

11.22 Ownership

Each Borrower shall procure that there is no change in the legal ownership of its limited liability company interests throughout the Security Period.

11.23 Employees and ERISA Compliance

None of the Borrowers shall employ any individuals (other than the master and crew members of the Ship), or sponsor, maintain or become obligated to contribute to any Plan. Each Borrower shall provide prompt written notice to the Agent in the event that that Borrower becomes aware that it has incurred or is reasonably likely to incur any liability with respect to any Plan, that, individually or in the aggregate with any other such liability, would be reasonably expected to have a Material Adverse Effect.

11.24 Further assurance

- (a) Each Borrower shall, and shall procure that each Security Party will, promptly, and in any event within the time period specified by the Security Trustee do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Trustee may specify (and in such form as the Security Trustee may require in favour of the Security Trustee or its nominee(s)):
- (i) to create, perfect, vest in favour of the Security Trustee or protect the priority of the Security Interest or any right of any kind created or intended to be created under or evidenced by the Finance Documents to which such Security Party is a party (which may include the execution of a mortgage, charge, assignment or other Security Interest over all or any of the assets which are, or are intended to be, the subject of the Finance Documents) or for the exercise of any rights, powers and remedies of the Security Trustee, any receiver or the Creditor Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Trustee or confer on the Creditor Parties Security Interests over any property and assets of that Borrower or Security Party (as the case may be) located in any jurisdiction equivalent or similar to the Security Interest intended to be conferred by or pursuant to the Finance Documents;
 - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Finance Documents or to exercise any power specified in any Finance Document in respect of which the Security Interest has become enforceable; and/or

- (iv) to enable or assist the Security Trustee to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Borrower shall, and shall procure that each other Security Party shall, take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security Interest conferred or intended to be conferred on the Security Trustee or the Creditor Parties by or pursuant to the Finance Documents to which such Borrower or Security Party is a party.
- (c) At the same time as a Borrower delivers to the Security Trustee any document executed by itself or another Security Party pursuant to this Clause, that Borrower shall deliver, or shall procure that such other Security Party will deliver, to the Security Trustee a certificate signed by two of that Borrower's or Security Party's directors or officers which shall:
 - (i) set out the text of a resolution of that Borrower's or Security Party's directors specifically authorising the execution of the document specified by the Security Trustee; and
 - (ii) 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 or officers and is valid under that Borrower's or Security Party's articles of association or other constitutional documents.

11.25 Sale of Ship A

At any time after the Security Cover Ratio has become less than the Applicable Percentage, each Borrower undertakes the following (on the instructions of all the Lenders after consultation with the Borrowers):

- (a) to take all necessary actions in order to market Ship A for sale immediately upon receipt of the Lenders' instructions including, without limitation, closely monitoring the market and liaising with brokers;
- (b) on a best efforts basis, to ensure that Ship A is sold for cash on normal commercial arm's length terms to a buyer and for a purchase price, each reasonably acceptable to the Agent in its consideration of the market standards prevailing at that time (acting on the instructions of the Lenders);
- (c) to keep the Agent regularly updated (quarterly and at any other time upon the Agent's request) regarding the sale process of Ship A and to advise the Agent promptly of any offers received (including, without limitation, the price offered, the identity of the buyer, the main terms of any offers and the process of the negotiations), such updates to be satisfactory to the Lenders;
- (d) in the event of the sale of Ship A being agreed, on a best efforts basis, to ensure that (i) the memorandum of agreement is signed between Borrower A and the buyer for the sale of Ship A and (ii) that the sale of Ship A is successfully completed and Ship A is irrevocably and unconditionally delivered to the relevant buyer within a time frame reasonably set out by the Agent at that time; and
- (e) on a best efforts basis, to send to the Agent a certified copy of the memorandum of agreement (and any addenda or supplemental agreements applicable thereto) made between Borrower A and the buyer in respect of the sale of Ship A, promptly after the execution of such document.

Any partial prepayment made pursuant to this Clause shall be applied in such order as set out in Clause 8.10(a)(ii).

11.26 Most favoured nation clause

Each Borrower undertakes to procure that, (i) during the Waiver Period in respect of items listed in sub-paragraphs (b), (d) and (f) and (ii) throughout the duration of the Security Period in respect of items listed in sub-paragraphs (a), (c) and (e), the Creditor Parties shall receive no less favourable treatment under this Agreement than that provided or to be provided under any Group Facility Agreement (by way of amendment or supplement to, or refinancing of, that Group facility Agreement) in relation to:

- (a) any amendment to a maturity date under any such Group Facility Agreement as a result of which the maturity date will fall before 31 December 2020;
- (b) the existence of any amortization principal payment profile/schedule until 31 December 2019 (inclusive);
- (c) the provisions relevant to the calculation of the Excess Cash Flow and generally the cash sweep mechanism;
- (d) the waiver of the security cover ratio at the Borrowers' level;
- (e) the financial covenants relevant to the Value Adjusted Leverage Ratio, Book Leverage Ratio and minimum Net Worth of the Corporate Guarantor; and
- (f) any increase to the aggregate of any amounts to be paid in respect of interest solely related to margin (howsoever defined) for the duration of the Waiver Period (calculated as at the date of that Group Facility Agreement).

Accordingly, should any member of the Group or the Corporate Guarantor provide to any other creditor more favourable treatment in relation to (a) to (f) above (and, in relation to subparagraphs (b), (d) and (f) for the duration of the Waiver Period) than those which the Creditor Parties have been provided with under this Agreement or any other Finance Document, each Borrower shall promptly advise the Agent of those arrangements and covenants and shall, upon the Agent's request, enter into such documentation supplemental to the Finance Documents as the Lenders may require in order to achieve parity with the creditors under such relevant Group Facility Agreement.

11.27 Sale of Tasman Ships

Each Borrower undertakes to:

- (i) to take all necessary actions in consultation with the Lenders, in order to market each Tasman Ship for sale including, without limitation, closely monitoring the market and liaising with brokers;
- (ii) on a best efforts basis, ensure that each Tasman Ship is sold for cash on normal commercial arm's length terms to a buyer and for a purchase price, each reasonably acceptable to the Agent after taking consideration of the market conditions prevailing at any relevant time (acting on the instructions of the Lenders);
- (iii) keep the Agent regularly updated (at least quarterly and at any other time upon the Agent's reasonable request) regarding the sale process of each Tasman Ship and to advise the Agent promptly of any offers received (including, without limitation, the price offered, the identity of the buyer, the main terms of any offers and the process of the negotiations), such updates to be satisfactory to the Lenders; and

- (iv) in the event that an opportunity acceptable to the Borrowers and the Lenders arises for the sale of a Tasman Ship, on a best efforts basis, ensure that (i) the memorandum of agreement is signed between the Borrower being the owner of that Tasman Ship and the buyer for the sale and purchase of that Tasman Ship and to send to the Agent a certified copy of the memorandum of agreement (and any addenda or supplemental agreements applicable thereto) promptly after the execution of the same and (ii) the sale of that Tasman Ship is successfully completed and that such Tasman Ship is irrevocably and unconditionally delivered to the relevant buyer.

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 in writing (such permission not to be unreasonably withheld or delayed).

12.2 Maintenance of status

Each Borrower will maintain its separate corporate existence and remain in good standing under the laws of The Marshall Islands.

12.3 Negative undertakings

None of the Borrowers will:

- (a) change the nature of its business; or
- (b) pay any dividend or make any other form of distribution or effect any form of redemption, purchase or return of its limited liability company interests at any time;
- (c) provide any form of credit or financial assistance to:
 - (i) a person who is directly or indirectly interested in that Borrower's limited liability company interests 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 that Borrower than those which it could obtain in a bargain made at arms' length;
- (d) open or maintain any account with any bank or financial institution except accounts with the Agent for the purposes of the Finance Documents;
- (e) issue, allot or grant any person any limited liability company interests other than the relevant Shareholder;
- (f) 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 other than the Designated Transactions;
- (g) enter into any form of amalgamation, merger or de-merger or any form of reconstruction or reorganisation or any form of acquisition, including any joint venture (save for an IPO);

- (h) change its constitutional documents; or
- (i) acquire any vessel other than the Ship owned by it.

13 INSURANCE

13.1 General

Each Borrower also undertakes with each Creditor Party to comply (while that Ship owned by it is subject to a Mortgage) with the following provisions of this Clause 13 from the Drawdown Date and at all times during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit.

13.2 Maintenance of obligatory insurances

Each Borrower shall keep the Ship owned by it insured at the expense of that Borrower against:

- (a) fire and usual marine risks (including increased value, hull and machinery and excess risks);
- (b) war risks;
- (c) protection and indemnity risks (including excess war risk P&I cover); and
- (d) any other risks (other than loss of hire) 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 that Borrower to insure and which are specified by the Security Trustee by notice to that 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 such amount as shall from time to time be approved by the Security Trustee but in any event in an amount not less than the greater of (i) an amount which when aggregated with the insured aggregate value of the other Ships, 120 per cent, of the Loan and (ii) the aggregate Market Value of the Mortgaged Ships;
- (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 under basic protection and indemnity club entry;
- (d) in relation to protection and indemnity risks in respect of the full tonnage of the Ship owned by it;
- (e) on such terms as shall from time to time be approved in writing by the Security Trustee (including, without limitation, a blocking and trapping clause);
- (f) on approved terms; and
- (g) through approved brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations.

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 effected by it shall:

- (a) subject always to paragraph (b), name that Borrower as the sole named assured and the Approved Manager so co-assured unless the interest of every other named assured is limited:
 - (i) in respect of any obligatory insurances for hull and machinery and war risks;
 - (ii) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
 - (iii) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
 - (iv) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;and every other named assured has undertaken in writing to the Security Trustee (in such form as it requires) that any deductible shall be apportioned between that Borrower and every other named assured in proportion to the gross claims made or paid by each of them and that it 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;
- (b) whenever the Security Trustee requires, name (or be amended to name) the Security Trustee as additional named assured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Trustee, 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;
- (c) name the Security Trustee as loss payee with such directions for payment as the Security Trustee may specify;
- (d) 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;
- (e) provide that the obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Trustee or any other Creditor Party; and
- (f) provide that the Security Trustee may make proof of loss if that Borrower fails to do so.

13.5 Renewal of obligatory insurances

Each Borrower shall:

- (a) at least 14 days (or such other shorter period as the Agent may approve) before the expiry of any obligatory insurance effected by it:
- (b) notify the Security Trustee of the brokers (or other insurers) and any protection and indemnity or war risks association through or with whom that Borrower proposes to renew that obligatory insurance and of the proposed terms of renewal; and

- (c) obtain the Security Trustee's approval to the matters referred to in paragraph (i);
- (d) at least 5 Business Days (or such other shorter period as the Agent may approve) before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Security Trustee's approval pursuant to paragraph (a); and
- (e) procure that the approved brokers and/or the war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Security Trustee in writing of the terms and conditions of the renewal.

13.6 Copies of policies; letters of undertaking

Each Borrower shall ensure that all approved brokers provide the Security Trustee with pro forma copies of all policies relating to the obligatory insurances which they are to effect or renew and of a letter or letters of undertaking in a form required by the Security Trustee and including undertakings by the approved brokers that:

- (a) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 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 14 days before the expiry of the obligatory insurances, in the event of their not having received notice of renewal instructions from that 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 that Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of that Ship forthwith upon being so requested by the Security Trustee.

13.7 Copies of certificates of entry

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provides the Security Trustee with:

- (a) a certified copy of the certificate of entry for that Ship;
- (b) a letter or letters of undertaking in such form as may be required by the Security Trustee;
- (c) where required to be issued under the terms of insurance/indemnity provided by a 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 that Borrower in accordance with the requirements of such protections and indemnity association; and
- (d) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to that Ship.

13.8 Deposit of original policies

Each Borrower shall ensure that all policies relating to obligatory insurances effected by it are deposited with the approved brokers through which the insurances are effected or renewed.

13.9 Payment of premiums

Each Borrower shall punctually (or shall procure that the Approved Managers of its Ship) pay all premiums or other sums payable in respect of the obligatory insurances effected by it and produce all relevant receipts when so required by the Security Trustee.

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 Compliance with terms of insurances

None of the Borrowers 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 13.6(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) none of the Borrowers shall make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
- (c) each Borrower shall make (and promptly supply copies to the Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
- (d) none of the Borrowers 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.

13.12 Alteration to terms of insurances

None of the Borrowers shall either make or agree to any alteration to the terms of any obligatory insurance nor waive any right relating to any obligatory insurance.

13.13 Settlement of claims

None of the Borrowers 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.

13.14 Provision of copies of communications

Each Borrower shall provide the Security Trustee, promptly following the request of the Agent, copies of all written communications between that Borrower and:

- (a) the approved brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters, which relate directly or indirectly to:
- (d) that Borrower's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls;
- (e) 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; and
- (f) a claim under any obligatory insurances of the Ship.

13.15 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 13.17 or dealing with or considering any matters relating to any such insurances,

and the Borrowers 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).

13.16 Mortgagee's interest marine insurance and additional perils insurance

The Security Trustee shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance and mortgagee's interest additional perils insurance in an amount not less than 120 per cent, of the Loan on such terms, through such insurers and generally in such manner as the Security Trustee may from time to time consider appropriate and each Borrower shall upon demand fully indemnify the Creditor Parties 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.

13.17 Review of insurance requirements

Upon the occurrence of an Event of Default, 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 opinion of the Security Trustee, significant and capable of affecting the Borrowers, the Ships and their Insurances (including, without limitation, changes in the availability or the cost of insurance coverage or the risks to which each Borrower may be subject), and may appoint insurance consultants in relation to this review at the cost of the relevant Borrower.

13.18 Modification of insurance requirements

The Security Trustee shall notify the Borrowers of any proposed modification under Clause 13.17 to the requirements of this Clause 13 which the Security Trustee reasonably consider appropriate in the circumstances, and such modification shall take effect on and from the date it is notified in writing to the relevant Borrower as an amendment to this Clause 13 and shall bind that Borrower accordingly.

13.19 Compliance with mortgagee's instructions

The Security Trustee shall be entitled (without prejudice to or limitation of any other rights which it may have or acquire under any Finance Document) to require a Ship to remain at any safe port or to proceed to and remain at any safe port designated by the Security Trustee until the Borrower owning that Ship implements any amendments to the terms of the obligatory insurances and any operational changes required as a result of a notice served under Clause 13.18.

14 SHIP COVENANTS

14.1 General

Each Borrower also undertakes with each Creditor Party to comply with the following provisions of this Clause 14 from the Drawdown Date and at all times during the Security Period (except as the Agent, with the authorisation of the Majority Lenders, may otherwise permit in writing (and in case of Clauses 14.2, 14.3(b), 14.5 and 14.12(e), such permission not to be unreasonably withheld or delayed).

14.2 Ship's name and registration

Each Borrower shall keep the Ship owned by it registered in its name under an Approved Flag; shall not do, omit to do or allow to be done anything as a result of which such registration might be cancelled or imperilled; and shall not change the name or port of registry of the Ship owned by it.

14.3 Repair and classification

Each Borrower shall keep the Ship owned by it in a good and safe condition and state of repair:

- (a) consistent with first-class ship ownership and management practice;
- (b) so as to maintain the highest class free of overdue recommendations and conditions with a first-class classification society which is a member of IACS acceptable to the Agent (such acceptance not to be unreasonably withheld);
- (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 and the ISPS Code.

14.4 Modification

None of the Borrowers shall make any modification or repairs to, or replacement of, any Ship or equipment installed on it which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.

14.5 Removal of parts

None of the Borrowers shall remove any material part of any Ship, or any item of equipment installed on, any 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 relevant Ship the property of the relevant Borrower and subject to the security constituted by the relevant Mortgage **Provided that** a Borrower may install and, subject to the Agent's consent, remove (such consent not to be unreasonably withheld or delayed, if such removal will not, in the opinion of the Agent, affect the value of the Ship) equipment owned by a third party if the equipment can be removed without any risk of damage to the Ship owned by it.

14.6 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 the Security Trustee provide the Security Trustee, with copies of all survey reports prepared by surveyors appointed by the Borrowers and, if required by the Security Trustee, by a surveyor appointed by the Security Trustee at the Borrowers' cost.

14.7 Inspection

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 interfering with the Ship's trading schedule at the cost of the Borrowers for inspections not more than once in any calendar year to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections **Provided that** if an Event of Default occurs which is continuing the Security Trustee may, by surveyors or other persons appointed by it, board the Ship and carry out such inspection at all times as it deems fit at the Borrowers' cost.

14.8 Prevention of and release from arrest

Each Borrower shall promptly discharge (or, in the case of paragraph (a) below, shall provide evidence satisfactory to the Agent that such liabilities are being contested by that Borrower in good faith by appropriate steps and in respect of which appropriate reserves have been made):

- (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 owned by it, 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, within 25 days (or such longer period as may be requested by the Borrowers and approved by the Agent acting with the authorisation of the Majority Lenders) from receiving notice of the arrest of the Ship owned by it, or of its detention in exercise or purported exercise of any such lien or claim, that Borrower shall procure its release by providing bail or otherwise as the circumstances may require.

14.9 Compliance with laws etc.

Each Borrower shall:

- (a) comply, or procure compliance with the ISM Code, the ISPS Code, all Environmental Laws and all other laws or regulations applicable to the Ship owned by it, its ownership, operation and management or to the business of that Borrower;
- (b) not employ the Ship owned by it nor allow its employment in any manner contrary to any applicable law or regulation in any relevant jurisdiction including but not limited to the ISM Code and the ISPS Code;
- (c) in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit the Ship owned by it to enter or trade to any zone which is declared a war zone by any government or by the Ship's war risks insurers unless the prior written consent of the war risk insurers has been given and that Borrower has (at its expense) effected any special, additional or modified insurance cover which the war risk insurers may require; and
- (d) comply with the PATRIOT Act and the United States Foreign Corrupt Practices Act.

14.10 Provision of information

Each Borrower shall promptly provide the Security Trustee with any information which it requests regarding:

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

14.11 Notification of certain events

Each Borrower shall immediately notify (and in respect of sub-paragraph (f), such notice shall be reasonably in advance) the Security Trustee by fax and email, of:

- (a) in respect of any Tasman Ship, any time or consecutive voyage charter otherwise permitted without the prior written consent of the Agent (acting with the authorisation of the Majority Lenders) pursuant to Clause 14.12(a);
- (b) in respect of Ship A or Ship B, any time or consecutive voyage charter in respect of the Ship owned by it for a term which exceeds, or which by virtue of any optional extensions may exceed, 12 months;
- (c) any casualty which is a Major Casualty;
- (d) any occurrence as a result of which the Ship owned by it has become or is, by the passing of time or otherwise, likely to become a Total Loss;

- (e) any requirement or recommendation made by any insurer or classification society or by any competent authority which is not immediately complied with;
- (f) any arrest or detention of the Ship owned by it, any exercise or purported exercise of any lien on that Ship or its Earnings or any requisition of that Ship for hire;
- (g) any intended dry docking of the Ship owned by it;
- (h) any Environmental Claim made against that Borrower or in connection with the Ship owned by it, or any Environmental Incident;
- (i) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, an Approved Manager or otherwise in connection with the Ship owned by it; or
- (j) 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 that Borrower shall keep the Security Trustee advised in writing on a regular basis and in such detail as the Security Trustee shall require of that Borrower's, the Approved Managers or any other person's response to any of those events or matters.

14.12 Restrictions on chartering, appointment of managers etc.

None of the Borrowers shall, in relation to the Ship owned by it:

- (a) in respect of any Tasman Ship, enter into any time or consecutive voyage charter in respect of any Tasman Ship for a term which exceeds, or which by virtue of any optional extensions may exceed 12 months (+/- 45 days) unless (i) such charter contains a "sales clause" entitling the Borrower owning that Tasman Ship to sell its Tasman Ship subject to the consent of the charterer, such consent not to be unreasonably withheld and (ii) the last day of the charter period (including any optional extensions) does not fall after the Final Maturity Date in respect of Tranche B;
- (b) let that Ship on demise charter for any period;
- (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 that Ship is fixed;
- (e) appoint a manager of that Ship other than the Approved Managers or agree to any alteration to the terms of the Approved Managers' appointment;
- (f) de-activate or lay up that Ship; or
- (g) put that Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed \$500,000 (or the equivalent in any other currency) unless that person has first given to the Security Trustee and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or its Earnings for the cost of such work or for any other reason.

14.13 Notice of Mortgage

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

14.14 Sharing of Earnings

None of the Borrowers shall:

- (a) enter into any agreement or arrangement for the sharing of any Earnings;
- (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 a Borrower to any Earnings.

14.15 ISPS Code

Each Borrower shall comply with the ISPS Code and in particular, without limitation, shall:

- (a) procure that the Ship owned by that Borrower and the company responsible for that Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain for that Ship an ISSC; and
- (c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

14.16 Charterparty Assignment

If a Borrower enters into any Charter, that Borrower shall at the request of the Agent, execute in favour of the Security Trustee a Charterparty Assignment and shall procure to use its best endeavors:

- (i) serve notice of the Charterparty Assignment on the charterer and use its best endeavours to procure that the charterer acknowledges such notice in such form as the Agent may approve or require; and
- (ii) deliver to the Agent such other documents equivalent to those referred to at paragraphs 3, 4 and 5 of Schedule 3, Part A as the Agent may require.

14.17 Green Award

If and for so long as the Initial Lender is a Green Award Incentive Provider and a Creditor Party under this Agreement, in the event that any of the Borrowers or either of the Approved Managers complies with the requisite application, auditing and surveying process of Green Award and receives the Green Award certification and the Ship owned by that Borrower or managed by that Approved Manager becomes Green Award certified, the Initial Lender shall reimburse the Borrowers up to an amount equal to 25 per cent of the auditing and annual membership fees required in respect of that Ship (for the avoidance of doubt, such reimbursement shall not be applicable to any application fees).

14.18 Responsible Ship Recycling

If a Ship is sold for scrapping, the Borrower owning that Ship shall use its best endeavours to ensure that that Ship shall be dismantled in a safe, sustainable and socially and environmentally responsible way (the requirements for that Ship to be dismantled in a safe, sustainable, socially and environmentally responsible way shall be determined by the Agent in consultation with the relevant Borrower at the relevant time).

15 SECURITY COVER

15.1 Minimum required security cover

Clause 15.2 applies if, at any time other than during the Waiver Period, the Agent notifies the Borrowers that the Security Cover Ratio is below 125 per cent, of the aggregate amount of (i) the Loan and (ii) the Swap Exposure.

15.2 Provision of additional security; prepayment

If the Agent (acting on the instructions of the Majority Lenders) serves a notice on the Borrowers under Clause 15.1, the Borrowers shall prepay such part at least of the Loan as will eliminate the shortfall on or before the date falling 30 days after the date on which the Agent's notice is served under Clause 15.1 (the "**Prepayment Date**") unless at least 1 Business Day before the Prepayment Date the Borrowers have provided, or ensured that a third party has provided, additional security which, in the opinion of the Majority 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 the Majority Lenders, reasonably approve or require.

15.3 Valuation of Ships

The Market Value of a Ship at any date is that shown by taking the arithmetic means of two valuations addressed to the Agent, each valuation to be prepared:

- (a) as at a date not more than 30 days previously;
- (b) by an Approved Broker nominated by the Borrowers and approved by the Agent;
- (c) with or without physical inspection of the Ship (as the Agent may require); and
- (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, free of any existing charter or other contract of employment.

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 valuations under Clause 15.2, 15.3 or 15.4 and any valuations provided under Clause 11.6(d) (including any additional valuations provided pursuant to Clause 15.8 at the option of the Borrowers) shall be binding and conclusive as regards the Borrowers, as shall be any valuation which the Majority 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 Approved Broker 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 Majority Lenders (or the expert appointed by them) consider prudent.

15.7 Frequency of valuations

Each Borrower acknowledges and agrees that the Agent may commission valuation(s) of the Ship at least semi-annually and at such other times as the Agent shall deem necessary (subject to Clause 15.8 of this Agreement).

15.8 Payment of valuation expenses

Without prejudice to the generality of the Borrowers' obligations under Clauses 20.2 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 **Provided that** so long as (i) no Event of Default has occurred which is continuing and (ii) no mandatory prepayment is required to be made pursuant to Clauses 8.8(a) or 8.8(b), the Borrowers shall not be obliged to pay any such fees or expenses in respect of more than two sets of valuations of each Ship in any calendar year. At the cost and option of the Borrowers, the Borrowers shall be entitled to provide, in addition to the valuations under Clause 11.6(d) (for the other two quarters on which semi-annual valuations have not been provided together with the PIK Compliance Certificate), an additional set of valuations to determine the Market Values of the Ships to be utilised for the calculation of the PIK Amount.

15.9 Application of prepayment

Clause 8.10 shall apply in relation to any prepayment pursuant to Clause 15.2.

16 PAYMENTS AND CALCULATIONS

16.1 Currency and method of payments

All payments to be made by the Lenders or by any Borrower under a Finance Document shall be made to the Agent or to the Security Trustee, in the case of an amount payable to it:

- (a) by not later than 11.00 a.m. (New York City time) on the due date;
- (b) in same day Dollar funds settled through the New York Clearing House Interbank Payments System (or in such other Dollar funds and/or settled in such other manner as the Agent shall specify as being customary at the time for the settlement of international transactions of the type contemplated by this Agreement);
- (c) in the case of an amount payable by a Lender to the Agent or by any Borrower to the Agent or any Lender, to the account of the Agent with correspondent bank Bank of America Intl. New York (correspondent bank SWIFT: BOFAUS3N (SWIFT: ABNANL2A, beneficiary: ABN AMRO Bank N.V. Amsterdam and account number: NL60ABNA0626269504) with reference "\$82,459,678.29 facility re m.v.'s ORCA I, KATHERINE, TASMAN, DIMITRIS Y AND IAN H", 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 any 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 commitment fee 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, the Swap Bank or the Security Trustee shall be made available by the Agent to that Lender, the Swap Bank or, as the case may be, the Security Trustee by payment, with funds having the same value as the funds received, to such account as the Lender, the Swap Bank 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 and/or the Swap Bank generally shall be distributed by the Agent to each Lender and the Swap Bank 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 or the Swap Bank, deduct and withhold from that amount any sum which is then due and payable to the Agent from that Lender or the Swap Bank under any Finance Document or any sum which the Agent is then entitled under any Finance Document to require that Lender or the Swap Bank 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 any Borrower or any Lender or the Swap Bank any sum which the Agent is expecting to receive for remittance or distribution to that Borrower or that Lender or the Swap Bank 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 or the Swap Bank, without first having received that sum, that Borrower or (as the case may be) the Lender or the Swap Bank 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 the Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers 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 Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers 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 any Borrower under Clauses 20, 21 and 22 of this Agreement or by any Borrower or any Security Party under any corresponding or similar provision in any other Finance Document);
- (ii) secondly, in or towards satisfaction pro rata of any and all amounts of interest or default interest payable to the Creditor Parties under the Finance Documents (and, for this purpose, the expression **"interest"** shall include any net amount which any Borrower shall have become liable to pay or deliver under section 2(e) (Obligations) of the Master Agreement but shall have failed to pay or deliver to the Swap Bank at the time of application or distribution under this Clause 17); and
- (iii) thirdly, in or towards satisfaction pro rata of the Loan and the Swap Exposure (in the case of the latter, calculated as at the actual Early Termination Date applying to each particular Designated Transaction, or if no such Early Termination Date shall have occurred, calculated as if an Early Termination Date occurred on the date of application or distribution hereunder);

(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 either 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 provisions of Clause 17.1(a); 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 the Majority Lenders and the Swap Bank, by notice to the Borrowers, the 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 any Borrower or any Security Party.

18 APPLICATION OF EARNINGS; SWAP PAYMENTS

18.1 Payment of Earnings and Swap Payments

Each Borrower undertakes with each Creditor Party to ensure that, throughout the Security Period (and subject only to the provisions of the General Assignments):

- (a) all Earnings of the Ship owned by it are paid to the Earnings Account for that Ship; and
- (b) all payments by the Swap Bank to any Borrower under each Designated Transaction are paid to the Earnings Account of that Borrower.

18.2 Application of Earnings

Each Borrower undertakes with the Lenders that any funds from time to time credited to, or standing to the credit of, its Earnings Account shall, unless and until an Event of Default shall have occurred and is continuing (whereupon the provisions of Clause 17.1 shall apply), be available for application in the following manner:

- (a) in or towards making payments of all amounts due and payable by the Borrowers under this Agreement and the Master Agreement (other than payments of principal and interest pursuant to Clauses 5.1, 7.2 and/or 8.1);
- (b) in or towards making the transfers to the Retention Account required pursuant to Clause 18.3; and
- (c) any surplus shall be applied in accordance with Clause 8.14 and once Clause 8.14 is no longer applicable, any surplus shall be released to the Borrowers **Provided that** no Event of Default has occurred and is continuing or will occur following such release to the Borrowers.

18.3 Monthly retentions

Each Borrower undertakes with each Creditor Party to ensure that, as of 1 January 2020 in each calendar month of the Security Period, on such dates as the Agent may from time to time specify, there is transferred to the Retention Account out of the Earnings received in its Earnings Account (or any of them) during the preceding calendar month:

- (a) one-third of the amount of the repayment instalment in respect of Tranche A falling due under Clause 8.1 on the next Repayment Date in respect of Tranche A;
- (b) the relevant fraction of the aggregate amount of interest on that Tranche which is payable on the next due date for payment of interest under this Agreement; and
- (c) the relevant fraction of the net amount which is payable by the Borrowers to the Swap Bank in respect of any Designated Transaction on the next due date for payment of such amount under the relevant Confirmation.

The “**relevant fraction**” is:

- (i) in relation to paragraph (b) a fraction of which the numerator is 1 and the denominator the number of months comprised in the then current Interest Period applicable to the relevant Tranche (or, if the current Interest Period ends after the next due date for payment of interest under this Agreement for the relevant Tranche, the number of months from the later of the commencement of the current Interest Period for the relevant Tranche or the last due date for payment of interest for that Tranche to the next due date for payment of interest for that Tranche under this Agreement); and
- (ii) in relation to paragraph (c), a fraction of which the numerator is one and the denominator is the number of months between fixed rate payments specified in the relevant Confirmation.

18.4 Shortfall in Earnings

If the aggregate Earnings of the Ships received in the Earnings Accounts are insufficient in any month for the required amount to be transferred to the Retention Account under Clause 18.3, the Borrowers shall make up the amount of the insufficiency on demand from the Agent; but, without thereby prejudicing the Agent’s right to make such demand at any time, the Agent may, if so authorised by the Majority Lenders, permit the Borrowers to make up all or part of the insufficiency by increasing the amount of any transfer under Clause 18.3 from the Earnings of the Ships received in the next or subsequent months.

18.5 Application of retentions

Until an Event of Default occurs which is continuing, the Agent shall on each Repayment Date and on each due date for the payment of interest under this Agreement distribute to the Lenders in accordance with Clause 16.4 so much of the then balance on the Retention Account as equals:

- (a) the repayment instalment in respect of the relevant Tranche due on that Repayment Date; or
- (b) the amount of interest in respect of the relevant Tranche payable on that interest payment date,
- (c) in discharge of the Borrowers’ liability for that repayment instalment or that interest.

18.6 Interest accrued on Accounts

Any credit balance on the Accounts shall bear interest at the rate from time to time offered by the Agent to its customers for Dollar deposits of similar amounts and for periods similar to those for which such balances appear to the Agent likely to remain on the Accounts.

18.7 No release of accrued interest

Interest arising under Clause 18.6 shall be credited to the Retention Account but shall not be released to the Borrowers until the end of the Security Period.

18.8 Location of accounts

Each Borrower shall promptly:

- (a) comply with any requirement of the Agent as to the location or re-location of the Accounts (or any of them); and
- (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 Accounts.

18.9 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.

18.10 Borrowers' obligations unaffected

The provisions of this Clause 18 (as distinct from a distribution effected under Clause 18.5) do not affect:

- (a) the liability of the Borrowers to make payments of principal and interest on the due dates; or
- (b) any other liability or obligation of the Borrowers or any Security Party or K&T Marine under any Finance Document.

19 EVENTS OF DEFAULT

19.1 Events of Default

An Event of Default occurs if:

- (a) any 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 unless payment is made within 3 Business Days of its due date due to an administrative or technical error or a disruption event in the payment and/or communication system which, in each case, is beyond the control of the Creditor Parties; or
- (b) any breach occurs of Clause 9.2, 10.18, 10.19, 11.2, 11.3, 11.18, 11.20, 11.21, 12.2, 12.3, 13.2, 13.4, 14.2, 14.8, 18.1 or 18.3 (and, in the case of Clause 18.3, such breach is not remedied as provided in Clause 18.4) or clause 11.19 of the Corporate Guarantee (unless (i) in respect of any breach under Clause 11.18, the Borrowers remedy any shortfall of the Minimum Liquidity Amount within 5 Business Days of the earlier of (A) the date on which the Agent becomes aware of such breach or (B) the date on which the Borrowers become aware of such breach or (ii) in respect of any breach under Clause 14.8, the arrest of the relevant Ship is discharged within 25 days (or such longer period as may be requested by the Borrowers and approved by the Agent acting with the authorisation of the Majority Lenders)); or

- (c) any breach by any Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a) or (b)) which, in the opinion of the Majority Lenders, is capable of remedy, and such default continues unremedied 10 days after the earlier of (i) the written notice from the Agent requesting action to remedy the same and (ii) the Borrower or the relevant Security Party becoming aware of the breach; or
- (d) (subject to any applicable grace period specified in any Finance Document) any breach by any Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach falling within 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 or K&T Marine in a Finance Document or in a Drawdown Notice or any other notice or document relating to a Finance Document is untrue or misleading when it is made or repeated; or
- (f) at any time other than during the Refinancing Period, any of the following occurs in relation to any Financial Indebtedness of a Relevant Person (any Financial Indebtedness, exceeding in aggregate, in the case of the Corporate Guarantor \$3,000,000 (or the equivalent in any other currency or currencies) and, in the case of a Borrower, \$1,000,000 (or the equivalent in any other currency or currencies)):
 - (i) any Financial Indebtedness of a Relevant Person is not paid when due; 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 (howsoever described in the relevant agreement or instrument) and irrespective of whether that event of default is or may be remedied or waived by the creditor(s) of that Relevant Person **Provided that:**
 - (A) in the case of an event of default that is remedied or waived by the creditor(s) of that Relevant Person, an Event of Default shall cease to exist under this Agreement once the Borrowers have provided written notice to the Agent of such remedy or waiver; and
 - (B) in the case of any Financial Indebtedness created under:
 - (1) any guarantee and indemnity of the Corporate Guarantor, a demand is made by the relevant creditor(s) under such guarantee and indemnity; or
 - (2) any guarantee and indemnity of the Corporate Guarantor securing the obligations of any Subsidiary, the Financial Indebtedness of that Subsidiary is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of that Subsidiary's payment default or that Subsidiary's declaration of bankruptcy or insolvency and, in the opinion of the Agent in its discretion, that payment default or, as the case may be, that default due to that declaration of bankruptcy or insolvency, may adversely affect the ability of the Corporate Guarantor to comply with its obligations under the Corporate Guarantee unless, in the case of any payment default, the Corporate Guarantor is able to provide evidence to the Agent that such payment default has been remedied within 10 days of the date on which the overdue payment(s) became due and payable; or

- (iii) a lease or hire purchase agreement (other than a time charter in connection with a Ship) creating any Financial Indebtedness of a Relevant Person is terminated by the lessor or owner or becomes capable of being terminated as a consequence of any termination event; or
- (iv) any overdraft, loan, note issuance, acceptance credit, letter of credit, guarantee, foreign exchange or other facility, or any swap or other derivative contract or transaction, relating to any Financial Indebtedness of a Relevant Person ceases to be available or becomes capable of being terminated as a result of any event of default, or cash cover is required, or becomes capable of being required, in respect of such a facility as a result of any event of default; or
- (v) any Security Interest securing any Financial Indebtedness of a Relevant Person becomes enforceable; or
- (g) any of the following occurs in relation to a Relevant Person:
 - (i) at any time other than during the Refinancing Period, a Relevant Person becomes, in the opinion of the Majority Lenders, unable to pay its debts as they fall due (in respect of a sum of, or sums aggregating, \$1,000,000 (in the case of a Borrower)) or \$3,000,000 (in the case of the Corporate Guarantor) or more or the equivalent in another currency or currencies, **Provided that** no Event of Default will occur under this paragraph if that debt is paid by that Relevant Person within 3 Business Days); or
 - (ii) any assets of a Relevant Person are subject to any form of execution, attachment, arrest, sequestration or distress or any form of freezing order (in respect of a sum of, or sums aggregating, \$500,000 (in the case of a member of the Group (other than the Corporate Guarantor)) or \$2,000,000 (in the case of the Corporate Guarantor) or more or the equivalent in another currency or currencies, **Provided that** no Event of Default will occur under this paragraph if that execution, attachment, arrest, sequestration or distress or any form of freezing order is discharged or released within 25 days (or such longer period as may be requested by the Borrowers and approved by the Agent acting with the authorisation of the Majority Lenders) of its commencement); or
 - (iii) any administrative or other receiver is appointed over any asset of a Relevant Person; or
 - (iv) an administrator is appointed (whether by the court or otherwise) in respect of a Relevant Person; or
 - (v) any formal declaration of bankruptcy or any formal statement to the effect that a Relevant Person is insolvent or likely to become insolvent is made by a Relevant Person or by the directors of a Relevant Person or, in any proceedings, by a lawyer acting for a Relevant Person; or
 - (vi) a provisional liquidator is appointed in respect of a Relevant Person, a winding up order is made in relation to a Relevant Person or a winding up resolution is passed by a Relevant Person; or
 - (vii) a resolution is passed, an administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by (aa) a Relevant Person, (bb) the members or directors of a Relevant Person, (cc) a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person, or (dd) a government minister or public or regulatory authority of a

Pertinent Jurisdiction for or with a view to the winding up of that or another Relevant Person or the appointment of a provisional liquidator or administrator in respect of that or another Relevant Person, or that or another Relevant Person ceasing or suspending business operations or payments to creditors, save that this paragraph does not apply to a fully solvent winding up of a Relevant Person other than a Borrower or the Corporate Guarantor which is, or is to be, effected for the purposes of an amalgamation or reconstruction previously approved by the Majority Lenders; 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,

No Event of Default shall occur under paragraphs (ix) and (x) above if any Subsidiary of the Corporate Guarantor or the Corporate Guarantor (together, the **“Negotiating Parties”** and each a **“Negotiating Party”**) take or resolve to take any steps or actions (the **“Steps and Actions”**) with a view to obtaining 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 in respect of any Financial Indebtedness (the **“Subsidiary Indebtedness”**) of any Negotiating Party **Provided that:**

- (A) if that Negotiating Party has granted a Security Interest, guarantee or other form of assurance or security in favour of any creditor, that creditor has neither demanded any payment from that Negotiating Party nor exercised any of its enforcement rights in respect of that Subsidiary Indebtedness;

- (B) the Agent is immediately notified by that Negotiating Party (or, in the case of a Subsidiary of the Corporate Guarantor, by the Corporate Guarantor) that it takes or resolves to take the Steps and Actions (together with any details, as may be reasonably requested by the Agent and to the extent that the same may be disclosed under any relevant non-disclosure arrangements entered into with the relevant creditor(s) in good faith, in connection with the Steps and Actions); and
 - (C) any Steps and Actions taken by that Negotiating Party do not have a material adverse effect (in the reasonable opinion of the Agent) on the financial condition, state of affairs or operations of that Negotiating Party and/or result in the non-compliance of any of the provisions of Clause 11.26 (*Most favoured nation clause*); or
- (xi) in a country other than England, any event occurs, any proceedings are opened or commenced or any step is taken which, in the opinion of the Majority Lenders is similar to any of the foregoing; or
- (h) any Borrower 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
 - (i) it becomes unlawful in any Pertinent Jurisdiction or impossible:
 - (i) for any Borrower, the Corporate Guarantor or any Security Party to discharge any liability under a Finance Document or to comply with any other obligation which the Majority Lenders consider material under a Finance Document; or
 - (ii) for the Agent, the Security Trustee, the Lenders or the Swap Bank to exercise or enforce any right under, or to enforce any Security Interest created by, a Finance Document; or
 - (j) any official consent necessary to enable any Borrower to own, operate or charter the Ship owned by it or to enable any Borrower or any Security Party or K&T Marine to comply with any provision which the Majority 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
 - (k) without the prior written consent of the Agent (to be given with the authorisation of the Majority Lenders (such consent not to be unreasonably withheld)) the Corporate Guarantor is listed on any stock exchange;
 - (l) any provision which the Majority Lenders consider material of a Finance Document proves to have been or becomes invalid or unenforceable, or a Security Interest created by a Finance Document proves to have been or becomes invalid or unenforceable or such a Security Interest proves to have ranked after, or loses its priority to, another Security Interest or any other third party claim or interest except the Permitted Security Interests; or
 - (m) the security constituted by a Finance Document is in any way imperilled or in jeopardy or the state of the Approved Flag of a Ship is or becomes involved in hostilities or civil war or there is a seizure of power in such state by unconstitutional means, or any other event occurs in relation to that Ship, the Mortgage or the Approved Flag in respect of that Ship and in the reasonable opinion of the Agent such event is likely to have a Material Adverse Effect unless the Borrower owning that Ship, within 14 days of the occurrence of such event (or such longer period as may be agreed by the Agent acting with the authorisation of the Lenders) re-registers that Ship on an alternative Approved Flag and subject to:
 - (i) the Ship remaining subject to a Security Interest created by a first priority or preferred ship mortgage on the Ship and, if appropriate, a first priority deed of covenant collateral to that mortgage (or equivalent first priority security) on substantially the same terms as the Mortgage in respect of the Ship in Agreed Form; and

- (ii) the execution of such other documentation amending and supplementing the Finance Documents, as the Agent, acting with the authorisation of the Lenders, shall reasonably approve or require; or
- (n) an Event of Default (as defined in section 14 of the Master Agreement) occurs; or
- (o) the Master Agreement or any other Finance Document is terminated, cancelled, suspended, rescinded or revoked or otherwise ceases to remain in full force and effect for any reason except with the consent of the Agent, acting with the authorisation of the Majority Lenders; or
- (p) any breach occurs of Clause 15.2, and such default continues un-remedied 14 days after written notice from the Agent requesting action to remedy the same; or
- (q) the authority or ability of a Borrower or the Corporate Guarantor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to such Borrower or Corporate Guarantor (as the case may be) or any of its assets (unless, in the case of any Borrower, any such occurrence would otherwise be considered a Total Loss as a result of which a mandatory prepayment would be required pursuant to Clause 8.8(b) (*Mandatory prepayment*), and the Borrowers prepay the required amount in accordance with Clause 8.8(b) (*Mandatory prepayment*)); or
- (r) a Borrower or a Security Party (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document; or
- (s) any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to any of the Finance Documents or the transactions contemplated in any of the Finance Documents or against a Borrower or the Corporate Guarantor or its respective assets which has or could reasonably be expected to have a Material Adverse Effect; or
- (t) 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 the Corporate Guarantor; or
 - (ii) any accident or any Environmental Incident or other event involving any Ship or another vessel owned, chartered or operated by a Relevant Person,

which constitutes a Material Adverse Change.

19.2 Actions following an Event of Default

On, or at any time after, the occurrence of an Event of Default:

- (a) the Agent may, and if so instructed by the Majority Lenders, the Agent shall:
 - (i) serve on the Borrowers a notice stating that all or part of the Commitments and all other obligations of each Lender to the Borrowers under this Agreement are cancelled; and/or

- (ii) serve on the Borrowers a notice stating that all or part of the Loan together with 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
- (iv) the Security Trustee may, and if so instructed by the Agent, acting with the authorisation of the Majority Lenders, the Security Trustee shall take any action which, as a result of the Event of Default or any notice served under paragraph (a)(i) or (a)(ii), the Security Trustee, the Agent and/or the Lenders and/or the Swap Bank are entitled to take under any Finance Document or any applicable law.

19.3 Termination of Commitments

On the service of a notice under Clause 19.2(a)(i), the Commitments and all other obligations of each Lender to the Borrowers under this Agreement shall be cancelled.

19.4 Acceleration of Loan

On the service of a notice under Clause 19.2(a)(ii), all or, as the case may be, part of the Loan, specified in the notice together with 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) or 19.2(a)(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 Swap Bank, 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 any Borrower or any Security Party with any form of claim or defence.

19.7 Creditor Party's rights unimpaired

Nothing in this Clause shall be taken to impair or restrict the exercise of any right given to individual Lenders or the Swap Bank 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 Corporate Guarantor, a Borrower, any other Security Party (other than (i) an Approved Manager, (ii) K&T Marine and, for the avoidance of doubt, (iii) the Poseidon Shareholders).

19.10 Interpretation

In Clause 19.1(g) 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.

19.11 Position of Swap Bank

Neither the Agent nor the Security Trustee shall be obliged, in connection with any action taken or proposed to be taken under or pursuant to the foregoing provisions of this Clause 19, to have any regard to the requirements of the Swap Bank except to the extent that the Swap Bank is also a Lender.

20 FEES AND EXPENSES

20.1 Costs of negotiation, preparation etc.

The Borrowers shall pay to the Agent on its demand the amount of all expenses (including legal and insurance consultant fees) reasonably and properly incurred by the Agent or the Security Trustee in connection with the negotiation, preparation, printing, execution, syndication, perfection or registration of any Finance Document, the Equity Undertaking or any related document or with any transaction contemplated by a Finance Document, the Equity Undertaking or a related document (including, but not limited to, any costs incurred by the Agent in connection with the insurance opinion to be provided to it in accordance with paragraph 7 of Part B, Schedule 3).

20.2 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 reasonably and properly incurred by a Creditor Party in connection with:

- (a) any amendment or supplement to a Finance Document and the Equity Undertaking, or any proposal for such an amendment to be made;
- (b) any consent or waiver by the Lenders, the Swap Bank, the Majority Lenders or the Creditor Party concerned under or in connection with a Finance Document and the Equity Undertaking, or any request for such a consent or waiver;
- (c) the valuation of any security provided or offered under Clause 15 (save as otherwise provided in Clause 15.8) or any other matter relating to such security; or

- (d) where the Security Trustee, 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 that Ship pursuant to Clause 13.17; and
- (e) any step taken by the Creditor Party concerned with a view to the protection, exercise or enforcement of any right or Security Interest created by a Finance Document or the Equity Undertaking 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.

20.3 Documentary taxes

The Borrowers shall promptly pay any tax payable on or by reference to any Finance Document and the Equity Undertaking, 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 Borrowers to pay such a tax.

20.4 Agent's management time

Any indemnity amount payable to the Agent under the Agency and Trust Agreement or this Agreement shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrowers (and always subject to the Borrowers' prior consent, such consent not to be unreasonably withheld) and the other Creditor Parties, and is in addition to any fee paid or payable to the Agent under Clause 20.

20.5 Security Trustee's management time

Any indemnity amount payable to the Security Trustee under the Agency and Trust Agreement or this Agreement shall include the cost of utilising the Security Trustee's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Trustee may notify to the Borrowers (and always subject to the Borrowers' prior consent, such consent not to be unreasonably withheld) and the other Creditor Parties, and is in addition to any fee paid or payable to the Security Trustee under Clause 20.

20.6 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 20 and is accompanied by a breakdown which indicates the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

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) a Tranche 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 payment in respect 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 the Borrowers 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); and
 - (d) the occurrence and/or continuance of an Event of Default or a Potential 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 or any FATCA deduction) 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, 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 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 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; or
- (b) any other Pertinent Matter,

other than claims, expenses, liabilities and losses which are shown to have been directly and mainly caused by the dishonesty or wilful misconduct of the officers or employees of the Creditor Party concerned.

Without prejudice to its generality, this Clause 21.3 covers any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code, the ISPS Code or any Environmental Law.

21.4 Environmental Indemnity

Without prejudice to its generality, Clause 21.3 covers any claims, demands, proceedings, liabilities, taxes, losses or expenses of every kind which arise, or are asserted, under or in connection with any law relating to safety at sea, pollution or the protection of the environment, the ISM Code or the ISPS Code.

21.5 Currency indemnity

If any sum due from any 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 (Rotterdam 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 their other liabilities under the Finance Documents and which shall not be merged in any judgment or order relating to those other liabilities.

21.6 Application to Master Agreement

For the avoidance of doubt, Clause 21.5 does not apply in respect of sums due from a Borrower to the Swap Bank under or in connection with the Master Agreement as to which sums the provisions of section 8 (Contractual Currency) of the Master Agreement shall apply.

21.7 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 is accompanied by a breakdown which indicates the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

21.8 Sums deemed due to a Lender

For the purposes of this Clause 21, a sum payable by the Borrowers to the Agent or the Security Trustee for distribution to a Lender shall be treated as a sum due to that Lender.

21.9 Mandatory cost

The Borrowers shall, on demand by the Agent, pay to the Agent for the account of the relevant Lender, such amount which any Lender certifies in a notice to the Agent to be its good faith determination of the amount necessary to compensate it for complying with:

- (a) in the case of a Lender lending from a lending office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank or any other authority or agency which replaces all or any of its functions) in respect of loans made from that facility office; and

- (b) in the case of any Lender lending from a lending office in the United Kingdom, any reserve asset, special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England (or any other governmental authority or agency) and/or paying any fees to the Financial Conduct Authority and/or the Prudential Regulation Authority (or any other governmental authority or agency which replaces all or any of their functions), which, in each case, is referable to that Lender's participation in the Loan.

21.10 Notice of prepayment

If the Borrowers are not willing to continue to indemnify the Creditor Parties for any tax for which the Creditor Parties liable under Clause 21.1, the Borrowers may give the Agent not less than 14 days' notice of their intention to prepay the Loan at the end of an Interest Period.

21.11 Prepayment

A notice under Clause 21.10 shall be irrevocable; and on the date specified in the Borrowers' notice of intended prepayment, the Commitments shall terminate and the Borrowers shall prepay the Loan, (without premium or penalty) together with accrued interest thereon at the applicable rate plus the applicable Margin and the Mandatory Cost (if any).

22 NO SET-OFF OR TAX DEDUCTION

22.1 No deductions

All amounts due from the Borrowers 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) that Borrower shall notify the Agent as soon as it becomes aware of the requirement;
- (b) that 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 Borrower concerned 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, excluding any FATCA Deduction, except tax on a Creditor Party's overall net income.

22.5 Application to Master Agreement

For the avoidance of doubt, Clause 22 does not apply in respect of sums due from a Borrower to the Swap Bank under or in connection with the Master Agreement as to which sums the provisions of section 2(d) (Deduction or Withholding for Tax) of the Master Agreement shall apply.

22.6 Notice of prepayment

If the Borrowers are not willing to continue to make a tax deduction under Clause 22.2, the Borrower may give the Lender not less than 14 days' notice of its intention to prepay the Loan at the end of an Interest Period.

22.7 Prepayment

A notice under Clause 22.6 shall be irrevocable; and on the date specified in the Borrowers' notice of intended prepayment, the Commitments shall terminate and the Borrowers shall prepay (without premium or penalty) the Loan, together with accrued interest thereon at the applicable rate plus the applicable Margin and the Mandatory Cost (if any).

22.8 FATCA

(a) FATCA Information

- (i) Subject to paragraph (iii) below, each party to a Finance Document shall, within 10 Business Days of a reasonable request by another party to the Finance Documents:
 - (A) confirm to that other party whether it is a FATCA Exempt Party or is not a FATCA Exempt Party; and
 - (B) supply to the requesting party such forms, documentation and other information relating to its status under FATCA (including its applicable "passthru percentage" or other information required under the US Treasury regulations or other official guidance including intergovernmental agreements) as the requesting party reasonably requests for the purposes of such requesting party's compliance with FATCA.
- (ii) If a party to any Finance Document confirms to another party pursuant to Clause 22.6(a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that party shall notify that other party reasonably promptly;
- (iii) Sub-clause (i) above shall not oblige any Creditor Party to do anything which would or might in its reasonable opinion constitute a breach of any law or regulation, any policy of that party, any fiduciary duty or any duty of confidentiality, or to disclose any confidential information (including, without limitation, its tax returns and calculations); provided, however, that information required (or equivalent to the information so required) by United States Internal Revenue Service Forms W-8 or W-9 (or any successor forms) shall not be treated as confidential information of such party for purposes of this sub-clause (iii);
- (iv) If a party to any Finance Document fails to confirm its status or to supply forms, documentation or other information requested in accordance with sub-clause (i) above (including, for the avoidance of doubt, where sub-clause (iii) above applies), then:

(A) if that party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and

(B) if that party failed to confirm its applicable passthru percentage then such party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable passthru percentage is 100 per cent.,

until (in each case) such time as the party in question provides the requested confirmation, forms, documentation or other information.

(b) **FATCA Withholding**

(i) Each party to any Finance Document may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

(ii) Each party to any Finance Document shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the party to whom it is making the payment and, in addition, shall notify the Borrower, the Agent and the other Creditor Parties.

23 ILLEGALITY, ETC.

23.1 Illegality

This Clause 23 applies if a Lender (for the purposes of this Clause 23, a “**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 and applicable law, an amendment to an existing and applicable law or a change in the manner in which an existing and applicable law is or will be interpreted or applied; or

(b) contrary to, or inconsistent with, any applicable 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 any 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 23.2, the relevant 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.

23.4 Mitigation

If circumstances arise which would result in a notification under Clause 23.1 then, without in any way limiting the rights of the Lenders under Clause 23.3, the Notifying Lender shall use reasonable endeavours to transfer its obligations, liabilities and rights under this Agreement and the Finance Documents to another office or financial institution not affected by the circumstances but the Notifying Lender shall not be under any obligation to take any such action if, in its opinion, to do would or might:

- (a) have an adverse effect on its business, operations or financial condition; or
- (b) involve it in any activity which is unlawful or prohibited or any activity that is contrary to, or inconsistent with, any regulation; or
- (c) involve it in any expense (unless indemnified to its satisfaction) or tax disadvantage.

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 an alteration after the date of this Agreement in the manner in which a law is interpreted or applied (disregarding any effect which relates to the application to payments under this Agreement of a tax on the Lender’s overall net income); or
- (b) complying with any regulation (including any which relates to capital adequacy or liquidity controls or which affects the manner in which the Notifying Lender allocates capital resources to its obligations under this Agreement) which is introduced, or altered, or the interpretation or application of which is altered, after the date of this Agreement; or
- (c) the introduction, implementation, application, administration or compliance with:
 - (i) the **“International Convergence of Capital Measurement and Capital Standards, a Revised Framework”** published by the Basel Committee on Banking Supervision in June 2004, in the form existing on the date of this Agreement (**“Basel II”**) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Creditor Party or any of its Affiliates); or
 - (ii) Basel III, CRD IV or CRR or any law or regulation which implements or applies Basel III, CRD IV or CRR (regardless of the date on which it is enacted, adopted or issued and regardless of whether any such implementation, application or compliance is by a government, regulator, a Creditor Party or any of its Affiliates) after the date of this Agreement,

the Notifying Lender (or its Holding Company) has incurred or will incur an **“increased cost”**,

(in each case when compared to the cost of complying with such regulations as determined by the Notifying Lender (or Holding Company or Affiliate of it) on the date of this Agreement (whether such implementation, application or compliance is by a government, regulator, supervisory authority, the Notifying Lender or its Holding Company),

24.2 Meaning of **“increased cost”**

In this Clause 24, **“increased cost”** means, in relation to a Notifying Lender:

- (a) an additional or increased cost incurred as a result of, or in connection with, the Notifying Lender having entered into, or being a party to, this Agreement or a Transfer Certificate, of funding or maintaining its Commitment or Contribution or performing its obligations under this Agreement, or of having outstanding all or any part of its Contribution or other unpaid sums;
- (b) a reduction in the amount of any payment to the Notifying Lender under this Agreement or in the effective return which such a payment represents to the Notifying Lender or on its capital;
- (c) an additional or increased cost of funding all or maintaining all or any of the advances comprised in a class of advances formed by or including the Notifying Lender's Contribution or (as the case may require) the proportion of that cost attributable to the Contribution; or
- (d) a liability to make a payment, or a return foregone, which is calculated by reference to any amounts received or receivable by the Notifying Lender under this Agreement,

but not an item attributable to (i) a change in the rate of tax on the overall net income of the Notifying Lender (or a Holding Company of it), (ii) a FATCA Deduction required to be made by a party to a Finance Document or (iii) an item covered by the indemnity for tax in Clause 21.1 or by Clause 22.

For the purposes of this Clause 24.2 the Notifying Lender may in good faith allocate or spread costs and/or losses among its assets and liabilities (or any class of its assets and liabilities) on such basis as it considers appropriate.

24.3 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.

24.4 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.

24.5 Notice of prepayment

If the Borrowers are not willing to continue to compensate the Notifying Lender for the increased cost under Clause 24.4, the Borrowers may give the Agent not less than 14 days' notice of their intention to prepay the Notifying Lender's Contribution at the end of an Interest Period.

24.6 Prepayment; termination of Commitment

A notice under Clause 24.5 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 applicable Margin and the Mandatory Cost (if any).

24.7 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 a Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from that Borrower to that Creditor Party under any of the Finance Documents; and
- (b) for that purpose:
- (c) break, or alter the maturity of, all or any part of a deposit of that Borrower;
- (d) convert or translate all or any part of a deposit or other credit balance into Dollars; and
- (e) 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 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 the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of any Borrower.

26 TRANSFERS AND CHANGES IN LENDING OFFICES

26.1 Transfer by Borrowers

None of the Borrowers may, without the prior written consent of the Agent, given on the instructions of all the Creditor Parties, transfer any of its rights, liabilities or obligations under any Finance Document and the Master Agreement.

26.2 Transfer by a Lender

Subject to Clause 26.4, a Lender (the "**Transferor Lender**") may at any time, with consultation with the Borrowers but without the consent of the Borrowers or any Security Party, 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, another bank or financial institution or a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (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. The Transferee Lender shall be selected by the Transferor Lender with prior consultation with the Borrowers.

No Borrower, Security Party or any other member of the Group or shareholder of any such party shall be entitled to become a Transferee Lender.

However any rights and obligations of the Transferor Lender in its capacity as Agent or Security Trustee will have to be dealt with separately in accordance with the Agency and Trust Agreement

26.3 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 and the Swap Bank;
- (b) on behalf of the Transferee Lender, send to each Borrower 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,

but the Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Transferor Lender and the Transferee Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to that Transferee Lender.

26.4 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.

26.5 No transfer without Transfer Certificate

Except as provided in Clause 26.17, 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, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

26.6 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.

26.7 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 (other than the Master 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 any 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 (other than the Master Agreement) 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 any 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 (other than the Master Agreement) which are applicable to the Lenders generally, including but not limited to those relating to the Majority Lenders and 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 any 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.

26.8 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 the Borrowers during normal banking hours, subject to receiving at least 3 Business Days' prior notice.

26.9 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.

26.10 Authorisation of Agent to sign Transfer Certificates

Each Borrower, the Security Trustee and each Lender and the Swap Bank irrevocably authorise the Agent to sign Transfer Certificates on its behalf.

26.11 Registration fee

In respect of any Transfer Certificate, the Agent shall be entitled to recover a registration fee of \$2,500 from the Transferor Lender or (at the Agent's option) the Transferee Lender.

26.12 Sub-participation; securitisation; subrogation assignment

- (a) A Lender may sub-participate or include in a securitisation or similar transaction all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, any Borrower, any Security Party, the Agent or the Security Trustee or any other Creditor Party; and the Lenders may assign, in any manner and terms agreed by the Majority Lenders, the Agent and the Security Trustee, all or any part of those rights to an insurer or surety who has become subrogated to them.
- (b) The Borrowers shall, and shall procure that each Security Party shall, do everything desirable or necessary to assist a Lender to achieve a successful (in the opinion of that Lender) securitisation (or similar transaction).

26.13 Disclosure of information

- (a) In relation to any information which a Lender has received (other than Confidential Information) in relation to any Borrower, any Security Party or their affairs under or in connection with any Finance Document, that Lender may disclose (save as otherwise provided in Clause 31) any such information without the prior irrevocable authorisation of or notice to that Borrower and the Corporate Guarantor to:
- (b) a potential transferee lender, sub-participant, Affiliate, any other assignee or transferee or any other person who may propose entering into a contractual relation with that Lender in relation to this Agreement; and/or
- (c) any direct or indirect Subsidiary, any direct or indirect Holding Company, any Affiliate or any other company in its group; and/or
- (d) any authorities (including, without limitation, any private, public or internationally recognised authorities) or any party to any Finance Document or any professional adviser to that Lender; and/or
- (e) a rating agency or their professional advisors; and/or
- (f) any other person regarding the funding, refinancing, transfer, assignment, sale, sub-participation, insurance arrangement, operational arrangement or other transaction in relation thereto including without limitation any enforcement, preservation, assignment, transfer, sale or sub-participation of that Lender's rights and obligations,

- (g) and including, without limitation, (x) for purposes in connection with (1) any enforcement or (2) assignment or transfer of that Lender's rights or obligations under any Finance Document or (y) to the extent desirable or necessary in connection with or in contemplation of a securitisation (or similar transaction).

26.14 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.

26.15 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.

26.16 Replacement of Reference Bank

If any Reference Bank ceases to be a Lender or is unable on a continuing basis to supply quotations for the purposes of Clause 5 then, unless the Borrowers, the Agent and the Majority Lenders otherwise agree, the Agent, acting on the instructions of the Majority Lenders, and after consulting the Borrowers, shall appoint another bank (whether or not a Lender) to be a replacement Reference Bank; and, when that appointment comes into effect, the first-mentioned Reference Bank's appointment shall cease to be effective.

26.17 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 26, each Lender may without consulting with or obtaining consent from any Borrower or any Security Party, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and
 - (b) in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities;
- except that no such charge, assignment or Security Interest shall:
- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for that Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by any Borrower or any Security Party or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

27 VARIATIONS AND WAIVERS

27.1 Variations, waivers etc. by Majority Lenders

Subject to Clause 27.2, 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 or K&T Marine is a party, by that Security Party or K&T Marine.

27.2 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 27.1 applies as if the words "by the Agent on behalf of the Majority Lenders" were replaced by the words "by or on behalf of every Lender and the Swap Bank":

- (a) a reduction in the Margin;
- (b) a postponement to the date for, or a reduction in the amount of, any payment of principal, interest, fees or other sum payable under this Agreement;
- (c) an increase in any Lender's Commitment;
- (d) a change to the definition of "**Majority Lenders**";
- (e) a change to Clause 3 or this Clause 27;
- (f) any release of, or material variation to, a Security Interest, guarantee, indemnity or subordination arrangement set out in a Finance Document (except to the extent expressly provided for in any Finance Document); and
- (g) any other change or matter as regards which this Agreement or another Finance Document expressly provides that each Lender's consent is required.

27.3 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 27.1 and 27.2, 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 a Security Party of an obligation under a Finance Document or the general law; or
- (d) any right or remedy conferred by any Finance Document or by the general law,

and there shall not be implied into any Finance Document any term or condition requiring any such provision to be enforced, or such right or remedy to be exercised, within a certain or reasonable time.

28 NOTICES

28.1 General

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

28.2 Addresses for communications

A notice by letter or fax shall be sent:

- (a) to the Borrowers: c/o the Technical Manager
3-5 Menandrou Street
145 61 Kifissia
Greece

Facsimile No: +30 210 80 84 224
- (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, Arranger and Security Trustee: ABN AMRO Bank N.V.
93 Coolensingel,
3012 AE Rotterdam
The Netherlands

Fax No: +31 10401 5323
- (d) to the Swap Bank: ABN AMRO Bank N.V.

c/o Markets Documentation Unit
Gustav Mahlerlaan 10
NL-1082PP Amsterdam
The Netherlands
mdu@nl.abnamro.com

Fax No: +31 10 459 0538

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.

28.3 Effective date of notices

Subject to Clauses 28.4 and 28.5:

- (a) a notice which is delivered personally or posted shall be deemed to be served, and shall take effect, at the time when it is delivered; and

- (b) a notice which is sent by fax shall be deemed to be served, and shall take effect, 2 hours after its transmission is completed.

28.4 Service outside business hours

However, if under Clause 28.3 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 28.5) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

28.5 Illegible notices

Clauses 28.3 and 28.4 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.

28.6 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.

28.7 Electronic communication

Any communication to be made between the Agent and a Lender or Swap Bank or the Agent and the Borrowers under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent and the relevant Creditor Party and the Borrower:

- (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 or the Swap Bank or the Borrowers will be effective only when actually received in readable form and, in the case of any electronic communication made by a Creditor Party or the Borrowers to the Agent, only if it is addressed in such a manner as the Agent shall specify for this purpose.

28.8 English language

Any notice under or in connection with a Finance Document shall be in English.

28.9 Meaning of “notice”

In this Clause 28, “notice” includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

29 JOINT AND SEVERAL LIABILITY

29.1 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 29.2, joint.

29.2 No impairment of Borrower’s 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 any other Borrower;
- (b) any Lender, the Swap Bank or the Security Trustee entering into any rescheduling, refinancing or other arrangement of any kind with any other Borrower;
- (c) any Lender, the Swap Bank or the Security Trustee releasing any other Borrower or any Security Interest created by a Finance Document; or
- (d) any combination of the foregoing.

29.3 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 none of the Borrowers shall in any circumstances be construed to be a surety for the obligations of any other Borrower under this Agreement.

29.4 Subordination

Subject to Clause 29.5, during the Security Period, none of the Borrowers shall:

- (a) claim any amount which may be due to it from any 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 any 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 any other Borrower; or
- (c) set off such an amount against any sum due from it to any other Borrower; or
- (d) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving any other Borrower or other Security Party; or
- (e) exercise or assert any combination of the foregoing.

29.5 Borrower's 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 29.4, in relation to any other Borrower, that Borrower shall take that action as soon as practicable after receiving the Agent's notice.

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.

30.5 PATRIOT Act Notice

Each of the Agent and the Lenders hereby notifies the Borrowers that pursuant to the requirements of the PATRIOT Act and the policies and practices of the Agent and each Lender, the Agent and each of the Lenders is required to obtain, verify and record certain information and documentation that identifies each Borrower and any Security Party, which information includes the name and address of each Security Party and such other information that will allow the Agent and each of the Lenders to identify each Security Party in accordance with the PATRIOT Act.

31 CONFIDENTIALITY

31.1 Confidential Information

The Creditor Parties agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 31.2, and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

31.2 Disclosure of Confidential Information

The Creditor Parties may disclose:

- (a) to any of its Affiliates and any of their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as the Creditor Parties shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person (if that person to whom the Confidential Information is to be given is informed in writing of its confidential nature and undertakes in writing not to disclose such Confidential Information to any third party and/or make use of it in case the dealings contemplated below are not concluded):
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and/or any Security Party and to any of that person's Affiliates, Representatives and professional advisers;
 - (iii) appointed by the Creditor Parties or by a person to whom paragraphs (i) or (ii) applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraphs (i) or (ii);
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom or for whose benefit a Creditor Parties charges, assigns or otherwise creates security (or may do so) pursuant to Clause 26.17;
 - (vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (viii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (ix) to whom information is required to be disclosed in connection with, and for the purposes of, any insurance to be effected by a Creditor Party in relation to or in connection with any Finance Document;
 - (x) who is a party to this Agreement; or
 - (xi) with the consent of the Borrowers,

in each case, such Confidential Information as the Creditor Parties shall consider appropriate;

- (c) to any person appointed by a Creditor Party by a person to whom paragraphs (b)(i) or (b)(ii) of Clause 31.2 applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) provided always that such person will undertake in writing not to disclose such Confidential Information to any third party;
- (d) to any rating agency (including its profession advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents, the Borrower and/or the Security Parties provided always that such rating agency will undertake in writing not to disclose such Confidential Information to any third party.

31.3 Entire agreement

This Clause 31 constitutes the entire agreement between the parties to this Agreement in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

31.4 Inside Information

The Creditor Parties acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Creditor Parties undertake not to use any Confidential Information for any unlawful purpose.

31.5 Notification of disclosure

The Creditor Parties agree (to the extent permitted by law and regulation) to inform the Borrowers and the Security Parties:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 31.2 except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 31.

31.6 Continuing obligations

The obligations of this Clause 31 are continuing and, in particular, shall survive and remain binding on the Creditor Parties for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Borrower and the Security Parties under or in connection with the Finance Documents have been paid in full and all obligations of the Creditor Parties have been cancelled or otherwise cease to be available; and
- (b) the date on which a Creditor Party otherwise ceases to be a party to this Agreement.

32 BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each Party acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

33 LAW AND JURISDICTION

33.1 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.

33.2 Exclusive English jurisdiction

Subject to Clause 33.3, the courts of England shall have exclusive jurisdiction to settle any Dispute.

33.3 Choice of forum for the exclusive benefit of the Creditor Parties

Clause 33.2 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.

None of the Borrowers shall commence any proceedings in any country other than England in relation to a Dispute.

33.4 Process agent

Each Borrower irrevocably appoints Saville & Co. at its registered office for the time being presently at One Carey Lane, London, EC2V 8AE, England to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with a Dispute.

33.5 Creditor Party rights unaffected

Nothing in this Clause 33 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.

33.6 Meaning of “proceedings” and “Dispute”

In this Clause 33, “**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

Lender	Lending Office	Commitment (US Dollars)
ABN AMRO BANK N.V.	c/o Loans Administration Transportation Clients 93 Coolsingel 3012 AE Rotterdam The Netherlands	82,459,678.29

SCHEDULE 2

DRAWDOWN NOTICE

To: ABN AMRO BANK N.V.
93 Coolingsingel
3012 AE Rotterdam
The Netherlands
Attention: Loans Administration

[•]

DRAWDOWN NOTICE

- 1 We refer to the loan agreement (the “Loan Agreement”) dated [•] 2017 and made between ourselves, as Borrowers, the Lenders referred to therein, and yourselves as Agent, Arranger, Security Trustee and Swap Bank in connection with a facility of US\$82,459,678.29. Terms defined in the Loan Agreement have their defined meanings when used in this Drawdown Notice.
- 2 We request to borrow the Tranche [A] [B] as follows:
 - (a) Amount of Tranche: US\$[•];
 - (b) Drawdown Date: [•];
 - (c) Duration of the first Interest Period shall be [•] months; and
 - (d) Payment instructions: account in our name and numbered [•] with [•] of [•].
- 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; and
 - (b) no Event of Default or Potential Event of Default has occurred or will result (save as otherwise provided in Clause 9.1(c) of the Loan Agreement) from the borrowing of the Tranche.
- 4 This notice cannot be revoked without the prior consent of the Majority Lenders.

[Name of Signatory]

for and on behalf of
ZEUS ONE MARINE LLC
IKAROS MARINE LLC
TASMAN MARINE LLC
HUDSON MARINE LLC
DRAKE MARINE LLC

SCHEDULE 3

CONDITION PRECEDENT DOCUMENTS

PART A

The following are the documents referred to in Clause 9.1(a) required before service of the first Drawdown Notice.

- 1 A duly executed original of:
 - (a) this Agreement;
 - (b) the Master Agreement;
 - (c) the Master Agreement Assignment;
 - (d) the Corporate Guarantee;
 - (e) the Agency and Trust Agreement;
 - (f) the Equity Undertaking;
 - (g) the Accounts Pledge;
 - (h) the Shares Security Deeds; and
 - (i) any Subordination Agreement,each document required to be delivered under each Finance Document referred to in paragraphs (a) to (i) inclusive above and any other Finance Document that the Agent may require, in the Agreed Form.
- 2 Copies of the certificate of formation and constitutional documents (and a certificate of goodstanding) of each Borrower, the Corporate Guarantor and any other Security Party.
- 3 Copies of appropriate evidence of authorisation by the members (or, as the case may be, the directors) of each Borrower and each Security Party authorising the execution of each of the Finance Documents to which that Borrower or that Security Party is a party and, in the case of a Borrower, authorising named officers to give the Drawdown Notices and other notices under this Agreement.
- 4 The original of any power of attorney under which any Finance Document and the Master Agreement is executed on behalf of a Borrower, the Corporate Guarantor and any other Security Party.
- 5 An original certificate of a duly authorised officer of the Borrower and each Security Party:
 - (a) certifying that each copy document relating to it specified in paragraphs 2, 3 and 4 of this Part A of Schedule 3 is correct, complete and in full force and effect;
 - (b) setting out the names of the directors, officers and members of that Borrower and Security Party and the proportion of shares held by each member; and
 - (c) setting out a specimen of the signature of each person authorised by the resolutions referred to in paragraph 3 of this Part A of Schedule 3.

- 6 Copies of all consents which any Borrower, the Corporate Guarantor or any Security Party requires to enter into, or make any payment under, any Finance Document.
- 7 The originals of any mandates or other documents required in connection with the opening or operation of the Earnings Accounts and the Retention Account.
- 8 Such documents and other evidence in such form as is requested by the Agent in order for the Lenders to comply with all necessary “know your customer” or “client acceptance” or other similar identification procedures (including, but not limited to, specimen signatures of all the members or directors, as the case may be, and other officers of the Borrowers and each Security Party) in relation to the transactions contemplated in the Finance Documents.
- 9 Evidence of the ultimate beneficial ownership in respect of each Borrower, the Corporate Guarantor, each Shareholder and each Approved Manager.
- 10 Favourable legal opinions from lawyers appointed by the Agent on such matters concerning the laws of the Marshall Islands, the Netherlands and such other relevant jurisdictions as the Agent may require, including without limitation, any legal opinion on the due execution of the Equity Undertaking by the Poseidon Shareholders and any documents required to be delivered for the purposes of such opinion.
- 11 If available and applicable, a certified true copy of any Charter (and any addenda thereto) in respect of a Ship together with, if required by the Agent, evidence of due execution of such Charter by the parties thereto.
- 12 Documentary evidence that the agent for service of process named in Clause 33 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) required before or, as the context may require, the Drawdown Date (but prior to the making of any advance).

In this Part B of Schedule 3, the following definitions have the following meanings:

- 1 In respect of each Ship, a duly executed original of the Mortgage, the General Assignment and, as the case may be, the Charterparty Assignment (and of each document to be delivered by each of them).
- 2 Documentary evidence that:
 - (a) each Ship is definitively and permanently registered in the name of the relevant Borrower under an Approved Flag;
 - (b) each Ship is in the absolute and unencumbered ownership of the relevant Borrower save as contemplated by the Finance Documents;
 - (c) each Ship maintains the class with a first class classification society which is a member of IACS (as the Agent may approve) free of all overdue recommendations and conditions of such classification society affecting class;
 - (d) the Mortgage relating to each Ship has been duly registered or recorded against that Ship as a valid first preferred or, as the case may be, priority ship mortgage in accordance with the laws of the applicable Approved Flag State; and
 - (e) each Ship is insured in accordance with the provisions of this Agreement and all requirements therein in respect of insurances have been complied with.
- 3 Documents establishing that each will, as from the Drawdown Date relating thereto, be managed by the Approved Managers on terms acceptable to the Lenders, together with:
 - (a) the Approved Managers' Undertakings relative thereto; and
 - (b) copies of the Technical Manager's Document of Compliance and of that Ship's Safety Management Certificate (together with any other details of the applicable safety management system which the Agent requires), the ISSC and the IAPPC.
- 4 A valuation of each Mortgaged Ship addressed to the Agent by Kontiki Shipbrokers with date 17 June 2017.
- 5 An original of the a deed of release in Agreed Form and each document to be delivered under or pursuant to it, together with evidence satisfactory to the Agent of its due execution by the parties to it and evidence that all Security Interests under the Existing Facility Agreement have been released, reassigned or, as the case may be, discharged.
- 6 Evidence satisfactory to the Agent that the shareholders' equity of \$5,000,000 has been paid into the Group.
- 7 Favourable legal opinions from lawyers appointed by the Agent on such matters concerning the law of the Marshall Islands, the Approved Flag State on which each relevant Ship is registered and such other relevant jurisdictions as the Agent may require.
- 8 A favourable opinion from an independent insurance consultant acceptable to the Agent on such matters relating to the insurances for each Ship as the Agent may require.

- 9 Documentary evidence that the Agent for service of process named in Clause 33 has accepted its appointment.
- 10 Evidence satisfactory to the Agent that the Minimum Liquidity Amount is standing to the credit of each Earnings Account in respect of each Ship pursuant to Clause 11.18.
- 11 Copies of any further consents which any Borrower or any Security Party requires to enter into, or make any payment under, any Finance Document.
- 12 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.

Each of the documents specified in paragraphs 2, 3 and 6 of Part A and every other 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 a Borrower.

SCHEDULE 4

DESIGNATION NOTICE

To: ABN AMRO BANK N.V.

93 Coolensingel
3012 AE Rotterdam
The Netherlands
as Agent

Attn: [Ship Finance Portfolio Management]

[date]

Dear Sirs

Loan Agreement dated [•] 2017 (the “Loan Agreement”) and made between (i) Zeus One Marine LLC, Ikaros Marine LLC, Tasman Marine LLC, Hudson Marine LLC and Drake Marine LLC as joint and several Borrowers, (ii) the Lenders, (iii) the Swap Bank, (iv) and yourselves as Agent, Arranger and Security Trustee

We refer to:

- 1 the Loan Agreement;
- 2 the Master Agreement dated as of [•] made between ourselves and the Swap Bank; and
- 3 a Confirmation delivered pursuant to the said Master Agreement dated [•] and addressed by the Swap Bank to us.

In accordance with the terms of the Loan Agreement, we hereby give you notice of the said Confirmation and hereby confirm that the Transaction evidenced by it will be designated as a “Designated Transaction” for the purposes of the Loan Agreement and the Finance Documents.

Yours faithfully

for and on behalf of
**ZEUS ONE MARINE LLC
IKAROS MARINE LLC
TASMAN MARINE LLC
HUDSON MARINE LLC
DRAKE MARINE LLC**

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: ABN AMRO Bank N.V. for itself and for and on behalf of each Borrower, each Security Party, the Security Trustee, each Lender and the Swap Bank, as defined in the Loan Agreement referred to below.

[•]

- 1 This Certificate relates to a Loan Agreement (the **“Loan Agreement”**) dated [•] 2017 and made between (1) [•], [•], [•], [•] and [•] as joint and several Borrowers, (2) the banks and financial institutions named therein as Lenders, (3) ABN AMRO Bank N.V. as Swap Bank, (4) ABN AMRO Bank N.V. as Agent, (5) ABN AMRO Bank N.V. as Arranger and (6) ABN AMRO Bank N.V. as Security Trustee for a loan facility of US\$82,459,678.29.
- 2 In this Certificate, terms defined in the Loan Agreement shall, unless the contrary intention appears, have the same meanings and:
“Relevant Parties” means the Agent, each Borrower, each Security Party, the Security Trustee, each Lender and the Swap Bank;
“Transferor” means [full name] of [lending office]; and
“Transferee” means [full name] of [lending office].
- 3 The effective date of this Certificate is [•] **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 (other than the Master Agreement) in relation to [•] per cent, of its Contribution, which percentage represents \$[•].
- 5 By virtue of this Certificate and Clause 26 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 (other than the Master Agreement) which Clause 26 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 26 of the Loan Agreement.
- 8 The Transferor:
 - (a) warrants to the Transferee and each Relevant Party that;

- (i) 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) 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; and
- (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 of the other Finance Documents;
 - (b) agrees that it will have no rights of recourse on any ground against either the Transferor, the Agent, the Security Trustee, any Lender or the Swap Bank in the event that:
 - (i) any of 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 any of 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 Borrowers 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, any Lender or the Swap Bank in the event that this Certificate proves to be invalid or ineffective;
 - (d) warrants to the Transferor and each Relevant Party that:
 - (i) it has full capacity to enter into this transaction and has taken all corporate action and obtained all consents which it needs to take or obtain in connection with this transaction; and
 - (ii) 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 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 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]

By:

Date:

Agent

Signed for itself and for and on behalf of itself
as Agent and for every other Relevant Party
ABN AMRO Bank N.V.

By:

Date:

[Name of Transferee]

By:

Date:

Administrative Details of Transferee

Name of Transferee:

Lending Office:

Contact Person
(Loan Administration Department):

Telephone:

Fax:

Contact Person
(Credit Administration Department):

Telephone:

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

PIK COMPLIANCE CERTIFICATE

To: ABN AMRO BANK N.V.
93 Coolensingel
3012 AE Rotterdam
The Netherlands
Attn: [Loans Administration]

[date]

Dear Sirs

Loan Agreement dated [•] 2017 and made between (i) Zeus One Marine LLC and others (as borrowers), (ii) the banks and financial institutions therein listed (as lenders), (iii) ABN AMRO Bank N.V. as agent, arranger, swap bank and security trustee in connection with a facility of US\$82,459,678.29 (the “Loan Agreement”)

Terms defined in the Loan Agreement have their defined meanings when used in this PIK Compliance Certificate.

We refer to the undertaking set out in Clause 11.6(d) of the Loan Agreement and confirm that, as at the [3-month period ending [•]]:

- | | | |
|-----------------|-----------------------------------------------------------------------|-------|
| (a) | aggregate Market Value of the Ships | _____ |
| | Minimum Liquidity Amount + the net realisable value of any additional | |
| (b) | security provided under Clause 15.1 of the Loan Agreement | _____ |
| (c) = (b) + (a) | VMC | _____ |
| | Outstanding Loan plus | _____ |
| | Outstanding Swap Exposure | |
| (d) | Required Security Cover Ratio (130%) | _____ |
| (e) = (d) - (c) | Delta between required Security Cover Ratio and VMC* | _____ |
| | PIK Amount of 200bps over Delta | _____ |
| | aggregate PIK Amount allocated on Tranche A Balloon Instalment | _____ |

* if delta positive

[•]

for and on behalf of

ZEUS ONE MARINE LLC

IKAROS MARINE LLC


TASMAN MARINE LLC

HUDSON MARINE LLC

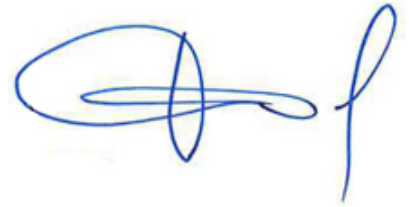
DRAKE MARINE LLC

BORROWERS


SIGNED by
FILANTHI KATSAFADOU
for and on behalf of
ZEUS ONE MARINE LLC
in the presence of:

)
)
)
)
)


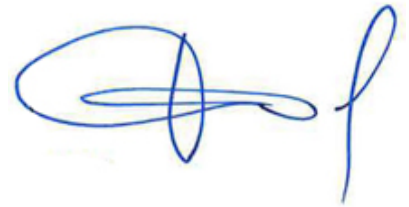
EMMANOUIL PONTIKIS
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE




SIGNED by
FILANTHI KATSAFADOU
for and on behalf of
IKAROS MARINE LLC
in the presence of:

)
)
)
)
)


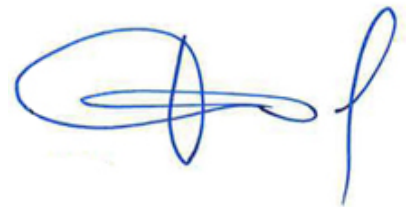
EMMANOUIL PONTIKIS
ATTORNEY-AT - LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE




SIGNED by
FILANTHI KATSAFADOU
for and on behalf of
TASMAN MARINE LLC
in the presence of:

)
)
)
)
)


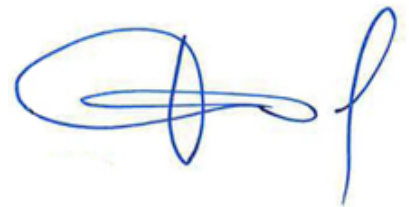
EMMANOUIL PONTIKIS
ATTORNEY-AT - LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE




SIGNED by
FILANTHI KATSAFADOU
for and on behalf of
HUDSON MARINE LLC
in the presence of:

)
)
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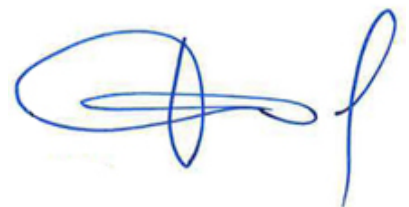
EMMANOUIL PONTIKIS
ATTORNEY-AT - LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



SIGNED by
FILANTHI KATSAFADOU
for and on behalf of
DRAKE MARINE LLC
in the presence of:

)
)
)
)
)


EMMANOUIL PONTIKIS
ATTORNEY-AT - LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



LENDERS

SIGNED by
GEORGIA ASIMAKOPOULOS
for and on behalf of
ABN AMRO BANK N.V.
in the presence of:

)
)
)
)
)


EMMANOUIL PONTIKIS
ATTORNEY-AT- LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



SWAP BANK

SIGNED by
GEORGIA ASIMAKOPOULOS
for and on behalf of
ABN AMRO BANK N.V.
in the presence of:

)
)
)
)
)


EMMANOUIL PONTIKIS
ATTORNEY-AT- LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



AGENT

SIGNED by
GEORGIA ASIMAKOPOULOS
for and on behalf of
ABN AMRO BANK N.V.
in the presence of:

)
)
)
)
)


EMMANOUIL PONTIKIS
ATTORNEY-AT- LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



ARRANGER

SIGNED by
GEORGIA ASIMAKOPOULOS
for and on behalf of
ABN AMRO BANK N.V.
in the presence of:

)
)
)
)
)




EMMANOUIL PONTIKIS
ATTORNEY- AT- LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SECURITY TRUSTEE

SIGNED by
GEORGIA ASIMAKOPOULOS
for and on behalf of
ABN AMRO BANK N.V.
in the presence of:

)
)
)
)
)




EMMANOUIL PONTIKIS
ATTORNEY-AT- LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

Dated 9 October 2018

**ZEUS ONE MARINE LLC and
IKAROS MARINE LLC**
as joint and several Borrowers

and

**TASMAN MARINE LLC
HUDSON MARINE LLC and
DRAKE MARINE LLC**
as Collateral Owners

and

POSEIDON CONTAINERS HOLDINGS LLC
as Corporate Guarantor

and

ODYSSEUS MARINE LLC
as Shareholder

and

THE BANKS AND FINANCIAL INSTITUTIONS
Listed in Schedule 1
as Lenders

and

ABN AMRO BANK N.V.
as Agent, Arranger, Swap Bank and as Security Trustee

AMENDING AND RESTATING DEED

relating to
a secured term loan facility dated 30 August 2017 of originally up to US\$82,459,678.29
to refinance certain existing indebtedness and secured on
m.vs. "ORCA I", "KATHERINE", "TASMAN",
"DIMITRIS Y" and "IAN H"

**WATSON FARLEY
&
WILLIAMS**

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PARTIES

- (1) **ZEUS ONE MARINE LLC and IKAROS MARINE LLC**, each a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as joint and several borrowers (each a **“Borrower”** and, together, the **“Borrowers”**);
- (2) **TASMAN MARINE LLC, HUDSON MARINE LLC and DRAKE MARINE LLC**, each a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as collateral owners (each a **“Collateral Owner”** and, together, the **“Collateral Owners”**);
- (3) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as corporate guarantor (the **“Corporate Guarantor”**);
- (4) **ODYSSEUS MARINE LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as shareholder (**“Odysseus”**);
- (5) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**; and
- (6) **ABN AMRO BANK N.V.** acting through its office at 93 Coolingsingel, 3012 AE, Rotterdam, The Netherlands, as **Agent, Arranger and Security Trustee** and acting through its office at Gustav Mahlerlaan 10, NL-1082 PP, Amsterdam, The Netherlands, as **Swap Bank**.

BACKGROUND

- (A) By a loan agreement dated 30 August 2017 (and a first deferral letter dated 2 July 2018, a second deferral letter dated 30 July 2018 and a third deferral letter dated 30 August 2018, together, the **“Deferral Letters”**) (the **“Loan Agreement”**) and made between (i) the Original Borrowers (hereinafter defined) as joint and several borrowers, (ii) the Lenders and (iii) ABN AMRO Bank N.V. as Agent, Swap Bank, Arranger and Security Trustee, the Lenders have made available to the Original Borrowers a loan facility in an amount of (originally) up to US\$82,459,678.29. At the date of this Deed, the outstanding amount of Tranche B is \$64,253,892.38.
- (B) By an agency and trust agreement entered into pursuant to the Loan Agreement, it was agreed that the Security Trustee would hold the Trust Property on trust for the Lenders and the Swap Bank.
- (C) By a master agreement (the **“Master Agreement”**) (on the 2002 ISDA Master Agreement form together with the schedule attached thereto (as amended)) dated 30 August 2017 and made between (i) the Original Borrowers and (ii) the Swap Bank, it was agreed that the Swap Bank would enter into Designated Transactions with the Original Borrowers from time to time.
- (D) By a corporate guarantee dated 30 August 2017 (the **“Corporate Guarantee”**) and made between (i) the Corporate Guarantor and (ii) the Security Trustee, the Corporate Guarantor has guaranteed the obligations of the Original Borrowers under the Loan Agreement and the Master Agreement.

- (E) The Original Borrowers and the Corporate Guarantor have requested that the Creditor Parties agree to:
- (i) the refinancing of Tranche B, which was due and payable on 30 June 2018 and deferred pursuant to the Deferral Letters, by the Senior Lenders pursuant to the terms and conditions of the Senior Facility Agreement; and
 - (ii) the consequential amendments to the Loan Agreement and the other Finance Documents in connection therewith, together, the **“Request”**.
- (F) This Deed sets out the terms and conditions on which the Creditor Parties will agree with effect on and from the Effective Date, to the Request of the Original Borrowers and the Corporate Guarantor outlined in Recital (E) above and to the consequential amendments to the Loan Agreement and the other Finance Documents.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Defined expressions

Words and expressions defined in the Loan Agreement shall have the same meanings when used in this Deed (including the Recitals) unless the context otherwise requires or they are otherwise defined in this Deed.

1.2 Definitions

In this Deed, unless the contrary intention appears:

“Additional Document” means each of this Deed, each of the Collateral Documents, the Inter-Creditor Deed, the Mortgage Addenda and, in the plural, means all of them;

“Amended and Restated Corporate Guarantee” means the Corporate Guarantee as amended and restated pursuant to this Deed;

“Amended and Restated Loan Agreement” means the Loan Agreement as amended and restated pursuant to this Deed;

“Cash Collateral Account” means, in relation to the Tasman Ships, an account in the name of the Collateral Owners with the Agent in Rotterdam designated “[*name of relevant Collateral Owner*] – Cash Collateral Account”, or any other account (with that or another office of the Agent) which is designated by the Agent as the Cash Collateral Account in relation to the Tasman Ships for the purposes of the Amended and Restated Loan Agreement;

“Cash Collateral Account Pledge” means a deed creating security in respect of the Cash Collateral Account executed or to be executed by the Collateral Owners in favour of the Security Trustee in the Agreed Form;

“Collateral Charterparty Assignment” means, in relation to each Tasman Ship, a second priority specific assignment of the rights of the relevant Collateral Owner who is the owner of that Tasman Ship under the Charter relevant thereto executed or to be executed by the relevant Collateral Owner in favour of the Security Trustee in the Agreed Form and, in the plural, means all of them;

“Collateral Document” means each of the Collateral Guarantee, each Collateral Mortgage, each Collateral General Assignment, each Collateral Charterparty Assignment, each Collateral Manager’s Undertaking, each Collateral Shares Security Deed, each Collateral Earnings Account Pledge and the Cash Collateral Account Pledge and, in the plural means all of them;

“Collateral Earnings Account” means, in relation to each Tasman Ship, an account in the name of the Collateral Owner owning that Tasman Ship with the Senior Security Agent in Amsterdam designated “[name of relevant Collateral Owner] – Earnings Account”, or any other account (with that or another office of the Security Trustee) which is designated by the Senior Security Agent as the earnings account in relation to that Tasman Ship for the purposes of the Senior Facility Agreement and, in the plural, means any of all of them;

“Collateral Earnings Account Pledge” means, in respect of each Collateral Earnings Account, a deed creating second priority security in respect of that Collateral Earnings Account executed by the relevant Collateral Owner in favour of the Security Trustee in the Agreed Form and, in the plural, means all of them;

“Collateral General Assignment” means, in relation to each Tasman Ship, a second priority assignment of the Earnings, Insurances and any Requisition Compensation executed or to be executed by the relevant Collateral Owner in favour of the Security Trustee in the Agreed Form and, in the plural, means all of them;

“Collateral Guarantee” means, in relation to each Collateral Owner, a collateral guarantee executed or, as the context may require, to be executed by that Collateral Owner of the obligations of the Borrowers under the Amended and Restated Agreement and the other Finance Documents to which each Borrower is a party in the Agreed Form and, in the plural, means all of them;

“Collateral Manager’s Undertaking” means, in relation to each Tasman Ship, a second priority letter of undertaking executed or to be executed by each Approved Manager in favour of the Security Trustee, agreeing certain matters in relation to the management of the relevant Tasman Ship and subordinating its rights against that Tasman Ship and the relevant Collateral Owner owning that Tasman Ship to the rights of the Lenders under the Finance Documents, in the Agreed Form and, in the plural, means all of them;

“Collateral Mortgage” means, in relation to a Tasman Ship, the second priority or, as the case may be, preferred ship mortgage on that Tasman Ship (and, if required pursuant to the laws of the applicable Approved Flag State, a deed of covenant collateral thereto) in the Agreed Form and, in the plural, means all of them;

“Collateral Shares Security Deed” means, in relation to each Collateral Owner, a deed creating Security Interests over the limited liability company interests in that Collateral Owner to be executed by the relevant Shareholder in the Agreed Form and, in the plural, means all of them;

“Effective Date” means the date on which the Agent notifies the Borrowers and the Collateral Owners in writing in the form set out in Schedule 3 that all the conditions precedent in Schedule 2 have been satisfied or waived (as the case may be), which confirmation the Agent shall be under no obligation to give if an Event of Default shall have occurred which is continuing;

“Inter-Creditor Deed” means an inter-creditor deed executed or, as the context may require, to be executed, amongst others, by (i) the Security Trustee, the (ii) the Senior Security Agent, (iii) the Borrowers, (iv) the Collateral Owners (as collateral owners under the Amended and Restated Loan Agreement and collateral owners under the Senior Facility Agreement) and (v) THD Maritime Co. Limited (as borrower under the Senior Facility Agreement) in the Agreed Form;

“Mortgage Addendum” means, in respect of each Ship owned by a Borrower, the first addendum to the existing first preferred mortgage over that Ship in the Agreed Form and, in the plural, means both of them;

“Obligor” means each of the Borrowers, the Collateral Owners, the Corporate Guarantor and Odysseus;

“Original Borrower” means each of the Borrowers and each of the Collateral Owners and, in the plural means all of them;

“Senior Facility Agreement” means the facility agreement dated 8 October 2018 and made between, amongst others, (i) THD Maritime Co. Limited (as borrower), (ii) Amsterdam Trade Bank N.V. and others (as lenders), (iii) Amsterdam Trade Bank N.V. as agent, security agent and arranger, in respect of a loan facility of up to \$17,100,000;

“Senior Lenders” means each of the lenders (and any of their successors) under the Senior Facility Agreement;

“Senior Security Agent” means Amsterdam Trade Bank N.V. in its capacity as security agent on behalf of the finance parties under the Senior Facility Agreement, acting in such capacity through its office at World Trade Center, Tower I, Level 6, Strawinskyiaan 1939, 1077 XX Amsterdam, The Netherlands (and any successor thereof).

1.3 Application of construction and interpretation provisions of Loan Agreement

Clauses 1.2, 1.4 and 1.5 of the Loan Agreement apply, with any necessary modifications, to this Deed.

2 REPRESENTATIONS AND WARRANTIES

2.1 Repetition of Loan Agreement representations and warranties

Each Original Borrower represents and warrants to the Agent that the representations and warranties in clause 10 of the Amended and Restated Loan Agreement would remain true and not misleading if repeated on the date of this Deed (with appropriate modifications) with reference to the circumstances now existing as if the references to the “Finance Documents” included a reference to this Deed.

2.2 Repetition of Finance Documents representations and warranties

Each of the Obligors represents and warrants to the Agent that the representations and warranties in the Finance Documents (other than the Loan Agreement and those Finance Documents released or to be released pursuant to the partial deed of release related to the Tasman Ships referred to in Schedule 2 paragraph 7) to which it is a party would remain true and not misleading if repeated on the date of this Deed with reference to the circumstances now existing and with appropriate modifications to refer to this Deed and, where appropriate, the Mortgage Addenda.

3 AGREEMENT OF CREDITOR PARTIES

3.1 Agreement of Lenders

The Lenders agree, subject to and upon the terms and conditions of this Agreement, to the Request in Recital (E).

3.2 Agreement of the Creditor Parties

The Creditor Parties agree, subject to and upon the terms and conditions of this Agreement, to the consequential amendments of the Loan Agreement and the other Finance Documents in connection with the matters referred to in Clause 3.1.

3.3 Effective Date

The agreement of the Lenders and the other Creditor Parties in Clause 3.1 and Clause 3.2 shall have effect on and from the Effective Date.

4 AMENDMENT OF FINANCE DOCUMENTS

4.1 Amendment and restatement of the Loan Agreement

With effect on and from (and subject to the occurrence of) the Effective Date, the Loan Agreement shall be, and shall be deemed by this Deed to be, amended and restated in the form set out in Schedule 4.

4.2 Amendment and restated of the Corporate Guarantee

With effect on and from (and subject to the occurrence of) the Effective Date, the Corporate Guarantee shall be, and shall be deemed by this Deed to be, amended and restated in the form set out in Schedule 5.

4.3 Amendments to remaining Finance Documents

With effect on and from (and subject to the occurrence of) the Effective Date, each of the Finance Documents (other than the Loan Agreement, the Corporate Guarantee and each Mortgage owned by a Borrower which is to be amended and supplemented by the relevant Mortgage Addendum) shall be, and shall be deemed by this Deed to be amended as follows:

- (a) the definition of, and references throughout each of such Finance Documents to, the “Loan Agreement” and the “Corporate Guarantee” (howsoever defined therein) and any of the other Finance Documents shall be construed as if the same referred to, respectively:
 - (i) the Amended and Restated Loan Agreement;
 - (ii) the Amended and Restated Corporate Guarantee; and
 - (iii) the other Finance Documents as supplemented and amended by this Clause 4.3;

- (b) the definition of, and references throughout each such Finance Documents to each Mortgage in relation to a Ship owned by a Borrower, shall be construed as if the same referred to that Mortgage as amended and supplemented by the relevant Mortgage Addendum; and
- (c) the references throughout each of such Finance Documents to “this Agreement”, “this Deed”, “hereunder” and other like expressions shall be construed as if the same referred to those Finance Documents as supplemented and amended by this Deed.

4.4 Finance Documents to remain in full force and effect

Each of the Finance Documents shall remain in full force and effect as supplemented and amended by:

- (a) the amendments contained or referred to in Clause 4.1 through 4.3; and
- (b) such further or consequential modifications as may be necessary to give full effect to the terms of this Deed.

5 EFFECTIVE DATE

5.1 General

The agreement requested in Recital (E) and contained in Clause 4 is subject to the fulfilment of the conditions precedent in Clause 5.2.

5.2 Conditions precedent

The conditions referred to in Clause 5.1 are that the Agent shall have received, on or before the Effective Date, the documents and evidence referred to in Schedule 2 in all respects in form and substance satisfactory to the Agent and its lawyers on the date of this Deed or such later date as may be applicable pursuant to Clause 5.3. Upon receipt (or waiver under Clause 5.3) of the documents and evidence referred to above, the Agent shall promptly deliver to the Borrowers and the Collateral Owners a written confirmation in the form set out in Schedule 3.

5.3 Waiver of conditions precedent

If the Agent, in its discretion, confirms that the Effective Date has taken place before certain of the conditions referred to in Clause 5.2 are satisfied, the Borrowers and the Collateral Owners shall, in each case, ensure that those conditions are satisfied within a maximum of 5 Business Days after the date of the Effective Date.

6 FURTHER ASSURANCES

6.1 Obligation to execute further documents etc.

Each Obligor shall, and shall procure that each Approved Manager 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 laws of England or such other country as the Agent may, in any particular case, specify; and
- (b) effect any registration or notarisation, give any notice or take any other step, which the Agent may, by notice to such party, specify for any of the purposes described in Clause 6.2 or for any similar or related purpose.

6.2 Purposes of further assurances

The purposes referred to in Clause 6.1 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 this Deed or any Finance Document, each as amended and restated or supplemented by this Deed or by the Mortgage Addenda; and
- (b) implementing the terms and provisions of, and the transactions contemplated in this Deed or any Finance Document.

6.3 Terms of further assurances

The Agent may specify the terms of any document to be executed by the Obligors or the Approved Manager under this Clause 6, 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 of the Obligors shall, and the Obligors shall procure that the Approved Manager shall, comply with a notice under Clause 6.1 by the date specified in the notice.

6.5 Corporate or limited liability company action

At the same time as the relevant Obligor or, as the case may be, Approved Manager, delivers to the Agent any document executed under Clause 6.1(a), that Obligor or, as the case may be, Approved Manager, shall also deliver to the Agent a certificate signed by an officer of that Obligor or, as the case may be, Approved Manager, which shall:

- (a) set out the text of a resolution of that Obligor's or, as the case may be, that Approved Manager's, applicable governing body specifically authorising the execution of the document specified by the Agent unless the execution of the relevant document is authorised by the existing resolutions and general power of attorney of that Obligor or, as the case may be, that Approved Manager; and
- (b) state that either the resolution was duly passed by the member or at a meeting of the directors validly convened and held throughout and is valid under that Obligor's or as the case may be, that Approved Manager's, limited liability agreement, articles of incorporation or other constitutional documents.

7 EXPENSES

The Borrowers shall reimburse to the Agent on demand all reasonable costs, fees and expenses (including, but not limited to, legal fees and expenses) and taxes thereon incurred by the Agent or any other Creditor Party in connection with the negotiation, preparation and execution of this Deed and any other documents required thereunder.

8 NOTICES

The provisions of clause 28 (Notices) of the Loan Agreement and clause 16 of the Corporate Guarantee, as amended and restated by this Deed, shall apply to this as if they were expressly incorporated in this Deed with any necessary modifications.

9 SUPPLEMENTAL

9.1 Counterparts

This Deed may be executed in any number of counterparts.

9.2 Third party rights

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

10 LAW AND JURISDICTION

10.1 Governing law

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

10.2 Incorporation of the Loan Agreement provisions

The provisions of clause 33 (Law and Jurisdiction) of the Loan Agreement, as amended and restated by this Deed, shall apply to this Deed as if they were expressly incorporated in this Deed with any necessary modifications.

This Deed has been duly executed by or on behalf of the parties and has, on the date stated at the beginning of this Deed, been delivered as a Deed.

SCHEDULE 1

LENDERS

<u>Lender</u>	<u>Lending Office</u>
ABN AMRO Bank N.V.	c/o Loans Administration Transportation Clients 93 Coolensingel 3012 AE Rotterdam The Netherlands

SCHEDULE 2

CONDITIONS PRECEDENT DOCUMENTS

The following are the documents referred to in Clause 4.2:

- 1 A certificate signed by an officer of each Obligor confirming that there has been no change to the constitutional documents since those previously provided to the Agent.
- 2 In respect of each Obligor, documents of the kind specified in paragraphs 2, 3, 4 and 5 of Schedule 3, Part A of the Loan Agreement as amended and supplemented by this Deed with appropriate modifications to refer to this Deed (as applicable) and, in respect of each Approved Manager and K&T Marine LLC, an up-to-date certificate of incumbency.
- 3 Evidence satisfactory to the Agent that each Obligor and each Approved Manager is currently existing in good standing in accordance with the laws of its country of incorporation.
- 4 A duly executed original of each Additional Document (other than the Mortgage Addenda).
- 5 A duly executed original of each Mortgage Addendum together with documentary evidence that such Mortgage Addendum has been duly registered or, as the case may be, recorded, as a valid addendum to the relevant Mortgage related to the relevant Ship owned by each Borrower in accordance with the laws of the jurisdiction of the relevant Approved Flag.
- 6 A confirmation satisfactory to the Agent from the Original Borrowers and the Corporate Guarantor that no Event of Default has occurred or is continuing other than any Event of Default that has been remedied or waived.
- 7 A duly executed partial deed of release in respect of the obligations of the Collateral Owners and the Security Interests related to the Tasman Ships signed by each Obligor and countersigned by K&T Marine LLC and each Approved Manager in Agreed Form.
- 8 Evidence satisfactory to the Agent that the shareholders' equity (as required pursuant to clause 11.28 of the Corporate Guarantee) has been fully injected by the Corporate Guarantor into the Group.
- 9 The originals of any mandates or other documents required in connection with the opening or operation of the Cash Collateral Account.
- 10 Evidence satisfactory to the Agent that Tranche B has been (or will, concurrently on the Effective Date, be) refinanced by the Senior Lenders.
- 11 Evidence satisfactory to the Agent (in its absolute discretion) that the Senior Facility Agreement and the Inter-Creditor Deed contain certain required terms as agreed in the offer letter in respect of the Inter-Creditor Deed in such form as has been agreed by the Collateral Owners, the Senior Lenders and the Creditor Parties.
- 12 In the event that the Effective Date falls at the end of an Interest Period, evidence satisfactory to the Agent (in its absolute discretion) of payment of the Excess Cash Flow for the period up to and including the Effective Date.

- 13 Documentary evidence that the agent for service of process named in clause 33 of the Loan Agreement has accepted its appointment in respect of this Deed and any other Additional Documents (where applicable).
- 14 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 each Additional Document (including without limitation) all necessary governmental and other official approvals and consents in such pertinent jurisdictions as the Agent deems appropriate.
- 15 Favourable legal opinions from lawyers appointed by the Agent on such matters concerning the laws of Marshall Islands, Liberian, Panama and such other relevant jurisdictions as the Agent may require.
- 16 Any further authorisations, opinions, consents, agreements and documents in connection with any Additional Document or any other Finance Document which the Agent may request by notice to the Borrowers prior to the Effective Date.
- 17 Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 6 have been paid or will be paid by the Effective Date.

Each of the documents set out in paragraphs 1, 2, 3 and 6 shall be certified by an authorised signatory of the relevant Obligor as a true and correct, complete copy.

SCHEDULE 3

FORM OF EFFECTIVE DATE NOTICE

To: ZEUS ONE MARINE LLC
IKAROS MARINE LLC
TASMAN MARINE LLC
HUDSON MARINE LLC
DRAKE MARINE LLC
c/o Technomar Shipping Inc.
3-5 Menandrou Street
145 61 Kifisia
Athens, Greece
Fax: +30 210 8084224

[●] 2018

Dear Sirs

We refer to the amending and restating deed dated [●] 2018 (the “**Amending and Restating Deed**”) made between, inter alios, (i) yourselves as Borrowers and Collateral Owners, (ii) the Lenders, (iii) the Agent, (iv) the Arranger, (v) the Swap Bank and (vi) Security Trustee.

Words and expressions defined in the Amending and Restating Deed shall have the same meaning when used in this letter.

We write to confirm that the conditions precedent in clause 4.2 of the Amending and Restating Deed have been fulfilled [(other than the conditions precedent listed in paragraph[s] [●] and [●], which shall be fulfilled within [●] Business Days from the Effective Date)] and the Effective Date is [●] 2018.

Yours faithfully

for and on behalf of
ABN AMRO BANK N.V.

SCHEDULE 4

FORM OF AMENDED AND RESTATED LOAN AGREEMENT MARKED TO INDICATE AMENDMENTS

Amendments are indicated as follows:

- (a) Additions are indicated by underlined text; and
- (b) Deletions are shown by the relevant text being struck out.

Dated 30 August 2017

ZEUS ONE MARINE LLC and
IKAROS MARINE LLC
TASMAN MARINE LLC
HUDSON MARINE LLC and
DRAKE MARINE LLC
as joint and several Borrowers

and

THE BANKS AND FINANCIAL INSTITUTIONS
listed in Schedule 1
as Lenders

and

ABN AMRO BANK N.V.
as Agent, Arranger, Swap Bank
and Security Trustee

LOAN AGREEMENT

as amended and restated by an Amending and Restating Deed
dated 9 October 2018 relating to a secured term loan facility
of ~~US\$82,459,678.29~~ US\$64,253,892.38 to refinance certain existing indebtedness
and secured on
m.vs. "ORCA I", "KATHERINE", "TASMAN",
"DIMITRIS Y" and "IAN H"

WATSON FARLEY WATSON FARLEY
& &
WILLIAMS WILLIAMS

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BETWEEN

- (1) **ZEUS ONE MARINE LLC, and IKAROS MARINE LLC, TASMAN MARINE LLC, HUDSON MARINE LLC and DRAKE MARINE LLC,** as joint and several **Borrowers**;
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**;
- (3) **ABN AMRO BANK N.V.**, as **Agent**;
- (4) **ABN AMRO BANK N.V.**, as **Arranger**;
- (5) **ABN AMRO BANK N.V.**, as **Security Trustee**; and
- (6) **ABN AMRO BANK N.V.**, as **Swap Bank**.

BACKGROUND

- (A) ~~The~~ By a facility agreement dated 30 August 2017 and made between the (i) Original Borrowers, (ii) the Lenders, (iii) the Agent, (iv) the Security Trustee and (v) the Swap Bank, the Lenders have agreed to make available to the Original Borrowers a term loan facility of \$82,459,678.29 originally in two Tranches, ~~each such Tranche in the relevant Tranche Amount~~, for the purpose of refinancing the Existing Indebtedness secured on the Ships (as each such term is defined below) (the "Original Agreement").
- (B) The Swap Bank has agreed to enter into interest rate swap transactions with the Original Borrowers (at the Original Borrowers' option) from time to time to hedge the Original Borrowers' exposure under this Agreement to interest rate fluctuations and/or exchange rate risks.
- (C) The Lenders and the Swap Bank have agreed to share pari passu in the security to be granted to the Security Trustee pursuant to this Agreement.
- (D) By the Amending and Restating Deed, the Creditor Parties agreed to certain amendments to the Original Agreement and the other Finance Documents.
- (E) This Agreement sets out the terms and conditions of the Original Agreement as amended and restated by the Amending and Restating Deed.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 Definitions

Subject to Clauses 1.2 through 1.4, in this Agreement:

"Accounts" means, together, the Earnings Accounts-, the Cash Collateral Account and the Retention Account and, in the singular, means any of them;

"Accounts Pledge" means-;

- (a) a deed creating security in respect of the Earnings Accounts and the Retention Account ~~in the Agreed Form~~;
- (b) a deed creating security in respect of the Cash Collateral Account; and

(c) a second priority deed creating security in respect of each Collateral Earnings Account, each in the Agreed Form;

“**Affected Lender**” has the meaning given in Clause 5.7;

“**Affiliate**” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

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

“**Agent**” means ABN AMRO Bank N.V., acting in such capacity through its office at 93 Coolsingel, 3012 AE, Rotterdam, The Netherlands, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

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

“**Amending and Restating Deed**” means the Amending and Restating Deed dated 9 October 2018 and made between, amongst others, (i) the Borrowers, (ii) the Corporate Guarantor, (iii) the Collateral Owner, (iv) the Lenders, (v) the Agent, (vi) the Arranger, (vii) the Swap Bank and (viii) the Security Trustee;

“**Annex VI**” means Annex VI (Regulations for the Prevention of Air Pollution from Ships) to the International Convention for the Prevention of Pollution from Ships 1973 (as modified in 1978 and 1997);

“**Applicable Percentage**” means during the period commencing on:

- (a) 1 ~~June~~ July 2018 (inclusive) and ending on ~~31 December 2018~~ 30 June 2020 (inclusive), ~~110~~ 100 per cent.; and
- (b) 1 ~~January 2019~~ July 2020 (inclusive) and ending on ~~31 December 2019 (inclusive)~~ at all times thereafter, 110 per cent.;

“**Approved Broker**” means:

- (a) “**Approved Broker**” means in respect of any Borrower Ship, any of Barry Rogliano Salles, Breamar Seascope Ltd., Fearnleys A/S, H. Clarkson & Company Limited, Howe Robinson, Kontiki Shipbrokers, Maersk Brokers and Simpson Spence & Young or any other independent and reputable sale and purchase broker nominated by the Borrowers and, approved and appointed by the Agent and, in the plural, means any or all of them; and
- (b) in respect of any Tasman Ship, any of Howe Robinson, Marine Evaluations Ltd. Barry Rogliano Salles (BRS) Group, Maersk Broker K/S, Kontiki Valuations Ltd and such other brokers as may be agreed between the Senior Security Trustee, the relevant Collateral Owner and ABN Amro Bank N.V. (as junior mortgagee in respect of each such Tasman Ship);

“**Approved Flag**” means the Marshall Islands flag, the Liberian flag, the Panama flag or any other flag which the Agent may approve as the flag on which a Ship may be registered;

“Approved Flag State” means the Marshall Islands, Liberia, Panama or any other state in which the Agent may at the request of the Borrowers or, in the case of the Tasman Ships, the Collateral Owner owning that Tasman Ship, approve that a Ship be registered;

“Approved Manager” means, in relation to each Ship, Conchart Commercial Inc., a corporation incorporated and existing under the laws of the Marshall Islands, having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as commercial manager (the **“Commercial Manager”**) and Technomar Shipping Inc., a corporation incorporated and existing under the laws of the Republic of Liberia, having its registered office at 80 Broad Street, Monrovia, Liberia and each with management office at 3-5 Menandrou Street, Kifissia 145 61, Athens, Greece as technical manager (the **“Technical Manager”**), or any other company which the Agent may, at the request of the Borrower or, as the case may be, the Collateral Owner, owning that Ship, approve from time to time as the technical and/or commercial manager of that Ship and, in the plural, means both of them;

“Approved Manager’s Undertaking” means, in relation to each Ship, a letter of undertaking (such letter of undertaking being first priority in respect of a Borrower Ship and, in the case of each Tasman Ship, a second priority letter of undertaking) executed or to be executed by each Approved Manager in favour of the Security Trustee, agreeing certain matters in relation to the management of the relevant Ship and subordinating its rights against that Ship and the Borrower or, as the case may be, the Collateral Owner, owning that Ship to the rights of the Lenders under the Finance Documents, in the Agreed Form and, in the plural, means both of them;

“Arranger” means ABN AMRO Bank N.V., acting in such capacity through its office at 93 Coolsingel, 3012 AE, Rotterdam, The Netherlands, or any successor;

“Availability Period” means the period commencing on the date of this Agreement and ending on 31 August 2017 (or such later date as the Agent may, with the authorisation of all the Lenders, approve) or, if earlier, the date on which the Total Commitments are fully borrowed, fully (or partially as the case may be) cancelled or terminated;

“Bail-In Action” means the exercise of any Write-down and Conversion Powers;

“Bail-In Legislation” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation;

“Balloon Instalment” has the meaning given in ~~Clauses 8.1(a) and 8.1(b)~~Clause 8.1;

“Basel III” means:

- (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and

(b) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”;

“**Book Leverage Ratio**” shall have the meaning given to this term in the Corporate Guarantee;

“**Borrower**” means each of Borrower A, ~~Borrower B, Borrower C, Borrower D~~ and Borrower ~~E-B~~ and, in the plural, means ~~any or all~~ both of them;

“**Borrower A**” means Zeus One Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“**Borrower B**” means Ikaros Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“**Borrower C**” ~~means Tasman Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Company Complex, Ajeltake Road, Ajeltake islands, MH96960, Majuro, Marshall Islands;~~

“**Borrower D**” ~~means Hudson Marino LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;~~

“**Borrower E**” ~~means Drake Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Island;~~

“**Borrower-Ship**” means each of Ship A and Ship B and, in the plural, means both of them;

“**Business Day**” means a day on which banks are open in London, Athens, and Rotterdam and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City;

“**CACIB Facility Agreement**” means the facility agreement dated 11th August 2017 entered into by Pericles Marine LLC, Hephaestus Marine LLC and Hector Marine LLC, as joint and several borrowers with Credit Agricole Corporate and Investment Bank, as lender for the purpose of refinancing the existing indebtedness under the facility agreement dated 4 May 2011 entered into by Credit Agricole Corporate and Investment Bank (as lender) and Hector Marine LLC, Pericles Marine LLC and Hephaestus Marine LLC (as joint and several borrowers), as the same may be amended and/or supplemented from time to time;

“**Cash Collateral Account**” means, in relation to the Tasman Ships, an account in the name of the Collateral Owners with the Agent in Rotterdam designated “[name of relevant Collateral Owner] — Cash Collateral Account”, or any other account (with that or another office of the Agent) which is designated by the Agent as the Cash Collateral Account in relation to the Tasman Ships for the purposes of this Agreement;

“**Cash Collateral Amount**” means the credit balance being maintained on the Cash Collateral Account from time to time;

“**Cash Sweep Period**” ~~has the meaning given in Clause 8.14;~~ means:

(a) in relation to each Borrower Ship, each three-month period commencing on 1 January, 1 April, 1 July and 1 October in each financial year of the Borrowers, commencing with the period commencing on 1 July 2017 and at all times thereafter; and

(b) in relation to each Tasman Ship, each period commencing on 1 January, 1 April, 1 July and 1 October in each financial year of the Collateral Owners, commencing with the effective date (as defined therein) of the Amending and Restating Agreement and at all times thereafter;

“**Change of Control**” has the meaning given in Clause 8.13;

“Charter” means:

(a) “Charter” means, in relation to a Borrower Ship, any charter or other contract of employment or any consecutive voyage charter or contract of affreightment in respect of that Ship having a duration (or capable of exceeding a duration) of at least 12 months; Borrower Ship having a duration for capable of exceeding a duration) of at least 12 months; and

(b) in relation to a Tasman Ship, any charter or other contract of employment or any consecutive voyage charter or contract of affreightment in respect of that Tasman Ship having a duration (or capable of exceeding a duration) of at least 12 months;

“Charterparty Assignment” means, in relation to a Ship, a specific assignment (such assignment being a first priority assignment in respect of a Borrower Ship and, in the case of each Tasman Ship, a second priority specific assignment) of the rights of the Borrower or, as the case may be, the Collateral Owner, who is the owner of that Ship under the Charter relative thereto executed or to be executed by that Borrower or, as the case may be, the Collateral Owner, in favour of the Security Trustee in the Agreed Form and, in the plural, means any or all of them;

“**Code**” means the United States Internal Revenue Code of 1986;

“Collateral Earnings Account” means, in relation to a Tasman Ship, an account in the name of the Collateral Owner owning that Tasman Ship with the Senior Facility Agent in Amsterdam designated “[name of relevant Collateral Owner] — Earnings Account” or any other account (with that or another office of the Senior Facility Agent) which is designated by the Senior Facility Agent as the Collateral Earnings Account in relation to that Tasman Ship and, in the plural, means any or all of them;

“Collateral Guarantee” means, in respect of each Collateral Owner, a collateral guarantee executed or, as the context may require, to be executed by that Collateral Owner of the obligations of the Borrowers under this Agreement and the other Finance Documents to which each Borrower is a party in the Agreed Form;

“Collateral Owner” means each of Collateral Owner A, Collateral Owner B and Collateral Owner C and, in the plural, means all of them;

“Collateral Owner A” means Tasman Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“Collateral Owner B” means Hudson Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“Collateral Owner C” means Drake Marine LLC, a limited liability company formed in the Marsha Islands, whose, registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“Collateral Security” means each Collateral Guarantee and any other Security Interest granted or to be granted over, or in relation to, a Tasman Ship, in favour of the Security Trustee pursuant to the terms of this Agreement and, in the plural, means all of them;

“Collateral Ship A” means the 2000-built container vessel of 5,468 TEU currently registered in the ownership of Collateral Owner A with IMO No. 9189342 under the Marshall Islands flag with the name “TASMAN”;

“Collateral Ship B” means the 2000-built container vessel of 5,468 TEU currently registered in the ownership of Collateral Owner B with IMO No. 9189354 under the Liberian flag with the name “DIMITRISY”;

“Collateral Ship C” means the 2000-built container vessel of 5,468 TEU currently registered in the ownership of Collateral Owner C with IMO No. 9189500 under the Liberian flag with the name “IAN H”;

“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 Certificate” has the meaning given in the Corporate Guarantee;

“Confidential Information” means all information relating to the Loan, any Borrower, any Security Party, any member of the Group or the Finance Documents of which the Creditor Parties becomes aware in its capacity as Creditor Party or which is received by the Creditor Parties in relation to the Finance Documents from any member of the Group or any of its advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by a Creditor Party of Clause 31; or
- (b) is identified in writing at the time of delivery as non-confidential by any Borrower, member of the Group or Security Party or any of its advisers; or
- (c) is known by the Creditor Parties before the date the information is disclosed to it or is lawfully obtained by the Creditor Parties after that date, from a source which is, as far as the Creditor Parties are aware, unconnected with the Group and which, in either case, as far as the Creditor Parties are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality;

“Confirmation” and “Early Termination Date”, in relation to any continuing Designated Transaction, have the meanings given in the Master Agreement;

“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 Guarantee” means a corporate guarantee executed or, as the context may require, to be executed by the Corporate Guarantor of the obligations of the Borrowers under this Agreement and the other Finance Documents to which each Borrower is a party in the Agreed Form;

“Corporate Guarantor” means Poseidon Containers Holdings LLC, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro, Marshall Islands, MH96960;

“Corresponding Debt” means any amount which a Borrower owes to a Creditor Party under or in connection with the Finance Documents;

“CRD IV” means Directive 2013/36/EU of the European Union on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;

“CRR” means and Regulation (EU) No 575/2013 of the European Union on prudential requirements for credit institutions and investment firms;

“Creditor Party” means the Agent, the Arranger, the Security Trustee, any Lender or the Swap Bank, whether as at the date of this Agreement or at any later time;

“Debt Service” has the meaning given in Clause 8.14(b);

“Debt Service” means the sums incurred by the Borrowers in respect of the payment of principal of, and accrued interest on, the Loan pursuant to this Agreement and any sums paid by the Borrowers pursuant to the Master Agreement, from time to time;

“Designated Transaction” means a Transaction which ~~fulfills~~ fulfils the following requirements:

- (a) it is entered into by the Borrowers pursuant to the Master Agreement with the Swap Bank;
- (b) its purpose is the hedging of all or part of the Borrowers’ exposure under this Agreement to fluctuations in LIBOR arising from the funding of the Loan (or any part thereof) for a period expiring no later than the last Final Maturity Date; and
- (c) it is designated by the Borrowers, by delivery by the Borrowers to the Agent of a notice of designation in the form set out in Schedule 4, as a Designated Transaction for the purposes of the Finance Documents;

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

“Drawdown Date” means, in relation to a the Tranche, the date requested by the Borrowers for the Tranche to be made available to the Borrowers, or (as the context requires) the date on which the Tranche is actually made available to the Borrowers;

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

“DVB Facility Agreement” means the facility agreement dated 18 July 2017 entered into by, *inter alios*, the banks and financial institutions listed therein (as lenders), DVB Bank SE (as arranger, facility agent, security agent and account bank) and Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC (as joint and several borrowers), as the same may be amended and/or supplemented from time to time;

“Earnings” means, in relation to a Ship, all moneys whatsoever which are now, or later become, payable (actually or contingently) to the relevant Borrower or, as the case may be, the Collateral Owner, owning that Ship or the Security Trustee and which arise out of the use or operation of that Ship, including (but not limited to):

- (a) all freight, hire and passage moneys, compensation payable to that Borrower or, as the case may be, the Collateral Owner, or the Security Trustee (or, as the case may be, the Senior Security Trustee) in the event of requisition of that 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 that Ship;
- (b) all moneys which are at any time payable under any Insurances in respect of loss of hire, (if applicable under the Insurances); and
- (c) if and whenever that Ship is employed on terms whereby any moneys falling within paragraphs (a) or (b) 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 the Ship;

“Earnings Account” means, in relation to a Borrower Ship, an account in the name of the Borrower owning that Ship with the Agent in Rotterdam designated “[*name of relevant Borrower*] - Earnings Account”, or any other account (with that or another office of the Agent) which is designated by the Agent as the Earnings Account in relation to that Borrower Ship for the purposes of this Agreement and, in the plural, means any or all of them;

“EEA Member Country” means any member state of the European Union, Iceland, Liechtenstein and Norway;

“EnTrust Facility Agreement” means the facility agreement dated 11 August 2017 entered into by, *inter alios*, the financial institutions listed therein (as lenders), Wilmington Trust, National Association (as agent and security agent) and Leonidas Marine LLC (as borrower), as the same may be amended and/or supplemented from time to time;

“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:

- (a) any release of Environmentally Sensitive Material from a Ship; or
- (b) any incident in which Environmentally Sensitive Material is released from a vessel other than a Ship as a result of a collision between a Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which a Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or a Ship and/or any Borrower and/or a Collateral Owner and/or any operator or manager of a 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 any Borrower and/or Collateral Owner and/or any operator or manager of a 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;

“Equity Undertaking” means the undertaking executed by the Poseidon Shareholders in favour of the Security Trustee pursuant to the terms of the Original Agreement in relation to the Shareholders’ Equity, in Agreed Form;

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor thereto;

“ERISA Affiliate” means each person (as defined in Section 3(9) of ERISA) which together with the Borrowers (or, as the case may be, the Collateral Owners) or any of them would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Uniform Commercial Code (as from time to time in effect in any applicable jurisdiction);

“Equity Undertaking” means the undertaking executed or, as the context may require, to be executed by each of the Poseidon Shareholders in favour of the Security Trustee in the Agreed Form;

“EU Bail-In Legislation Schedule” means the document described as such and published by the Loan Market Association (or any successor person) from time to time;

“Event of Default” means any of the events or circumstances described in Clause 19.1;

“Excess Cash Flow” means:

(a) in respect of the Borrowers’ Ships, the excess cash amount calculated in accordance with Clause 8.14; and

(b) in respect of the Tasman Ships, the excess cash amount calculated in accordance with Clause 8.16;

“Excess Cash Flow Date” ~~has the meaning given in Clause 8.14~~ means, in relation to the Borrowers’ Ships or, as the case may be, the Tasman Ships, the last day of each relevant Cash Sweep Period;

“Excess Cash Flow Notice” has the meaning given in Clause 8.14;

“Excess Cash Flow Notice” means, in relation to the Borrowers’ Ships or, as the case may be, the Tasman Ships, a certificate to be provided, by the Borrowers or as the case may be the Collateral Owners, to the Agent within 45 days from each Excess Cash Flow Date related to the Ships owned by them, evidencing the consolidated Excess Cash Flow (in each case including a break-down of line items and, in respect of the excess cash flow notice related to the Tasman Ships, also identifying the Senior Deferred Amount that remains outstanding) available on such date;

“Existing Facility Agreement” means the facility agreement dated 14 November 2016 and made between (i) the Lenders, (ii) the Borrowers and the Collateral Owners (as joint and several borrowers), (iii) ABN AMRO Bank N.V. as agent, security trustee, the swap bank and arranger, in respect of a loan facility of up to (originally) \$106,417,500;

“Existing Indebtedness” means the outstanding Financial Indebtedness of the Borrowers and the Collateral Owners (as joint and several borrowers) under the Existing Facility Agreement on the Drawdown Date;

“Existing Indebtedness Grace Period” means the period commencing on the date of this Agreement and ending on the Drawdown Date;

“FATCA” means sections 1471 through 1474 of the Code and any US Treasury regulations thereunder;

“FATCA Deduction” means a deduction or withholding from a payment under any Finance Document required by or under FATCA;

“FATCA Exempt Party” means a party to a Finance Document that is entitled under FATCA to receive payments free from any FATCA Deduction;

“Final Maturity Date” means in respect of: 31 December 2020;

~~(a) Tranche A, 31 December 2020; and~~

~~(b) Tranche B, 30 June 2018;~~

“Finance Documents” means:

(a) this Agreement;

(b) the Amending and Restating Deed;

~~(c) the Master Agreement;~~

~~(d) the Agency and Trust Agreement;~~

~~(e) the Master Agreement Assignment;~~

(f) the Inter-Creditor Deed;

~~(g) the Corporate Guarantee;~~

(h) any Collateral Guarantee;

~~(i) the General Assignments;~~

~~(j) the Mortgages;~~

~~(k) the Accounts Pledge-Pledges;~~

~~(l) the Shares Security Deeds;~~

~~(m) any Charterparty Assignments;~~

~~(n) each Approved Manager’s Undertakings;~~

~~(o) any Subordination Agreement;~~

~~(p) any other document (whether creating a Security Interest or not) which is executed at any time by any Borrower, any Collateral Owner, the Corporate Guarantor, ~~either any~~ Shareholder, either Approved Manager or any other person as security for, or to establish any form of subordination or priorities arrangement in relation to, any amount payable to the Lenders and/or the Swap Bank under this Agreement or any of the other documents referred to in this definition; and~~

(g) ~~(n)~~ any other document designated as such by the Agent and the Borrowers.

“Financial Indebtedness” means any indebtedness for or in relation to:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with IFRS, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“Financial Year” means, in relation to each Borrower-, each Collateral Owner and the Corporate Guarantor, each period of 1 year commencing on 1 January in respect of which its annual (audited, in the case of the Corporate Guarantor only) accounts are or ought to be prepared;

“Fleet Vessels” means all of the vessels (including, but not limited to, the Ships) from time to time wholly owned by members of the Group (each a **“Fleet Vessel”**);

“General Assignment” means, in relation to a Borrower Ship, a first priority, and, in the case of each Tasman Ship, second priority general assignment of the Earnings, the Insurances and any Requisition Compensation in the Agreed Form and, in the plural, means all of them;

“Green Award” means The Green Award Foundation, an independent foundation, established 1994 on the initiative of the Rotterdam Municipal Port Management and the Dutch Ministry of Transport;

“Green Award Incentive Provider” means the name of any entity that has been appointed as such by the Green Award Foundation;

“Group” means the Corporate Guarantor and its Subsidiaries (including but not limited to the Borrowers and the Collateral Owners) from time to time during the Security Period and **“member of the Group”** shall be construed accordingly;

“Group Facility Agreement” means each of:

- (a) the DVB Facility Agreement;
- (b) the CACIB Facility Agreement; and
- (c) the EnTrust Facility Agreement, and, in the plural, means all of them.

“Holding Company” means, in relation to a person, any other person in respect of which it is a Subsidiary;

“IACS” means the International Association of Classification Societies;

“IAPPC” means a valid international air pollution prevention certificate issued under Annex VI;

“IFRS” means International Financial Reporting Standards promulgated by the International Accounting Standards Board, as amended from time to time, together with its pronouncements thereon from time to time;

“Initial Lender” means ABN AMRO Bank N.V., acting in such capacity through its office at Coolsingel 93, 3012 AG Rotterdam, The Netherlands, or any successor;

“Insurances” means, in relation to a Ship:

- (a) all policies and contracts of insurance, including entries of the Ship in any protection and indemnity or war risks association, effected in respect of the Ship, the Earnings or otherwise in relation to a Ship whether before, on or after the date of this Agreement; 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 and any rights in respect of any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement;

“Inter-Creditor Deed” means an inter-creditor deed executed or, as the context may require, to be executed, amongst others, by (i) the Security Trustee, the (ii) the Senior Security Trustee, (iii) the Borrowers, (iv) the Collateral Owners (as collateral owners under this Agreement and as collateral owners under the Senior Facility Agreement) and (v) THD Maritime (as borrower under the Senior Facility Agreement) in the Agreed Form;

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

“IPO” means the initial public offering of part or all of the share capital of the Corporate Guarantor and the subsequent listing of such share capital at a stock exchange acceptable to the Lenders;

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

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

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

“K&T Loan Agreement” means the loan facility agreement dated 4 May 2016 (as the same is amended and/or supplemented from time to time) between K&T Marine as lender and the Corporate Guarantor as borrower relating to a loan facility of up to \$12,211,552.74 in the Agreed Form;

“K&T Marine” means K&T Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“K&T Subordination Agreement” means an agreement to be made between K&T Marine (as lender), the Corporate Guarantor (as borrower) and the Security Trustee in respect of the K&T Loan Agreement;

“Legal Reservations” means:

- (a) the limitations on enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; and
- (b) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered as a condition precedent under this Agreement;

“Lender” means 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 26.14) or its transferee, successor or assign and, in the plural, means all of them;

“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 the Screen Rate; or
- (b) if no rate is quoted on the Screen Rate, the rate per annum determined by the Agent to be the rate per annum notified to the Agent by the Reference Bank as the rate at which deposits in Dollars are offered to the Reference Bank by leading banks in the London Interbank Market at the Reference Bank’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, and, if any such rate is below zero, LIBOR will be deemed to be zero;

“Loan” means the principal amount for the time being outstanding under this Agreement;

“Major Casualty” means, in relation to a Ship, any casualty to the 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 a the Tranche has been made, Lenders whose Commitments total 66.66 per cent. of the Total Commitments; and

(b) after a the Tranche has been made, Lenders whose Contributions total 66.66 per cent. of the Loan;

“Mandatory Cost” means any cost calculated by the Agent pursuant to Clause 21.9;

“Margin” means, in respect of:

(a) ~~Tranche A:~~

(i) commencing on the Drawdown Date up to and including 31 March 2019, 3.42 per cent. per annum; and

(ii) at all times thereafter, 3.50 per cent. per annum; and

(b) ~~Tranche B~~

(i) ~~commencing on the Drawdown Date up to and including 31 March 2019, 3.92 per cent. per annum; and~~

(ii) ~~at all times thereafter, 4.00 per cent. per annum;~~

“Market Value” means, in relation to:

(a) each Borrower Ship and each other Fleet Vessel (if not subject to a mortgage), the market value thereof determined in accordance with Clause 15.3; ~~and~~

(b) each Tasman Ship, the market value thereof determined in accordance with the relevant provisions of the Senior Facility Agreement until the security period thereunder has lapsed, at which point, as determined under paragraph (a) above; and

(c) ~~(b)~~each Fleet Vessel (other than the Borrower Ships, the Tasman Ships and the Fleet Vessels referred to in paragraph ~~(a)~~(s) (a) and (b) above), the market value thereof determined in accordance with the relevant provisions of the loan agreement financing such Fleet Vessel;

“Master Agreement” means the master agreement (on the 2002 ISDA (Multicurrency-Crossborder) form) in the Agreed Form made between the Borrowers and the Swap Bank and includes all Designated Transactions from time to time entered into and Confirmations from time to time exchanged under the master agreement;

“Master Agreement Assignment” means the assignment of the Master Agreement in the Agreed Form;

“Material Adverse Change” means any event or series of events which, in the reasonable opinion of the Majority Lenders, has or could reasonably be expected to have a Material Adverse Effect;

“Material Adverse Effect” means, in the reasonable opinion of the Majority Lenders, a material adverse effect on:

(a) the business, operations, property, condition (financial or otherwise) or prospect of any Borrower, any Collateral Owners, the Corporate Guarantor and/or the Group taken as a whole; or

(b) the ability of a Borrower-, a Collateral Owner or the Corporate Guarantor to perform its obligations under the Finance Documents; and

(c) the validity or enforceability of, or the effectiveness or ranking of any Security Interest granted or purported to be granted pursuant to any of the Finance Documents or the rights or remedies of any Creditor Party under any of the finance Documents;

“**Minimum Liquidity Amount**” has the meaning given in Clause 11.18;

“**Minimum PIK Security Cover Ratio**” means, at each PIK Calculation Date, (and notwithstanding anything to the contrary provided in Clause 15 (*Security Cover*)), the aggregate of (i) the aggregate of the Market Value of the Mortgaged Borrower Ships, (ii) the net realisable value of any additional security provided at that time under Clause 15 and (for the avoidance of doubt, not inclusive of any Collateral Security), (iii) the aggregate of the Minimum Liquidity Amount maintained in the Earnings Accounts of all Mortgaged the Borrower Ships in accordance with Clause 11.18 at the relevant time and (iv) the Cash Collateral Amount, being at least 130 per cent. of the aggregate amount of (i) the Loan and (ii) the Swap Exposure;

“**Mortgage**” means, in relation to a Borrower Ship, the first (and, in the case of each Tasman Ship, second) priority or, as the case may be, preferred ship mortgage on that Ship (and, if required pursuant to the laws of the applicable Approved Flag State, a deed of covenant collateral thereto) (and, in respect of each Borrower Ship, as amended and supplemented by the relevant Mortgage Addendum), in the Agreed Form and, in the plural, means any or all of them;

“**Mortgage Addendum**” means, in relation to each Borrower Ship, the first addendum to the First Preferred Mortgage over that Borrower Ship;

“**Mortgaged Ship**” means a Ship which is subject to a Mortgage at the relevant time;

“**Negotiation Period**” has the meaning given in Clause 5.10;

“**Net Worth**” has the meaning given to it in the Corporate Guarantee;

“**Notifying Lender**” has the meaning given in Clause 23.1 or Clause 24.1 as the context requires;

“**Operating Expenses**” means, in respect of each Ship during a Cash Sweep Period, the aggregate expenditure necessarily incurred by the Borrower or, as the case may be, Collateral Owner, which is the owner of that Ship during that Cash Sweep Period in operating, insuring, maintaining, repairing and generally trading its Ship (including, but not limited to, any expenses in respect of dry-docking, special survey (including any projected costs for dry-docking and special surveys during the next 3 month period) and general and administrative expenses paid in respect of the Ship, any voyage expenses, as well as any other capitalised expenses as same are defined as per IFRS);

“**Original Borrowers**” means each of the Borrowers and each of the Collateral Owners and, in plural, means all of them;

“**Original Financial Statements**” means annual audited consolidated financial statements of the Corporate Guarantor for the year ending 31 December 2016;

“**Parallel Debt**” means any amount which a Borrower owes to the Security Trustee under Clause 3.7;

“**Participating Member State**” means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;

“Party” means a party to this Agreement;

“PATRIOT Act” means the United States Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Improvement and Reauthorization Act of 2005 (H.R. 3199);

“Payment Currency” has the meaning given in Clause 21.5;

“Permitted Loan” means:

- (a) a loan made to a Borrower or, as the case may be, a Collateral Owner, by any Affiliate, Holding Company or Subsidiary of the Corporate Guarantor or any other person:
 - (i) which is unsecured;
 - (ii) in relation to which no interest, fees, costs or expenses are payable during the Security Period;
 - (iii) in relation to which no repayment or prepayment of principal is capable of being made to the relevant lender in accordance with its terms and conditions during the Security Period;
 - (iv) which is fully subordinated in all respects to the Secured Liabilities; and
 - (v) any creditor’s rights thereunder have been assigned in favour of the Creditor Parties; and
- (b) the loan made to the Corporate Guarantor pursuant to the K&T Loan Agreement, and, in the plural means, any or all of them;

“Permitted Security Interests” means:

- (a) Security Interests created by the Finance Documents;
- (b) liens for unpaid master’s and crew’s wages;
- (c) liens for salvage;
- (d) liens arising by operation of law for not more than 2 months’ prepaid hire under any charter in relation to a Ship not prohibited by this Agreement;
- (e) liens for master’s disbursements incurred in the ordinary course of trading and any other lien arising by operation of law or otherwise in the ordinary course of the trading, chartering, operation, repair or maintenance of a Ship, provided such liens do not secure amounts more than 30 days overdue (unless the overdue amount is being contested by the relevant Borrower or, as the case may be, relevant Collateral Owner, in good faith by appropriate steps) and subject, in the case of liens for repair or maintenance, to Clause 14.12(g);
- (f) any Security Interest created in favour of a plaintiff or defendant in any action of the court or tribunal before whom such action is brought as security for costs and expenses while a Borrower or, as the case may be, a Collateral Owner, is prosecuting or defending such action in good faith by appropriate steps;
- (g) a right of pledge (and set-off) under and pursuant to the general conditions of ABN AMRO Bank N.V.; ~~and~~

(h) for the duration of the Existing Indebtedness Grace Period only, any Security Interests created under and pursuant to the terms of the Existing Facility Agreement; and

(i) Security Interests created in relation to the Tasman Ships by the Senior Finance Documents;

“Pertinent Document” means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause 13 or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to a Servicing Bank in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c);

“Pertinent Jurisdiction”, in relation to a company, means:

- (a) England and Wales;
- (b) the country under the laws of which the company is incorporated or formed;
- (c) a country in which the company has the centre of its main interests or 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 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 a main or territorial or ancillary proceedings, or which would have such jurisdiction if their assistance were requested by the courts of a country referred to in paragraphs (b) or (c);

“Pertinent Matter” means:

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

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

“PIK Amount” means, if at any PIK Calculation Date, the actual Security Cover Ratio on that PIK Calculation Date is less than the Minimum PIK Security Cover Ratio (such amount is evidenced in the PIK Compliance Certificates provided by the Borrowers pursuant to Clause 11.6(d) utilising the most recent semi-annual valuations provided under Clause 11.6(d) or, as the case may be, at the option of the Borrowers, the additional valuations provided pursuant to Clause 15.8), 2 per cent. of the amount of the Loan which would be required to be prepaid so as to eliminate the shortfall in the Minimum PIK Security Cover Ratio;

“PIK Calculation Date” means the date on which each PIK Compliance Certificate is due to be provided by the Borrowers to the Agent pursuant to Clause 11.6(d);

“PIK Compliance Certificate” means the compliance certificate evidencing the PIK Amount to be provided in accordance with Clause 11.6(d) in the form set out in Schedule 6;

“Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA that is subject to Title IV of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed to by any Creditor Party or any of their respective ERISA Affiliates;

“Poseidon Shareholders” means each of the shareholders being the direct legal and beneficial owners of the limited liability company interests in the Corporate Guarantor as disclosed to the Agent at the date of this Agreement before an IPO taking place;

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

“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 which is 2 Business Days before the first day of that Interest Period or any other period, unless market practice differs in the London Interbank Market for a currency, in which case the Quotation Date will be determined by the Agent in accordance with market practice in the London Interbank Market (and if quotations would normally be given by leading banks in the London Interbank Market on more than one day, the Quotation Date will be the last of those days);

“Reference Banks” means, subject to Clause 26.16, the branch of ABN AMRO Bank N.V. at 93 Coolsingel, 3012 AE, Rotterdam, The Netherlands and the London branch or any other bank or financial institution selected by the Agent;

“Refinancing Date” means, in relation to the Existing Facility Agreement, the date on which the Existing Indebtedness is refinanced by the Loan;

“Refinancing Period” means the period commencing on the date of this Agreement and ending on 31 August 2017 (or such later period as may be agreed by the Agent acting with the authorisation of the Majority Lenders);

“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;

“Repayment Instalment” has the meaning given in Clause 8.1(a);

“Representative” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian;

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

“Resolution Authority” means any body which has authority to exercise any Write-down and Conversion Powers;

“Restricted Party” means a person:

- (a) ~~“Restricted Person” means a person that is~~ (i) listed on, or owned or controlled by a person listed on any Sanctions List; (ii) ~~located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised; Under the laws of country or territory that is the target of country wise Sanctions; or~~ (iii) otherwise a target of Sanctions; or
- (b) located in, organised under the laws of or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory which is a subject of country-wide or territory-wide Sanctions (including, without limitation, at the date of this Agreement, Cuba, Iran, North Korea, Syria and Sudan); or
- (c) otherwise a subject of Sanctions;

“Retention Account” means, in relation to the Borrowers, a joint account in the names of the Borrowers with the Agent in Rotterdam designated “*name of Borrowers—Retention Account*”, or any other account (with that or another office of the Agent or with a bank or financial institution other than the Agent) which is designated by the Agent as the Retention Account for the purposes of this Agreement and, in the plural means any or all of them;

“Sanctions” means any ~~trade~~, economic or ~~trade~~ financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (i) ~~the United States government;~~ (ii) ~~the United Nations;~~ (iii) ~~the European Union or its Member States;~~ (iv) ~~the United Kingdom;~~ (v) any country to which the Borrower, the Corporate Guarantor, any other Security Party, any member of the Group or any Affiliate of any of them is bound; or (vi) the respective governmental institutions and agencies of any of the foregoing, including without limitation, the Office of Foreign Assets Control of the US Department of Treasury (**OFAC**), the United States Department of State and Her Majesty’s Treasury (**HMT**) (together “**Sanctions Authorities**”); a Sanctions Authority;

“Sanctions Authority” means:

- (a) the Security Council of the United Nations;
- (b) the United States of America;
- (c) the United Kingdom;
- (d) the European Union;
- (e) any member state of the European Union (including, without limitation, The Netherlands);
- (f) any country to which any Security Party is bound; and
- (g) the governments and official institutions or agencies of any of paragraphs (a) to (f) above, including without limitation the U.S. Office of Foreign Asset Control (“OFAC”), the U.S. Department of State, and Her Majesty’s Treasury (“HMT”);

“Sanctions List” means the “Specially Designated Nationals and Blocked Persons”— list ~~issued~~ maintained by OFAC, the “Consolidated List of Financial Sanctions Targets and Investment Ban List” ~~issued~~ maintained by HMT; ~~or any similar list issued or maintained or made public by any of the Sanctions Authorities; maintained by, or public announcement of a Sanctions designation made by, a Sanctions Authority, each as amended, supplemented or substituted from time to time;~~

“Screen Rate” means the London interbank offered rate administered by the ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for Dollars for the relevant period displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrowers and the Lenders;

“Secured Liabilities” means all liabilities which the Borrowers, the Corporate Guarantor, 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 Cover Ratio” means, at any relevant time, the aggregate of (i) the aggregate of the Market Value of the ~~Mortgaged Borrower~~ Ships (determined in accordance with Clause 15.3), (ii) the net realisable value of any additional security provided at that time under ~~Clause 15 and (not including, for the avoidance of doubt, any Collateral Security)~~, (iii) the aggregate of the Minimum Liquidity Amount maintained in the Earnings Accounts of ~~all Mortgaged the Borrower~~ Ships in accordance with Clause 11.18 at the relevant time and (iv) the aggregate of the Cash Collateral Amount at the relevant time, at that time expressed as a percentage of the aggregate amount of (i) the Loan and (ii) the Swap Exposure;

“Security Interest” means:

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

“Security Party” means the Corporate Guarantor, ~~either each Collateral Owner, any~~ Shareholder, either Approved Manager and any other person (other than any Poseidon Shareholder, K&T Marine or any 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 final paragraph of the definition of “Finance Documents”;

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

- (a) all amounts which have become due for payment by any 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 a Borrower nor any Security Party has any future or contingent liability under Clauses 20, 21 or ~~22~~ or 22 or any other provision of this Agreement or another Finance Document; and
- (d) the Agent, the Arranger, the Security Trustee and the Majority Lenders do not consider that there is a significant risk that any payment or transaction under a Finance Document would be set aside, or would have to be reversed or adjusted, in any present or possible future bankruptcy of 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 Property” means:

- (a) the Transaction Security expressed to be granted in favour of the Security Trustee as trustee for, or for the benefit of, the Creditor Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Borrower or any other Security Party to pay amounts in relation to the Secured Liabilities to the Security Trustee as trustee for, or for the benefit of, the Creditor Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Borrower or any Security Party or any other person in favour of the Security Trustee as trustee for, or for the benefit of, the Creditor Parties;
- (c) the Security Trustee’s interest in any turnover trust created under the Finance Documents;
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Trustee is required by the terms of the Finance Documents to hold as trustee on trust for, or for the benefit of, the Creditor Parties,

except:

- (i) rights intended for the sole benefit of the Security Trustee; and
- (ii) any moneys or other assets which the Security Trustee has transferred to the Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement.

“Security Trustee” means ABN AMRO Bank N.V., acting in such capacity through its office at 93 Coolsingel, 3012 AE, Rotterdam, The Netherlands, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

“Senior Debt Service” means the sums incurred by THD Maritime (as borrower) in respect of the payment of principal of, and accrued interest pursuant to the Senior Facility Agreement from time to time;

“Senior Deferred Amount” means, in respect of the Senior Facility Agreement, an amount equal to four million five hundred thousand Dollars (\$4,500,000), being the amount of principal repayments which have been identified as “deferred” until the end of the waiver period thereunder, as such amount may be reduced from time to time pursuant to the excess cash terms and conditions under the Senior Facility Agreement or as otherwise provided under the Senior Facility Agreement;

“Senior Facility Agent” means Amsterdam Trade Bank N.V., acting in its capacity as such under the Senior Facility Agreement through its office at World Trade Center, Tower 1, Level 6, Stawinskylaan 1939, Amsterdam 1077 XX, Netherlands (or any successor thereof);

“Senior Facility Agreement” means the facility agreement dated 9 October 2018 and made between, inter alia, (i) THD Maritime (as borrower), (ii) Amsterdam Trade Bank N.V. and others (as lenders), (iii) Amsterdam Trade Bank N.V. as agent, security trustee and arranger, in respect of a loan facility of up to \$17,100,000;

“Senior Finance Documents” means any finance document (howsoever defined) granted or to be granted pursuant to the terms and conditions of the Senior Facility Agreement;

“Senior Mandatory Prepayment Amount” shall have the meaning set out in the Inter-Creditor Deed;

“Senior Security Trustee” means Amsterdam Trade Bank N.V. in its capacity as security trustee under the Senior Facility Agreement, acting through its office at World Trade Center, Tower 1, Level 6, Stawinskylaan 1939, Amsterdam 1077 XX, Netherlands (or any successor thereof);

“Senior Surplus Proceeds” means, in respect of a sale, scrapping, disposal or Total Loss of a Tasman Ship, the surplus proceeds after the required Senior Mandatory Prepayment Amount has been paid under the Senior Facility Agreement in accordance with the terms and conditions of the Inter-Creditor Deed;

“Servicing Bank” means the Agent or the Security Trustee (or any successor thereof);

“Shareholder” means:

- (a) in relation to Borrower B, Odysseus Marine LLC, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro, Marshall Islands, MH96960; ~~and~~
- (b) in relation to ~~the other Borrowers (other than Borrower B)~~ A, the Corporate Guarantor; and
- (c) in relation to each of the Collateral Owners, THD Maritime;

“Shareholders’ Equity” means the equity contribution referred to in the Equity Undertaking in the amount of \$13,000,000 injected by the Corporate Guarantor and paid in to the Group utilising funds advanced to the Corporate Guarantor pursuant to the K&T Loan Agreement as of the effective date of the Amending and Restating Deed;

“Shares Security Deed” means, - (a) in relation to each Borrower, a deed creating first priority Security Interests over the limited liability company interests in that Borrower; and (b) in relation to each Collateral Owner, a deed creating second priority Security Interests over the limited liability company interests in that Collateral Owner, in each case to be executed by the relevant Shareholder in the Agreed Form and, in the plural, means all of them;

“Ship” means each of Ship A, Ship B, each Tasman Ship C, Ship D and Ship E and, in the plural, means any or all of them;

“Ship A” means the 2007-built container vessel of 5,100 TEU currently registered in the ownership of Borrower A with IMO No. 9318113 under the Panamanian flag with the name “ORCA I”;

“**Ship B**” means the 2013-built container vessel of 6,700 TEU currently registered in the ownership of Borrower B with IMO No. 9641235 under the Marshall Islands flag with the name “KATHERINE”;

“**Ship C**” means the 2000 built container vessel of 5,468 TEU currently registered in the ownership of Borrower C with IMO No. 9189342 under the Marshall Islands flag with the name “TASMAN”;

“**Ship D**” means the 2000 built container vessel of 5,468 TEU currently registered in the ownership of Borrower D with IMO No. 9189354 under the Liberian flag with the name “DIMITRIS Y”;

“**Ship E**” means the 2000 built container vessel of 5,468 TEU currently registered in the ownership of Borrower E with IMO No. 9189500 under the Liberian flag with the name “IAN H”;

“**Shortfall Amount**” means an amount (if any) which when aggregated with the excess Earnings applied towards prepayment of part of the Loan during the period commencing on 1 January 2019 and ending on 31 December 2019 pursuant to Clause 8.14 is equal to \$1,300,000;

“**Subordination Agreement**” means (i) an agreement to be made between the creditor under a Permitted Loan, the Borrower or Borrowers (or, as the case may be, the Collateral Owner or Collateral Owners) who have received credit under such Permitted Loan and the Security Trustee (and, in the case of any Permitted Loan to a Collateral Owner, also the Senior Security Trustee) and (ii) the K&T Subordination Agreement;

“**Subsidiary**” means a subsidiary within the meaning of section 1159 of the Companies Act 2006;

“**Swap Bank**” means ABN AMRO Bank N.V., acting in such capacity through its office at Gustav Mahlerlaan 10, NL-1082 PP, Amsterdam, The Netherlands;

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

“**Tasman Borrower**” means each of Borrower C, Borrower D and Borrower E that are joint and several borrowers under the Tasman Existing Facility Agreement and, in the plural, means any or all of them;

“**Tasman Ship**” means each of Collateral Ship €A, Collateral Ship €B and Collateral Ship €C and, in the plural, means all of them;

“**THD Maritime**” means THD Maritime Co., Limited, a private company limited with shares incorporated and existing under the laws of the Republic of Cyprus, whose registered office is at 16 Sophouli Street, Chanteclair Building, Floor 4, flat 403, Nicosia, Republic of Cyprus;

“**Total Loss**” means, in relation to a 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 30 days (or within any such longer period as may be requested by the Borrowers or, as the case may be the Collateral Owner owning that Ship, and approved by the Agent acting with the authorisation of the Majority Lenders) redelivered to the full control of the Borrower or, as the case may be, Collateral Owner, owning that Ship;

- (c) any condemnation of that Ship by any tribunal or by any person or person claiming to be a tribunal whose decision or judgement is enforceable; and
- (d) any arrest, capture, seizure or detention of that Ship (including any hijacking or theft) unless it is within 45 days (or within any such longer period as may be requested by the Borrowers or, as the case may be, the Collateral Owner owning that Ship, and approved by the Agent acting with the authorisation of the Majority Lenders) redelivered to the full control of the Borrower or, as the case may be, Collateral Owner, owning that Ship;

“Total Loss Date” means, in relation to a 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:
 - (A) ~~(i)~~ the date on which a notice of abandonment is given to the insurers; and
 - (B) ~~(ii)~~ the date of any compromise, arrangement or agreement made by or on behalf of the Borrower or, as the case may be, Collateral Owner, owning that Ship 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;

“Tranche” means each of Tranche A and Tranche B;

“Tranche Amount” means, in respect of:

- (a) ~~Tranche A, \$ 65,292,500; and~~
- (b) ~~Tranche B, \$17,167,178.29;~~

“Tranche A “Tranche” means an amount of ~~\$65,293,500~~ 64,253,892.38 or, as the context may require, the principal amount outstanding in respect of ~~that the~~ the Tranche A from time to time (as that outstanding amount may be increased by the aggregate PIK Amounts in accordance with Clause 8.1(a)~~(i)(A)~~);

“Tranche B” means amount of ~~\$17,167,178.29~~ or, as the context may require, ~~the principal amount outstanding in respect of that Tranche B~~ from time to time;

“Tranche Amount” means \$64,253,892.38;

“Transaction” has the meaning given in the Master Agreement;

“Transaction Security” means the Security Interests created or evidenced or expressed to be created or evidenced under the Finance Documents.

“**Transfer Certificate**” has the meaning given in Clause 26.2;

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

“**Value Adjusted Leverage Ratio**” has the meaning given to it in the Corporate Guarantee;

“**Waiver Period**” means the period commencing on the Drawdown Date and ending on (inclusive) 31 December 2019; and

“**Write-down and Conversion Powers**” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

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 (including, but not limited to, any governmental or third party 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 or fax;

“**excess risks**” means, in relation to a Ship, the proportion of claims for general average, salvage and salvage charges not recoverable under the hull and machinery policies in respect of the Ship in consequence of its insured value being less than the value at which the 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 a Ship, all insurances effected, or which the Borrower or, as the case may be, the Collateral Owner, owning the Ship is obliged to effect, under Clause 13 or any other provision of this Agreement or another Finance Document;

“**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 (either having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

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

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

“**war risks**” includes the risk of mines, blocking and trapping, terrorism, piracy and confiscation and all other 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 23 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 General Interpretation

In this Agreement:

- (a) references to, or to a provision of, a Finance Document or any other document are references to it as amended or supplemented, whether before the date of this Agreement or otherwise;
- (b) references to, or to a provision of, any law include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (c) words denoting the singular number shall include the plural and vice versa; and
- (d) Clauses 1.1 to 1.4 apply unless the contrary intention appears.

1.5 Headings

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

1.6 Accounting Terms

All accounting terms not specifically defined herein or in any other Finance Document shall be construed in accordance with IFRS and all financial data submitted pursuant to this Agreement or any other Finance Document shall be prepared in accordance with IFRS; **Provided however that** if the Corporate Guarantor notifies the Agent that it wishes to amend any covenant or any related definition to eliminate the effect of any change in IFRS occurring after the date of this Agreement on the determination of such covenant (or if the Agent notifies the Corporate Guarantor that the Majority Lenders wish to amend the covenants or any related definition for such purpose), then the Corporate Guarantor’s compliance with such covenant shall be determined on the basis of IFRS in effect immediately before the relevant change in IFRS became effective until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Corporate Guarantor and the Majority Lenders **Provided that** if such notice is not withdrawn or such covenant is not amended within 45 Business Days following the service of such notice then the Corporate Guarantor’s compliance with such covenant shall be determined on the basis of IFRS as in effect at the relevant time.

2 FACILITY

2.1 Amount of facility

Subject to the other provisions of this Agreement, the Lenders shall make available to the Borrowers a loan facility, in ~~two tranches, not exceeding in aggregate the amount of \$82,459,678.29 and in respect of each one Tranche, not exceeding the relevant Tranche Amount in respect of that Tranche.~~

2.2 Lenders' participations in ~~Tranches~~ the Tranche

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

2.3 Purpose of ~~Tranches~~ the Tranche

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

3 POSITION OF THE LENDERS, THE SWAP BANK AND THE MAJORITY LENDERS

3.1 Interests of Lenders and Swap Bank several

The rights of the Lenders and the Swap Bank under this Agreement and the Master Agreement are several; accordingly:

- (a) each Lender shall be entitled to sue for any amount which has become due and payable by the Borrowers to it under this Agreement; and
- (b) the Swap Bank shall be entitled to sue for any amount which has become due and payable by the Borrowers to it under the Master Agreement, without joining the Agent, the Security Trustee, any other Lender and the Swap Bank as additional parties in the proceedings.

3.2 Proceedings by individual Lender or Swap Bank

However, without the prior consent of the Majority Lenders, no Lender nor the Swap Bank may bring proceedings in respect of:

- (a) any other liability or obligation of any Borrower or a Security Party under or connected with a Finance Document; or
- (b) any misrepresentation or breach of warranty by any Borrower or a Security Party in or connected with a Finance Document.

3.3 Obligations several

The obligations of the Lenders and the Swap Bank under this Agreement and of the Swap Bank under the Master Agreement are several; and a failure of a Lender or the Swap Bank to perform its obligations under this Agreement or of the Swap Bank to perform its obligations under the Master Agreement shall not result in:

- (a) the obligations of the other Lenders or (as the case may be) the Swap Bank being increased; nor
- (b) any Borrower, any Security Party or any other Creditor Party being discharged (in whole or in part) from its obligations under any Finance Document, and in no circumstances shall a Lender or the Swap Bank have any responsibility for a failure of another Lender or the Swap Bank to perform its obligations under this Agreement or the Master Agreement.

3.4 Parties bound by certain actions of Majority Lenders

Every Lender, the Swap Bank, 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 (subject always to Clause 27.2); and
- (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.

3.5 Reliance on action of Agent

However, each Borrower 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.

3.6 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.

3.7 Parallel debt

- (a) Each Borrower irrevocably and unconditionally undertakes to pay to the Security Trustee amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of a Borrower:
 - (i) shall become due and payable at the same time as its Corresponding Debt;
 - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For the purposes of this Clause 3.7, the Security Trustee:
 - (i) is the independent and separate creditor of all the Parallel Debt;
 - (ii) acts in its own name and not as agent, representative or trustee of the Creditor Parties and its claims in respect of the Parallel Debt shall not be held on trust; and
 - (iii) shall have the independent and separate right to demand payment of any or all the Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).

- (d) The Parallel Debt of a Borrower shall be:
- (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Corresponding Debt has increased.
- (e) The Corresponding Debt of a Borrower shall be:
- (i) decreased to the extent that its Parallel Debt has been irrevocable and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Parallel Debt has increased,
- in each case provided that the Parallel Debt of a Borrower shall never exceed its Corresponding Debt.
- (f) All amounts received or recovered by the Security Trustee in connection with this Clause 3.7, to the extent permitted by applicable law, shall be applied in accordance with Clause 17 (*Application of Receipts*).

3.8 Lender incorporated or having its registered office in the Federal Republic of Germany

On any matter referred to in Clause 11.20 in respect of which the Lenders are to vote but in respect of which a Lender incorporated or having its registered office in the Federal Republic of Germany to whom Clause 11.20(d) applies shall not vote in accordance with such paragraph:

- (a) for the purposes of determining whether approval of the Majority Lenders is obtained the references in the definition of “Majority Lenders” to 66.66 per cent. of the Total Commitments and to 66.66 per cent. of the Loan shall for this purpose be construed to refer to 66.66 per cent. of the Total Commitments or, as the case may be, the Loan only taking account of the other Commitments of, or as the case may be, the participation in the Loan of, the Lenders and ignoring the Commitment of or, as the case may be, the participation in the Loan of, the Lender incorporated or having its registered office in the Federal Republic of Germany; and an action taken by the Majority Lenders as such definition is modified by this paragraph (a) shall be valid in the applicable circumstances and binding on all parties; and
- (b) for the purposes of determining whether the approval of all Lenders is obtained, all Lenders shall be construed to mean all the other Lenders other than any Lender incorporated or having its registered office in the Federal Republic of Germany and an action taken by all Lenders as modified by this paragraph (b) shall be valid in the applicable circumstances and binding on all the parties of this Agreement.

4 DRAWDOWN

4.1 Request for Tranche

Subject to the following conditions, the Borrowers may request a the Tranche to be made available by ensuring that the Agent receives a completed Drawdown Notice not later than 11.00 a.m. (Rotterdam time) 2 (two) Business Days prior to the intended Drawdown Date or within such shorter period as the Agent may approve.

4.2 Availability

The conditions referred to in Clause 4.1 are that:

- (a) a Drawdown Date has to be a Business Day during the Availability Period;
- ~~(b) both Tranches shall be advanced simultaneously on the same Drawdown Date;~~

- (b) ~~(e)~~ the amount of each the Tranche shall not exceed the ~~relevant~~ Tranche Amount; and
(c) ~~(d)~~ the aggregate amount of the ~~Tranches~~ Tranche shall not exceed the Total Commitments.

4.3 Notification to Lenders of receipt of a Drawdown Notice

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

- (a) the amount of the Tranche and the Drawdown Date;
(b) the amount of that Lender's participation in the Tranche; and
(c) the duration of the first Interest Period.

4.4 Drawdown Notice irrevocable

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

4.5 Lenders to make available Contributions

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

4.6 Disbursement of Tranche

Subject to the provisions of this Agreement, the Agent shall on the 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 of ABN AMRO Bank N.V. (acting as agent under the Existing Facility Agreement relevant to the Tranche being advanced) which the Borrowers specify in the Drawdown Notice; and
(b) in the like funds as the Agent received the payments from the Lenders.

4.7 Disbursement of Tranche to third party

The payment by the Agent under Clause 4.6 shall constitute the making of the Tranche and the Borrowers shall at that time become indebted, as principal and direct obligors, to each Lender in an amount equal to that Lender's Contribution.

5 INTEREST

5.1 Payment of normal interest

Subject to Clause 5.3 and the other provisions of this Agreement, interest on ~~each the~~ Tranche or the Loan in respect of each Interest Period applicable thereto 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 the~~ Tranche or the Loan in respect of an Interest Period shall be the aggregate of (i) the applicable Margin, (ii) the Mandatory Cost (if any) ~~and~~ (iii) LIBOR for that Interest Period.

5.3 Payment of accrued interest

In the case of an Interest Period longer than 3 months, accrued interest shall be paid every 3 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 Reference Banks to quote

A Reference Bank which is a Lender shall use all reasonable efforts to supply the quotation required of it for the purposes of fixing a rate of interest under this Agreement.

5.6 Absence of quotations by Reference Banks

If any Reference Bank fails to supply a quotation, 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) no screen rate is quoted in the Screen Rate and the Reference Banks (or, if there is only one Reference Bank at the relevant time, that Reference Bank) do not or, as the case may be, does not, before 1.00 p.m. (London time) on the Quotation Date for an Interest Period, provide quotations to the Agent in order to fix LIBOR; or
- (b) at least 1 Business Day before the start of an Interest Period, a Lender may notify the Agent that LIBOR fixed by the Agent would not accurately reflect the cost to that Lender of funding its respective Contribution (or any part of it) during the Interest Period in the London Interbank Market at or about 11.00 a.m. (London time) on the Quotation Date for the Interest Period; or
- (c) at least 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 and the Swap Bank 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 a the Tranche is made:

- (a) in a case falling within Clauses 5.7(a) or 5.7(b), the Lenders’ obligations to make the Tranche; and
- (b) in a case falling within ~~Clause 5.7(e)~~, Clause 5.7(c), the Affected Lender’s obligation to participate in the Tranche, shall be suspended while the circumstances referred to in the Agent’s notice continue.

5.10 Negotiation of alternative rate of interest

If the Agent's notice under Clause 5.8 is served after a the Tranche is made, the Borrowers, the Agent, the Lenders or (as the case may be) the Affected Lender and the Swap Bank shall use reasonable endeavours to agree, within 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 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, not exceeding 3 months, 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 plus the applicable Margin and the Mandatory Cost (if any) applicable to each Lender's or (as the case may be) to the Affected Lender's Contribution in ~~that~~ the Tranche; and the procedure provided for by this Clause 5.12 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 5.12, the Borrowers may give the Agent not less than 30 days' notice of their intention to prepay the Loan 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 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 applicable Margin and the Mandatory Cost (if any) applicable to the Affected Lender's Contribution.

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 a the Tranche shall commence on the Drawdown Date in respect of ~~such~~ the Tranche 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 shall be:

- (a) 3 months; or
- ~~(b) in the case of the first Interest Period applicable to the second Tranche drawn, a period ending on the last day of the Interest Period applicable to the first Tranche drawn then current, whereupon all Tranches shall be consolidated and treated as the Loan; or~~
- (b) ~~(e)~~ such other period requested by the Borrowers to the Agent not later than 11.00 a.m. (Rotterdam time) 2 Business Days before the commencement of the Interest Period as the Agent may, with the authorisation of all the Lenders, 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. (Rotterdam 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 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 7.3(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 applicable to it); and

(b) the aggregate of the applicable Margin and the Mandatory Cost (if any) 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 (after consultation with the Reference Banks) determines that Dollar deposits for any such period are not being made available to any Reference Bank 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 Reference Banks from such other sources as the Agent (after consultation with the Reference Banks) 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 7.3(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.

7.7 Application to Master Agreement

For the avoidance of doubt, this Clause 7 does not apply to any amount payable under the Master Agreement in respect of any continuing Transaction as to which section 2(e) (Default Interest and Compensation) of the Master Agreement shall apply.

8 REPAYMENT AND PREPAYMENT

8.1 Amount of repayment instalments

The Borrowers shall repay + the Tranche by:

~~(a) Tranche A by:~~

- (a) ~~(i)~~ 4 equal consecutive quarterly instalments in the amount of \$1,125,000 each (each a **“Repayment Instalment”**); and
- (b) ~~(ii)~~ a balloon instalment in the amount of \$60,792,500 ~~(as such amount may be adjusted in accordance with Clause 8.10(b), the “Tranche A the “Balloon Instalment”~~) (as such amount may be reduced pursuant to Clause 8.14 (*Prepayment out of excess Earnings*) ~~and in respect of Borrowers’ Ships~~), 8.15 (*Additional mandatory prepayment event*) ~~and 8.16 (*Prepayment out of excess Earnings in respect of Tasman Ships*)~~).

Provided that:

- (i) ~~(A)~~ if on each PIK Calculation Date the Security Cover Ratio at that date is less than ~~130~~ (1) from 1 January 2018 through 30 June 2020, 100 per cent. and (2) from 1 July 2020 and at all times thereafter, 110 per cent., the principal amount outstanding under ~~the Tranche A~~ the Tranche A (and respectively under the Loan) shall be increased on that PIK Calculation Date by an amount equal to the PIK Amount and the ~~Tranche A Balloon Instalment shall be increased accordingly; and~~
- (ii) ~~(B)~~ the Tranche A Balloon Instalment may be further increased or reduced in accordance with Clause 8.10(b); ~~and~~
- (b) ~~Tranche B by one balloon instalment the amount of \$17,167,178.29 (the “Tranche B Balloon Instalment” and together, the “Balloon Instalments” and each a “Balloon Instalment”).~~

8.2 Repayment Dates

- ~~(a)~~ In respect of Tranche A, ~~the~~ The first Repayment Instalment shall be repaid on 31 March 2020, each subsequent Repayment Instalment shall be repaid at three-monthly intervals thereafter and the last Repayment Instalment ~~for Tranche A together with the Tranche A Balloon Instalment in respect thereof shall be repaid not later than the relevant Final Maturity Date; and~~
- ~~(b)~~ In respect of Tranche B, the Tranche B Balloon Instalment in respect thereof shall be repaid on the relevant Final Maturity Date.

8.3 Final Repayment Date

On the ~~later~~ Final Maturity 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 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 \$250,000 or a higher integral multiple of \$250,000;
- (b) the Agent has received from the Borrowers at least (i) 15 Business Days’ prior written indicative notice and (ii) 10 Business Days’ prior written confirmative and irrevocable notice, in each case specifying the amount to be prepaid and the date on which the prepayment is to be made (such date shall be the last day of the Interest Period then current);

- (c) the Borrowers have provided evidence satisfactory to the Agent that any consent required by any Borrower or any Security Party in connection with the prepayment has been obtained and remains in force, and that any requirement relevant to this Agreement which affects any Borrower or any Security Party has been complied with; and
- (d) the Borrowers have complied with Clause 8.12 on or prior to the date of prepayment under Clauses 8.4 and 8.5.

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 the Majority 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.

8.8 Mandatory prepayment

The Borrowers shall be obliged to prepay the Relevant Amount (subject to Clauses 8.9 and 8.12) if a Ship is sold (including, without limitation, if it is sold for scrap) or becomes a Total Loss:

- (a) in the case of a sale, on the earlier of (a*i*) the date on which the sale is completed by delivery of that Ship to the buyer and (b*ii*) the date of receipt by the relevant Borrower (or, as the case may be, the relevant Collateral Owner) or the Security Trustee (or, as the case may be, the Senior Security Trustee) of the sale proceeds relating to such Ship,
any such sale shall be subject to the prior written consent (such consent not to be unreasonably withheld) of the Agent (acting with the authorisation of all Lenders) if an Event of Default has occurred and is continuing on the date of the Borrowers' request to sell that Ship and/or on the date of the sale of that Ship (prior to the transfer of ownership to the buyer and to the discharge of the relevant Mortgage); or
- (b) in the case of a Total Loss, on the earlier of (a*i*) the date falling 120 days after the Total Loss Date and (b*ii*) the date of receipt by the Security Trustee (or, in the case of a Tasman Ship, the date of receipt by the Senior Security Trustee) of the proceeds of insurance or the Requisition Compensation relating to such Total Loss.

In this Clause 8.8, "**Relevant Amount**" means:

- (i) ~~in respect of a sale of Ship A or any of the Tasman Ships which has been initiated by the Lenders in accordance with Clause 11.25 (Sale of Ship A) or Clause 11.27 (Sale of Tasman Ships), as applicable, and, at the time of the sale of Ship A or any of the Tasman Ships, Ship B is no longer a Mortgaged Ship, the total amount of sale proceeds of Ship A or such Tasman Ship or Tasman Ships being sold; and~~
- (ii) ~~in respect of any other sale or Total Loss of either Ship A or, subject to Clause 8.10(b), any of the Tasman Ships, which has not been initiated in the manner described under paragraph (i) above;~~
- (i) in respect of a Sale or Total Loss of Ship A or Ship B, in the event that, at the time of such sale or Total Loss, the other Borrower Ship that is not being sold, scrapped, disposed of or has not become a Total Loss, no longer remains a Mortgages Ship, the aggregate amount of (A) the Loan and (B) the Swap Exposure; and

- (ii) ~~(A) in the event that Ship B is, in respect of a sale or Total Loss of Ship A, in the event that at the time of such sale or Total Loss or sale of Ship A, Ship B, remains a Mortgaged Ship (regardless of, the total amount of sale in the context of a sale of Ship A, whether the Borrowers or pursuant to Clause 11.25, the Lenders have initiated such sale), the full amount of the sale, or, as the case may be, insurance proceeds of the Ship being sold or having become a Total Loss A; and~~
- (iii) ~~(B) in respect of a sale or Total Loss of Ship B, in the event that Ship B is, at the time of such sale or Total Loss or sale of Ship B, no longer Ship A, remains a Mortgaged Ship (and, in respect of a sale or Ship A, should that sale have been initiated by Borrower A and at such Borrower A's discretion), the greater of (a) the total amount of sale-, or, as the case may be, insurance proceeds of that Ship being sold or having become a Total Loss B and (b) the total amount which after the application of prepayment to be made pursuant to this Clause 8.8, results in the Security Cover Ratio being equal to (i) for the duration of the Waiver Period (A) from the Drawdown Date until 31 December 2017, 105 per cent., (B) from 1 January 2018 until 31 December 2018 — 30 June 2019, 120 per cent. and (Cii) from 1 January July 2019 until 31 December 2019, 125 per cent., and (ii) after the duration of the Waiver Period, the percentage required pursuant to Clause 15:1 (Minimum required security cover); and (iii) from 1 January 2020 and at all times thereafter, 130 per cent.; and~~
- (iv) in respect of a sale or Total Loss of a Tasman Ship, the full amount of the Senior Surplus Proceeds.
- (iii) ~~in respect of a sale or Total Loss of Ship B, the greater of (i) the total amount of sale or, as the case may be, insurance proceeds of that Ship and (ii) the total amount which after the application of prepayment to be made pursuant to this Clause 8.8 results in the Security Cover Ratio being equal to (A) for the duration of the Waiver Period (i) from the Drawdown Date until 31 December 2017, 105 per cent., (ii) from 1 January 2018 until 31 January 2018, 120 per cent. and (iii) from 1 January 2019 until the percentage required pursuant to Clause 15.1 (Minimum required security cover):~~

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 Application of partial prepayment

~~(a) Each partial prepayment made pursuant to :Clause 8.4 or 8.8 shall be applied first against the Balloon instalment and then against the then outstanding Repayment Instalments in inverse order of maturity.~~

- (i) ~~Clause 8.4 shall be applied first against the Balloon Instalment of the Tranche being prepaid as specified in Clause 8.1 and then against the then outstanding Repayment Instalments (in the case of Tranche A) in inverse order of maturity;~~
- (ii) ~~Clause 8.8 shall be applied in repayment of the Tranche relevant to the Ship which Instalment under such Tranche and subsequently, in the case of Tranche A, in or towards the then outstanding Repayment Instalments in inverse order of maturity, and any balance shall be applied against the remaining Tranche, first in or towards the relevant Balloon Instalment and, in the case of Tranche A, subsequently in or towards the then outstanding Repayment Instalments in inverse order of maturity; and~~

- (b) ~~If following the disposal of the last of the Tasman Ships, the aggregate sale proceeds (or, in the case of Total Loss, the aggregate insurance proceeds) arising from such disposals (or Total Loss) is:~~
- ~~(i) greater than \$17,167,178.29, then any such excess amount shall be applied in or toward prepayment of the Tranche A Balloon Instalment; and~~
 - ~~(ii) less than \$17,167,178.29, then an amount equal to such shortfall shall be added to the Tranche A Balloon Instalment and the amount of the Tranche A Balloon Instalment set out in Clause 8.1 shall be adjusted accordingly.~~

8.11 No reborrowing

No amount repaid or prepaid may be reborrowed.

8.12 Unwinding of Designated Transactions

On or prior to any repayment or prepayment of the Loan under this Clause 8 or any other provision of this Agreement, each Borrower shall, on a joint and several basis, wholly or partially reverse, offset, unwind or otherwise terminate one or more of the continuing Designated Transactions so that the notional principal amount of the continuing Designated Transactions thereafter remaining does not and will not in the future (taking into account the scheduled amortisation) exceed the amount of the Loan as reducing from time to time thereafter pursuant to Clause 8.1.

8.13 Mandatory Prepayment in case of Change of Control

If a Change of Control occurs, the Agent may, and on the instructions of all the Lenders shall, serve on the Borrowers a notice demanding the Borrowers to prepay the Loan and all other amounts then outstanding under the Finance Documents and upon receipt of which:

- (a) the Borrowers shall be obliged to prepay the Loan and pay all other amounts then outstanding under the Finance Documents in full within 15 days; and
- (b) any obligations of the Lenders to the Borrowers under this Agreement (including without limitation the obligation to make available the Loan) shall terminate and any undrawn Commitments shall be cancelled.

In this Clause 8.13 **“Change of Control”** means if any of the following occurs in relation to the Borrowers-, the Collateral Owners or the Corporate Guarantor (as applicable):

- (i) subject to paragraph (ii) below, without the prior consent of the Lenders, a change has occurred after the date of this Agreement in the direct or ultimate, legal or beneficial ownership of any of the limited liability company interests in any of the Borrowers or in any of the Collateral Owners or in the direct or ultimate control of the voting rights attaching to any of those interests; or
- (ii) other than in the case of any initial public offering of the limited liability company interests of the Corporate Guarantor on any stock exchange (with the Agent’s prior written consent (to be given with the authorisation of the Majority Lenders) such consent not to be unreasonably withheld)) the members disclosed to the Agent prior to the date of this Agreement as owning the whole of the limited liability interests of the Corporate Guarantor cease to own in aggregate at least 50 per cent, of the limited liability company interests (with a right to vote) of the Corporate Guarantor; or

- (iii) Mr George Giouroukos ceases to have a key position (as determined by the Agent, acting on the instructions of all the Lenders) in the executive management of the Corporate Guarantor; or
- (iv) any Borrower or any Collateral Owner ceases to be a wholly-owned subsidiary of the relevant Shareholder.

8.14 Prepayment out of excess Earnings in respect of Borrowers' Ships

If on an Excess Cash Flow Date in respect of the Borrowers' Ships, the aggregate of the daily Earnings of the ~~Mortgaged~~ Borrowers' Ships (for the avoidance of doubt, not inclusive of any commission or brokerage fees which are not otherwise included in the Operating Expenses of such ~~Mortgaged~~ Borrowers' Ships and are payable to a third party) for the preceding Cash Sweep Period of such Borrowers' Ships exceeds the aggregate of:

- (a) the aggregate of the Operating Expenses in respect of the Borrowers' Ships for that Cash Sweep Period; and
- (b) the ~~sums incurred by the Borrowers in respect of the payment of principal of, and accrued interest on, the loan pursuant to this Agreement and any sums paid by the Borrowers pursuant to the Master Agreement (the "Debt Service"),~~ Debt Service during such three-month period ending on the last day of that Cash Sweep Period; and
- (c) the aggregate Minimum Liquidity Amount held in the Borrowers' Earnings Accounts in respect of ~~all Mortgaged~~ the Borrowers' Ships (plus any amounts necessary to cover any shortfall on the aggregate Minimum Liquidity Amount),

the Borrowers shall pay such ~~excess amount (the "Excess Cash Flow")~~, as evidenced in the relevant Excess Cash Flow Notice, to the Agent, on the next Repayment Date falling due after receipt of such relevant Excess Cash Flow Notice (and, during the Waiver Period, at the end of the next Interest Period after receipt of such relevant Excess Cash Flow Notice), such amount shall be applied (notwithstanding anything to the contrary provided in Clause 8.10 hereof) in prepayment of the outstanding Repayment Instalments and Balloon ~~Instalments~~ instalment in order of maturity.

~~In this Cause 8.14:~~

~~"Cash Sweep Period" means, in relation to each Ship, each three-month period commencing on 1 January, 1 April, 1 July and 1 October in each financial year of the Borrowers, during the period commencing on 1 July 2017 and at all times thereafter.~~

~~"Excess Cash Flow Date" means the last day of each Cash Sweep Period; and~~

~~"Excess Cash Flow Notice" means a certificate to be provided by the Borrowers to the Agent within 45 days from each Excess Cash Flow Date evidencing the Excess Cash Flow available on such date.~~

8.15 Additional mandatory prepayment event

If the aggregate of the excess Earnings (i) applied in prepayment of the Loan pursuant to Clause 8.14 ~~above~~ and/or (ii) maintained in the Cash Collateral Account pursuant to Clause 8.16, is less than \$1,300,000 for the duration of the period commencing on 1 January 2019 until the Cash Sweep Period ending on 31 December 2019, the ~~Corporate Guarantor shall procure that part of the shareholders' equity (as provided in Schedule 3, Part B, paragraph 6 and clause 11.29 of the Corporate Guarantee) is injected, and the Borrowers shall be obliged~~

to utilise such ~~equity part of the Shareholders' Equity~~ to prepay the Shortfall Amount to the Lenders on the next Repayment Date falling due after receipt of the Excess Cash Flow ~~Notice~~ Notices relevant to that Cash Sweep Period. Such Shortfall Amount shall be applied in or towards prepayment of the then outstanding Repayment Instalments and Balloon ~~Instalments~~ Instalment, in order of maturity.

8.16 Prepayment out of excess Earnings in respect of Tasman Ships

If on an Excess Cash Flow Date in respect of the Tasman Ships, the aggregate of the daily Earnings of the Tasman Ships (for the avoidance of doubt, not inclusive of any commission or brokerage fees which are not otherwise included in the Operating Expenses of such Tasman Ships and are payable to a third party) for the preceding Cash Sweep Period of such Tasman Ships exceeds the aggregate of:

- (a) the aggregate of the Operating Expenses in respect of the Tasman Ships for that Cash Sweep Period; and
- (b) the Senior Debt Service during such three-month period ending on the last day of that Cash Sweep Period; and
- (c) the outstanding Senior Deferred Amount (if any) (after reducing such amount by an amount equal to the amount (if any) to be paid in or towards payment of such Senior Deferred Amount at the next repayment date under the Senior Facility Agreement in respect of the relevant Cash Sweep Period),

the Borrowers shall procure that the Collateral Owners transfer or procure the transfer by the Senior Facility Agent (within 10 Business Days after the date on which the Excess Cash Flow Notice is provided) seventy five per cent. (75%) of such Excess Cash Flow, as evidenced in the relevant Excess Cash Flow Notice, to the Cash Collateral Account. On the next Repayment Date falling due after the end of the Waiver Period, the relevant Cash Collateral Amount (if any) that has accrued at that time, shall be paid to the Agent. Any subsequent Cash Collateral Amount that has accrued from time to time (as evidenced on each subsequent Excess Cash Flow Notice), shall be paid to the Agent on each next Repayment Date falling after receipt of the relevant Excess Cash Flow Notice. Any such amounts paid to the Agent shall be applied (notwithstanding anything to the contrary provided in Clause 8.10 hereof) in prepayment of the outstanding Repayment Instalments and Balloon Instalment in order of maturity.

8.17 Excess Cash Flow up to Effective date of Amending and Restating Deed

The Borrowers shall, following the effective date of the Amending and Restating Deed pay the Excess Cash Flow up until that date, as evidenced in the relevant Excess Cash Flow Notice, at the end of the next Interest Period following that effective date.

9 CONDITIONS PRECEDENT

9.1 Documents, fees and no default

Each Lender's obligation to contribute to a Tranche is subject to the following conditions precedent:

- (a) that, on or before the service of the first Drawdown Notice, the Agent receives the documents described in Part A of Schedule 3 in form and substance satisfactory to the Agent and its lawyers;
- (b) that, on the Drawdown Date but prior to the making of any Tranche to be advanced on the Drawdown Date, the Agent receives or is satisfied that it will receive on the making of such Tranche the documents described in Part B of Schedule 3 in form and substance satisfactory to it and its lawyers;

- (c) that both at the date of each Drawdown Notice and at the Drawdown Date:
- (i) no Event of Default or Potential Event of Default has occurred and is continuing or would result from the borrowing of the relevant Tranche (excluding, for the Refinancing Period up until the Refinancing Date, any Events of Default having occurred and being continuing in connection with and under the Existing Facility Agreement);
 - (ii) the representations and warranties in Clause 10 and those of any 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; and
 - (v) 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 the Majority Lenders, request by notice to the Borrowers prior to the Drawdown Date.

9.2 Waiver of conditions precedent

If the Majority Lenders, at their discretion, permit a the Tranche 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 10 Business Days after the Drawdown Date (or such longer period as the Agent may, with the authorisation of the Majority 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 a limited liability company duly formed and validly existing in good standing under the laws of the Marshall Islands.

10.3 Limited Liability Company Interests and ownership

As of the date of this Agreement, each Borrower is authorized to issue 500 limited liability company interests, all of which have been issued to the relevant Shareholder and are owned free of any Security Interest or other claim except, during the Existing Indebtedness Grace Period, for Security Interests created under the Existing Facility Agreement and for the Security Interests created in favour of the Security Trustee under the Finance Documents.

10.4 Limited Liability Company power

Each Borrower has the limited liability capacity, and has taken all limited liability company action and obtained all consents necessary for it:

- (a) to carry out its business carried on or to be carried out by it and own its assets owned or to be owned by it;
- (b) to execute the Finance Documents to which that Borrower is a party; and
- (c) to borrow under this Agreement, to enter into Designated Transactions under the Master Agreement and to make all the payments contemplated by, and to comply with, those Finance Documents to which it 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 each 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) are in full force and effect;
- (b) constitute that Borrower's legal, valid and binding obligations enforceable against that Borrower in accordance with their respective terms; and
- (c) 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 the Legal Reservations.

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 a Borrower is a party:

- (a) each Borrower which is a party to that Finance Document 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 to which it is a party will not involve or lead to a contravention of:

- (a) any applicable 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, which in each case has, or could reasonably be expected to have, a Material Adverse Effect.

10.9 No withholding taxes

All payments which each Borrower is liable to make under the Finance Documents to which it is a party may be made without deduction or withholding for or on account of any tax payable under any law of any Pertinent Jurisdiction. No Finance Document is subject to any filing or stamp duty in any Pertinent Jurisdiction.

10.10 No default

No Event of Default (excluding, for the duration of the Refinancing Period up until the Refinancing Date, any Events of Default having occurred and being continuing in connection with and under the Existing Facility Agreement) has occurred and is continuing.

10.11 Information

All information which has been provided in writing by or on behalf of the Borrowers or any Security Party or K&T Marine 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 there has been no Material Adverse Change.

10.12 No litigation

Other than as previously disclosed to the Agent, no legal or administrative action against any Borrower (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 legal or administrative action has or could reasonably be expected to have a Material Adverse Effect.

10.13 Compliance with certain undertakings

At the date of this Agreement, the Borrowers are in compliance with Clauses 11.2, 11.4, 11.9, 11.13 and 11.20.

10.14 Taxes paid

Each Borrower has paid all taxes applicable to, or imposed on or in relation to that Borrower, its business or the Ship owned by it.

10.15 ISM Code and ISPS Code compliance

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

10.16 No money laundering; anti-bribery

- (a) Without prejudice to the generality of Clause 2.3, in relation to the borrowing by each Borrower, the performance and discharge of its obligations and liabilities under the Finance Documents, and the transactions and other arrangements affected or contemplated by the Finance Documents to which each Borrower is a party, each Borrower confirms (i) it is acting for its own account; (ii) it will use the proceeds of the Loan for its own benefit, under its full responsibility and exclusively for the purposes specified in this Agreement; and (iii) that the foregoing will not involve or lead to a contravention of any law, official requirement or other regulatory measure or procedure implemented to combat "money laundering" (as defined in Article 1 of Directive (2005/60/EC) of the European Parliament and of the Council).
- (b) Each Borrower will promptly inform the Agent by written notice, if it is not or ceases to be the beneficiary and will provide in writing the name and address of the beneficiary.

- (c) The Agent shall promptly notify the Lenders of any written notice it receives under this Clause 10.16.

10.17 No immunity

None of the Borrowers, nor any of their assets are entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding (which shall include, without limitation, suit attachment prior to judgement, execution or other enforcement).

10.18 Pari passu ranking

The obligations of each Borrower, each Security Party and K&T Marine under the Finance Documents to which it is a party rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

10.19 Patriot Act and anti-terrorism laws

To the extent applicable each Borrower is in compliance with (i) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, (ii) the PATRIOT Act and Executive Order No. 13224 on Terrorist Financing, effective 24 September 2001. No part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

10.20 Repetition

The representations and warranties in this Clause 10 shall be deemed to be repeated by the Borrowers:

- (a) on the date of service of each Drawdown Notice;
 - (b) on the Drawdown Date; ~~and~~
 - (c) with the exception of Clauses 10.9, 10.10, 10.11 and 10.12, on the first day of each Interest Period and on the date of any Compliance Certificate issued pursuant to clause 11.20 of the Corporate Guarantee; and
 - (d) on the effective date of the Amending and Restating Deed.
- as if made with reference to the facts and circumstances existing on each such day.

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 in writing (and in the case of Clauses 11.3 and 11.13 such permission not to be unreasonably withheld or delayed).

11.2 Title; negative pledge

Each Borrower will:

- (a) hold the legal title to, and own the entire beneficial interest in the Ship owned by it, her Insurances and Earnings, free from all Security Interests (except during the Existing Indebtedness Grace Period—, ___ Security Interests created under the Existing Facility Agreement) and other interests and rights of every kind, except for those created by the Finance Documents and the effect of assignments contained in the Finance Documents and except for Permitted Security Interests;
- (b) not create or permit to arise any Security Interest (except for Permitted Security Interests) over any other asset, present or future (including, but not limited to, that Borrower's rights against the Swap Bank under the Master Agreement or all or any part of that Borrower's interest in any amount payable to that Borrower by the Swap Bank under the Master Agreement); 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 and unsubordinated liabilities, except for liabilities which are mandatorily preferred by law.

11.3 No disposal of assets

None of the Borrowers will transfer, lease or otherwise dispose of (without the Agent's prior written consent, but always subject to Clause 8.8(a) of this Agreement and provided that, any sale or scrapping of a Borrower Ship under Clause 8.8(a) shall not be effected for less than the Market Value of that Borrower Ship at the relevant time):

- (a) all or a substantial part of its assets, whether by one transaction or a number of transactions, whether related or not; or
 - (b) any debt payable to it or any other right (present, future or contingent right) to receive a payment, including any right to damages or compensation,
- but paragraph (a) does not apply to any charter of a Ship as to which Clause 14.12 applies.

11.4 No other liabilities or obligations to be incurred

None of the Borrowers will incur any liability or obligation, including, without limitation, giving or allowing to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person, except:

- (a) liabilities and obligations under the Existing Facility Agreement (up until the Drawdown Date) and the Finance Documents to which it is a party;
- (b) liabilities or obligations reasonably incurred in the normal course of its business of trading, operating and chartering the Ship owned by it;
- (c) in respect of the Designated Transactions; and
- (d) liabilities or obligations under any Permitted Loans.

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

Each Borrower will send or procure that each of the following are sent to the Agent:

- (a) as soon as available, but in no event later than 180 days after the end of each Financial Year of the Corporate Guarantor, the annual audited (consolidated in respect of the Corporate Guarantor) financial statements of the Corporate Guarantor for that Financial Year (commencing with the financial statements for the year ended 31 December 2016);
- (b) as soon as available, but in no event later than 90 days after the end of the 6-month period ending on 30 June in each Financial Year of the Corporate Guarantor ~~and, each Borrower~~ and each Collateral Owner, the unaudited (consolidated in respect of the Corporate Guarantor) financial statements of the Corporate Guarantor ~~and, each Borrower~~ and each Collateral Owner in respect of the preceding 6-month period (commencing with the 6-month period ending 30 June 2017) which are certified as to their correctness by an authorised officer of the Corporate Guarantor ~~and, each Borrower~~ and the Collateral Owner (as the case may be);
- (c) as soon as available, but in no event later than 60 days after the end of the 3-month period ending on 30 September and 31 March in each Financial Year of the Corporate Guarantor ~~and, each Borrower~~ and each Collateral Owner, the unaudited (consolidated in respect of the Corporate Guarantor) financial statements of the Corporate Guarantor ~~and, each Borrower~~ and each Collateral Owner in respect of the preceding 3-month period (commencing with the 3-month period ending 30 June 2017) which are certified as to their correctness by an authorised officer of the Corporate Guarantor ~~and, each Borrower~~ and each Collateral Owner (as the case may be);
- (d) at the end of each 3-month period in each Financial Year of the Borrowers (commencing with the 3-month period ending on 30 June 2017), the PIK Compliance Certificate (together with the set of valuations to determine the Market Value of each Borrower Ship and the PIK Amount, such set of valuations to be provided on a semi-annual basis commencing with the 3-month period ending on 31 March 2017 and thereafter, at the option of the Borrowers, as provided for and in accordance with the provisions of Clause 15.8) which is to be certified as to its correctness by an authorised officer of the Borrowers;
- (e) on or prior to the 10th Business Day of each quarter in each Financial Year of the Corporate Guarantor (commencing with the quarter starting on 1 July 2017), a cash flow forecast in an Agreed Form evidencing all anticipated income and expenses in respect of the Fleet Vessels and the aggregate cash balances held or to be held by members of the Group in restricted and unrestricted accounts on a consolidated and projected basis for the 12-week period commencing as from the date on which the cash flow forecast is determined; ~~and~~
- (f) promptly after each request by the Agent, such further information regarding the financial condition, business and operation of the Borrowers, the Collateral Owners, the Ships and the Corporate Guarantor as the Agent may reasonably require; and
- (g) promptly, within 45 days from each Excess Cash Flow Date in relation to each of the Borrowers' Ships and, as the case may be, the Tasman Ships, an Excess Cash Flow Notice in respect of those Ships, in each case addressed to the Agent.

and each Borrower shall, and shall procure that the Corporate Guarantor shall, ensure that all cash flow forecasts of the Corporate Guarantor received pursuant to paragraph (e) of this Clause for the duration of the Waiver Period shall evidence a positive balance in respect of the Group for that Financial Year that is satisfactory to the Agent.

11.7 Form of financial statements

All accounts delivered under Clause 11.6 will:

- (i) be prepared in accordance with all applicable laws and IFRS consistently applied and, in respect of the Corporate Guarantor, financial reference periods consistent with those applied in preparation of the Original Financial Statements unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in IFRS, the accounting practices or reference periods and its auditors deliver to the Agent:

- (A) a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
- (B) sufficient information, upon request by the Agent, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether clause 11.19 of the Corporate Guarantee has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

Any reference in the Corporate Guarantee to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared;

- (b) give a true and fair view of the state of affairs of the relevant Borrower ~~and~~ the Corporate Guarantor and Collateral Owner at the date of those accounts and of its profit for the period to which those accounts relate; and
- (c) fully disclose or provide for all significant liabilities of the relevant Borrower-, the relevant Collateral Owner and the Corporate Guarantor.

11.8 Shareholder and creditor notices

Upon the occurrence of an Event of Default each Borrower will send to the Agent, at the same time as they are despatched, copies of all communications which are despatched to that Borrower's members or creditors or any class of them.

11.9 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 that Borrower to perform its obligations under any Finance Document to which it is a party;
- (b) for the validity or enforceability under any Finance Document to which it is a party; and
- (c) for that Borrower to continue to own and operate the Ship owned by it, and that Borrower will comply with the terms of all such consents.

11.10 Maintenance of Security Interests

Each Borrower will:

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

11.11 Notification of litigation

Each Borrower will provide the Agent with details of any legal or administrative action involving that Borrower or the Ship owned by it, the Earnings or the Insurances or either involving any Collateral Owner, any Tasman Ship or any Shareholder 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 that the legal or administrative action cannot be considered material in the context of any relevant Finance Document and the Borrowers shall procure that reasonable measures are taken to defend any such legal or administrative action.

11.12 No amendment to Master Agreement

None of the Borrowers will agree to any amendment or supplement to, or waive or fail to enforce, the Master Agreement or any of its provisions.

11.13 Principal place of business

Each Borrower will maintain a place of business, and keep its corporate documents (or copies thereof) and records (or copies thereof), at the address stated in Clause 28.2(a); and none of the Borrowers will establish, or do anything as a result of which it would be deemed to have, a place of business in any country other than Greece and, in respect of the Corporate Guarantor, the United States of America.

11.14 Confirmation of no default

Each Borrower will, within 5 Business Days after service by the Agent of a written request, serve on the Agent a notice which is signed by the authorised representative or senior officer of that Borrower and which:

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

The Agent may serve requests under this Clause 11.14 from time to time but only if asked to do so by a Lender or Lenders having Contributions exceeding 10 per cent, of the Loan or (if no ~~Tranches have~~ Tranche has been made) Commitments exceeding 10 per cent, of the Total Commitments; and this Clause 11.14 does not affect the Borrowers' obligations under Clause 11.15.

11.15 Notification of default

Each Borrower will notify the Agent as soon as that Borrower becomes aware (and in respect of sub-paragraph (c), as soon as practicable) of:

- (a) the occurrence of an Event of Default or a Potential Event of Default; or
- (b) any matter which indicates that an Event of Default or a Potential Event of Default may have occurred; or
- (c) any extension of the security period under the Senior Facility Agreement,

and will keep the Agent fully up-to-date with all developments.

11.16 Provision of further information

- (a) Each Borrower will, as soon as practicable after receiving the request, provide the Agent with any additional financial or other information relating:
- (i) to the Borrowers, the Collateral Owners, the Group, the Ships, the other Fleet Vessels, their Insurances or their Earnings (including, but not limited to, any sales or purchases of any Fleet Vessels, the incurrence of Financial Indebtedness by members of the Group, the refinancing or restructuring of any loan or credit facilities to which any members of the Group are a party (to the extent permitted to disclose information under the terms of such loan or credit facilities)] as the Agent may reasonably require; or
 - (ii) to any other matter relevant to, or to any provision of, a Finance Document,
- which may be requested by the Agent, the Security Trustee or any Lender at any time; and
- (b) Each Borrower will immediately notify the Agent if, prior to the delivery of the Compliance Certificate pursuant to clause 11.20 of the Corporate Guarantee, it becomes aware that the financial covenants included in clause 11.19 of the Corporate Guarantee will not be complied with.

11.17 Provision of copies and translation of documents

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

11.18 Minimum Liquidity

Each Borrower undertakes to maintain in its Earnings Account from the Drawdown Date ~~of the Tranche related to its Ship~~ and at all times thereafter throughout the Security Period, a credit balance of not less than \$500,000 (the “**Minimum Liquidity Amount**”).

11.19 “Know your customer” checks

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of any Borrower, any Collateral Owner, the Corporate Guarantor, any Shareholder or any Approved Manager after the date of this Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (c), any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrowers shall promptly upon the request of the Agent or the Lender concerned supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or the Lender concerned (for itself or, in the case of the event described in paragraph (c), on behalf of any prospective new Lender) in order for the Agent, the Lender concerned or, in the case of the event described in paragraph (c), any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents, including without limitation obtaining, verifying and recording certain information and documentation that will allow the Agent and each of the Lenders to identify each of the Borrowers, the Collateral Owners, the Shareholders, the Corporate Guarantor and the Approved Managers (as the case may be) in accordance with the requirements of the PATRIOT Act.

11.20 Sanctions and compliance with laws

(a) Compliance with laws

Each Borrower shall, and shall procure that the Corporate Guarantor and each other member of the Group and each Affiliate of any of them shall, comply ~~in all respect~~ with all applicable Sanctions.

(b) Sanctions

(i) ~~Each No Borrower undertakes that it shall,~~ and shall procure that neither the Corporate Guarantor ~~and nor~~ any other member of the Group ~~or any Affiliate of any of them, or any director, officer, agent, employee or person acting on behalf of the foregoing, is not a Restricted Person and does not act directly or indirectly on behalf of a Restricted Person nor any Affiliate of any of them shall, become a Restricted Party or act on behalf of, or as an agent of, a Restricted Party, to the extent this would lead to non-compliance by it or any other Party with any applicable Sanctions.~~

(ii) ~~Each Borrower shall not~~ No Borrower shall, and shall procure that neither the Corporate Guarantor nor any other member of the Group ~~or nor~~ any Affiliate of any of them shall ~~not~~, use any revenue or benefit derived from any activity or dealing with a Restricted ~~Person Party~~ in discharging any obligation due or owing to the Creditor Parties to the extent such use would lead to non-compliance by it or any other Party with any applicable Sanctions.

(iii) Each Borrower shall, and shall procure that the Corporate Guarantor and each other member of the Group and each Affiliate of any of them shall, procure that no proceeds from any activity or dealing with a Restricted ~~Person Party~~ are credited to any bank account held with any Creditor Party ~~in its name or in the name of any Borrower, the Corporate Guarantor or any other member of the Group or any Affiliate of any of them~~ a Creditor Party, to the extent crediting such bank account would lead to non-compliance by it, any Creditor Party or any Affiliate of a Creditor Party with any, applicable Sanctions.

(iv) Each Borrower shall, and shall procure that the Corporate Guarantor and each other member of the Group and each Affiliate of any of them shall, to the extent permitted by law and promptly upon becoming aware of them-, supply to the Agent details of any claim, action, suit, proceedings or investigation against it with respect to any applicable Sanctions by any Sanctions Authority.

(c) Use of proceeds

~~The Borrowers~~ No Borrower shall ~~not~~, and shall procure that neither the Corporate Guarantor nor any other member of the Group ~~and nor~~ any Affiliate of any of them shall ~~not~~, ~~permit or authorise any other person to use, directly or indirectly~~ lend, contribute or otherwise make available, ~~all or any part of~~ the proceeds of the Loan or any other transactions transaction contemplated by this Agreement ~~to fund or facilitate trade, business or other activities: (a) involving or for the benefit of any Restricted Person; or (b) in any other manner that could result in any Borrower, the Corporate Guarantor or a Creditor Party being in breach of any Sanctions or becoming a Restricted Person directly or indirectly for the purpose of financing any trade, business or other activities with any Restricted Party, to the extent, in each case, such use lending, contributing or otherwise making available the proceeds would lead to non-compliance by it or any other Party with any applicable Sanctions.~~

- (d) ~~Each party to this Agreement acknowledges and agrees that the Borrower does not undertake under paragraphs (a) to (c) (inclusive) above in favour of any Lender incorporated or having its registered office in the Federal Republic of Germany and no such Lender shall have any right thereunder and shall be deemed not to be a party to the provisions of this Clause 11.20.~~

11.21 Subordination and assignment of Permitted Loans

Each Borrower shall cause (i) all Permitted Loans to be fully subordinated to the Secured Liabilities and (ii) any creditor's rights under any such Permitted Loans to any Borrower(s) to be assigned in favour of the Creditor Parties.

11.22 Ownership

Each Borrower shall procure that there is no change in the legal ownership of its limited liability company interests throughout the Security Period.

11.23 Employees and ERISA Compliance

None of the Borrowers shall employ any individuals (other than the master and crew members of the Ship), or sponsor, maintain or become obligated to contribute to any Plan. Each Borrower shall provide prompt written notice to the Agent in the event that that Borrower becomes aware that it has incurred or is reasonably likely to incur any liability with respect to any Plan, that, individually or in the aggregate with any other such liability, would be reasonably expected to have a Material Adverse Effect.

11.24 Further assurance

- (a) Each Borrower shall, and shall procure that each Security Party will, promptly, and in any event within the time period specified by the Security Trustee do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Trustee may specify (and in such form as the Security Trustee may require in favour of the Security Trustee or its nominee(s)):
- (i) to create, perfect, vest in favour of the Security Trustee or protect the priority of the Security Interest or any right of any kind created or intended to be created under or evidenced by the Finance Documents to which such Security Party is a party (which may include the execution of a mortgage, charge, assignment or other Security Interest over all or any of the assets which are, or are intended to be, the subject of the Finance Documents) or for the exercise of any rights, powers and remedies of the Security Trustee, any receiver or the Creditor Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Trustee or confer on the Creditor Parties Security Interests over any property and assets of that Borrower or Security Party (as the case may be) located in any jurisdiction equivalent or similar to the Security Interest intended to be conferred by or pursuant to the Finance Documents;
 - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Finance Documents or to exercise any power specified in any Finance Document in respect of which the Security Interest has become enforceable; and/or

- (iv) to enable or assist the Security Trustee to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Borrower shall, and shall procure that each other Security Party shall, take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security Interest conferred or intended to be conferred on the Security Trustee or the Creditor Parties by or pursuant to the Finance Documents to which such Borrower or Security Party is a party.
- (c) At the same time as a Borrower delivers to the Security Trustee any document executed by itself or another Security Party pursuant to this Clause, that Borrower shall deliver, or shall procure that such other Security Party will deliver, to the Security Trustee a certificate signed by two of that Borrower's or Security Party's directors or officers which shall:
 - (i) set out the text of a resolution of that Borrower's or Security Party's directors specifically authorising the execution of the document specified by the Security Trustee; and
 - (ii) 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 or officers and is valid under that Borrower's or Security Party's articles of association or other constitutional documents.

11.25 Sale of Ship A

At any time after the Security Cover Ratio has become less than the Applicable Percentage, each Borrower undertakes the following (on the instructions of all the Lenders after consultation with the Borrowers):

- (a) to take all necessary actions in order to market Ship A for sale immediately upon receipt of the Lenders' instructions including, without limitation, closely monitoring the market and liaising with brokers;
- (b) on a best efforts basis, to ensure that Ship A is sold for cash on normal commercial arm's length terms to a buyer and for a purchase price, each reasonably acceptable to the Agent in its consideration of the market standards prevailing at that time (acting on the instructions of the Lenders);
- (c) to keep the Agent regularly updated (quarterly and at any other time upon the Agent's request) regarding the sale process of Ship A and to advise the Agent promptly of any offers received (including, without limitation, the price offered, the identity of the buyer, the main terms of any offers and the process of the negotiations), such updates to be satisfactory to the Lenders;
- (d) in the event of the sale of Ship A being agreed, on a best efforts basis, to ensure that (i) the memorandum of agreement is signed between Borrower A and the buyer for the sale of Ship A and (ii) that the sale of Ship A is successfully completed and Ship A is irrevocably and unconditionally delivered to the relevant buyer within a time frame reasonably set out by the Agent at that time; and
- (e) on a best efforts basis, to send to the Agent a certified copy of the memorandum of agreement (and any addenda or supplemental agreements applicable thereto) made between Borrower A and the buyer in respect of the sale of Ship A, promptly after the execution of such document.

Any partial prepayment made pursuant to this Clause shall be applied in such order as set out in Clause 8.10(a)(ii).

11.26 Most favoured nation clause

Each Borrower undertakes to procure that, (i) during the Waiver Period in respect of items listed in sub-paragraphs (b), (d) and (f) and (ii) throughout the duration of the Security Period in respect of items listed in sub-paragraphs (a), (c) and (e), the Creditor Parties shall receive no less favourable treatment under this Agreement than that provided or to be provided under any Group Facility Agreement or under the Senior Facility Agreement by way of amendment or supplement to, or refinancing of, that Group facility Agreement or, as the case may be, the Senior Facility Agreement in relation to:

- (a) any amendment to a maturity date under any such Group Facility Agreement or under the Senior Facility Agreement as a result of which the maturity date will fall before 31 December 2020;
- (b) the existence of any amortization principal payment profile/schedule until 31 December 2019 (inclusive);
- (c) the provisions relevant to the calculation of the Excess Cash Flow and generally the cash sweep mechanism;
- (d) the waiver of the security cover ratio at the Borrowers' level;
- (e) the financial covenants relevant to the Value Adjusted Leverage Ratio, Book Leverage Ratio and minimum Net Worth of the Corporate Guarantor; and
- (f) any increase to the aggregate of any amounts to be paid in respect of interest solely related to margin (howsoever defined) for the duration of the Waiver Period (calculated as at the date of that Group Facility Agreement or, as the context may require, the Senior Facility Agreement).

Accordingly, should any member of the Group or the Corporate Guarantor provide to any other creditor more favourable treatment in relation to (a) to (f) above (and, in relation to subparagraphs (b), (d) and (f) for the duration of the Waiver Period) than those which the Creditor Parties have been provided with under this Agreement or any other Finance Document, each Borrower shall promptly advise the Agent of those arrangements and covenants and shall, upon the Agent's request, enter into such documentation supplemental to the Finance Documents as the Lenders may require in order to achieve parity with the creditors under such relevant Group Facility Agreement or, as the context may require, the Senior Facility Agreement.

11.27 Senior Deferred Amount under the Senior Facility Agreement

11.27 Sale of Tasman Ships

Each Borrower undertakes to:

- (i) ~~to take all necessary actions in consultation with the Lenders, in order to market each Tasman Ship for sale including, without limitation, closely monitoring the market and liaising with brokers;~~
- (ii) ~~on a best efforts basis, ensure that each Tasman Ship is sold for cash on normal commercial arm's length terms to a buyer and for a purchase price, each reasonably acceptable to the Agent after taking consideration of the market conditions prevailing at any relevant time (acting on the instructions of the Lenders);~~

The Borrowers shall, and shall procure that the Collateral Owners, notify the Agent immediately once the Senior Deferred Amount has been prepaid or repaid in full pursuant to the terms and conditions of the Senior Facility Agreement.

11.28 Senior Debt Service

The Borrowers shall procure that the Collateral Owners (i) agree under the Senior Facility Agreement that, pursuant to the terms and conditions thereunder, the repayment of principal shall not exceed \$110,000 per quarter in respect of each advance related to each Tasman Ship and (ii) procure that the parties, under the Senior Facility Agreement shall not enter into any amendment or supplement to the Senior Facility Agreement or otherwise agree to any increase of such amount (unless otherwise permitted pursuant to the terms of the Inter-Creditor Deed).

- (iii) keep the Agent regularly updated (at least quarterly and at any other time upon the Agent's reasonable request) regarding the sale process of each Tasman Ship and to advise the Agent promptly of any offers received (including, without limitation, the price offered, the identity of the buyer, the main terms of any offers and the process of the negotiations), such updated to be satisfactory to the Lenders; and
- (iv) in the event that an opportunity acceptable to the Borrowers and the Lenders arises for the sale of a Tasman Ship, on a best efforts basis, ensure that (i) the memorandum of agreement is signed between the Borrower being the owner of that Tasman Ship and the buyer for the sale and purchase of that Tasman Ship and to send to the Agent a certified copy of the memorandum of agreement (and any addenda or supplemental agreements applicable thereto) promptly after the execution of the Same and (ii) the sale of that Tasman Ship is successfully completed and that such Tasman Ship is irrevocably and unconditionally delivered to the relevant buyer.

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 in writing (such permission not to be unreasonably withheld or delayed).

12.2 Maintenance of status

Each Borrower will maintain its separate corporate existence and remain in good standing under the laws of The Marshall Islands.

12.3 Negative undertakings

~~None of the Borrowers~~ Neither Borrower will:

- (a) change the nature of its business; or
- (b) pay any dividend or make any other form of distribution or effect any form of redemption, purchase or return of its limited liability company interests at any time;
- (c) provide any form of credit or financial assistance to:
 - (i) a person who is directly or indirectly interested in that Borrower's limited liability company interests 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 that Borrower than those which it could obtain in a bargain made at arms' length;
- (d) open or maintain any account with any bank or financial institution except accounts with the Agent for the purposes of the Finance Documents;
- (e) issue, allot or grant any person any limited liability company interests other than the relevant Shareholder;
- (f) 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 other than the Designated Transactions;
- (g) enter into any form of amalgamation, merger or de-merger or any form of reconstruction or reorganisation or any form of acquisition, including any joint venture (save for an IPO);
- (h) change its constitutional documents; or
- (i) acquire any vessel other than the Ship owned by it.

13 INSURANCE

13.1 General

Each Borrower also undertakes with each Creditor Party to comply (while that Ship owned by it is subject to a Mortgage) with the following provisions of this Clause 13 from the Drawdown Date and at all times during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit.

13.2 Maintenance of obligatory insurances

Each Borrower shall keep the Ship owned by it insured at the expense of that Borrower against:

- (a) fire and usual marine risks (including increased value, hull and machinery and excess risks);
- (b) war risks;
- (c) protection and indemnity risks (including excess war risk P&I cover); and
- (d) any other risks (other than loss of hire) 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 that Borrower to insure and which are specified by the Security Trustee by notice to that 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 such amount as shall from time to time be approved by the Security Trustee but in any event in an amount not less than the greater of (i) an amount which when aggregated with the insured aggregate value of the other Borrower Ships, 120 per cent. of the Loan and (ii) the aggregate Market Value of the ~~Mortgaged~~ Borrower Ships;

- (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 under basic protection and indemnity club entry;
- (d) in relation to protection and indemnity risks in respect of the full tonnage of the Ship owned by it;
- (e) on such terms as shall from time to time be approved in writing by the Security Trustee (including, without limitation, a blocking and trapping clause);
- (f) on approved terms; and
- (g) through approved brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations.

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 effected by it shall:

- (a) subject always to paragraph (b), name that Borrower as the sole named assured and the Approved Manager so co-assured unless the interest of every other named assured is limited:
 - (i) in respect of any obligatory insurances for hull and machinery and war risks;
 - (ii) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
 - (iii) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
 - (iv) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

and every other named assured has undertaken in writing to the Security Trustee (in such form as it requires) that any deductible shall be apportioned between that Borrower and every other named assured in proportion to the gross claims made or paid by each of them and that it 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;

- (b) whenever the Security Trustee requires, name (or be amended to name) the Security Trustee as additional named assured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Trustee, 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;
- (c) name the Security Trustee as loss payee with such directions for payment as the Security Trustee may specify;
- (d) 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;

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

13.5 Renewal of obligatory insurances

Each Borrower shall:

- (a) at least 14 days (or such other shorter period as the Agent may approve) before the expiry of any obligatory insurance effected by it;
- (b) notify the Security Trustee of the brokers (or other insurers) and any protection and indemnity or war risks association through or with whom that Borrower proposes to renew that obligatory insurance and of the proposed terms of renewal; and
- (c) obtain the Security Trustee's approval to the matters referred to in paragraph (i);
- (d) at least 5 Business Days (or such other shorter period as the Agent may approve) before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Security Trustee's approval pursuant to paragraph (a); and
- (e) procure that the approved brokers and/or the war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Security Trustee in writing of the terms and conditions of the renewal.

13.6 Copies of policies; letters of undertaking

Each Borrower shall ensure that all approved brokers provide the Security Trustee with pro forma copies of all policies relating to the obligatory insurances which they are to effect or renew and of a letter or letters of undertaking in a form required by the Security Trustee and including undertakings by the approved brokers that:

- (a) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 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 14 days before the expiry of the obligatory insurances, in the event of their not having received notice of renewal instructions from that 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 that Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of that Ship forthwith upon being so requested by the Security Trustee.

13.7 Copies of certificates of entry

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provides the Security Trustee with:

- (a) a certified copy of the certificate of entry for that Ship;
- (b) a letter or letters of undertaking in such form as may be required by the Security Trustee;
- (c) where required to be issued under the terms of insurance/indemnity provided by a 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 that Borrower in accordance with the requirements of such protections and indemnity association; and
- (d) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to that Ship.

13.8 Deposit of original policies

Each Borrower shall ensure that all policies relating to obligatory insurances effected by it are deposited with the approved brokers through which the insurances are effected or renewed.

13.9 Payment of premiums

Each Borrower shall punctually (or shall procure that the Approved Managers of its Ship) pay all premiums or other sums payable in respect of the obligatory insurances effected by it and produce all relevant receipts when so required by the Security Trustee.

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 Compliance with terms of insurances

None of the Borrowers 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 13.6(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) none of the Borrowers shall make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
- (c) each Borrower shall make (and promptly supply copies to the Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and

- (d) none of the Borrowers 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.

13.12 Alteration to terms of insurances

None of the Borrowers shall either make or agree to any alteration to the terms of any obligatory insurance nor waive any right relating to any obligatory insurance.

13.13 Settlement of claims

None of the Borrowers 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.

13.14 Provision of copies of communications

Each Borrower shall provide the Security Trustee, promptly following the request of the Agent, copies of all written communications between that Borrower and:

- (a) the approved brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters, which relate directly or indirectly to:
- (d) that Borrower's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls;
- (e) 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; and
- (f) a claim under any obligatory insurances of the Ship.

13.15 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 13.17 or dealing with or considering any matters relating to any such insurances,

and the Borrowers 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).

13.16 Mortgagee's interest marine insurance and additional perils insurance

The Security Trustee shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance and mortgagee's interest additional perils insurance in an amount not less than 120 per cent. of the Loan on such terms, through such insurers and generally in such manner as the Security Trustee may from time to time consider appropriate and each Borrower shall upon demand fully indemnify the Creditor Parties 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.

13.17 Review of insurance requirements

Upon the occurrence of an Event of Default, 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 opinion of the Security Trustee, significant and capable of affecting the Borrowers, the Borrower Ships and their Insurances (including, without limitation, changes in the availability or the cost of insurance coverage or the risks to which each Borrower may be subject), and may appoint insurance consultants in relation to this review at the cost of the relevant Borrower.

13.18 Modification of insurance requirements

The Security Trustee shall notify the Borrowers of any proposed modification under Clause 13.17 to the requirements of this Clause 13 which the Security Trustee reasonably consider appropriate in the circumstances, and such modification shall take effect on and from the date it is notified in writing to the relevant Borrower as an amendment to this Clause 13 and shall bind that Borrower accordingly.

13.19 Compliance with mortgagee's instructions

The Security Trustee shall be entitled (without prejudice to or limitation of any other rights which it may have or acquire under any Finance Document) to require a Borrower Ship to remain at any safe port or to proceed to and remain at any safe port designated by the Security Trustee until the Borrower owning that Ship implements any amendments to the terms of the obligatory insurances and any operational changes required as a result of a notice served under Clause 13.18.

14 SHIP COVENANTS

14.1 General

Each Borrower also undertakes with each Creditor Party to comply with the following provisions of this Clause 14 from the Drawdown Date and at all times during the Security Period (except as the Agent, with the authorisation of the Majority Lenders, may otherwise permit in writing (and in case of Clauses 14.2, 14.3(b), 14.5 and 14.12(e), such permission not to be unreasonably withheld or delayed).

14.2 Ship's name and registration

Each Borrower shall keep the Ship owned by it registered in its name under an Approved Flag; shall not do, omit to do or allow to be done anything as a result of which such registration might be cancelled or imperilled; and shall not change the name or port of registry of the Ship owned by it.

14.3 Repair and classification

Each Borrower shall keep the Ship owned by it in a good and safe condition and state of repair:

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

- (b) so as to maintain the highest class free of overdue recommendations and conditions with a first-class classification society which is a member of IACS acceptable to the Agent (such acceptance not to be unreasonably withheld);
- (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 and the ISPS Code.

14.4 Modification

None of the Borrowers shall make any modification or repairs to, or replacement of, any Borrower Ship or equipment installed on it which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.

14.5 Removal of parts

None of the Borrowers shall remove any material part of any Borrower Ship, or any item of equipment installed on, any Borrower 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 relevant Borrower Ship the property of the relevant Borrower and subject to the security constituted by the relevant Mortgage **Provided that** a Borrower may install and, subject to the Agent's consent, remove (such consent not to be unreasonably withheld or delayed, if such removal will not, in the opinion of the Agent, affect the value of the Borrower Ship) equipment owned by a third party if the equipment can be removed without any risk of damage to the Ship owned by it.

14.6 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 the Security Trustee provide the Security Trustee, with copies of all survey reports prepared by surveyors appointed by the Borrowers and, if required by the Security Trustee, by a surveyor appointed by the Security Trustee at the Borrowers' cost.

14.7 Inspection

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 interfering with the Ship's trading schedule at the cost of the Borrowers for inspections not more than once in any calendar year to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections **Provided that** if an Event of Default occurs which is continuing the Security Trustee may, by surveyors or other persons appointed by it, board the Ship and carry out such inspection at all times as it deems fit at the Borrowers' cost.

14.8 Prevention of and release from arrest

Each Borrower shall promptly discharge (or, in the case of paragraph (a) below, shall provide evidence satisfactory to the Agent that such liabilities are being contested by that Borrower in good faith by appropriate steps and in respect of which appropriate reserves have been made):

- (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 owned by it, 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, within 25 days (or such longer period as may be requested by the Borrowers and approved by the Agent acting with the authorisation of the Majority Lenders) from receiving notice of the arrest of the Ship owned by it, or of its detention in exercise or purported exercise of any such lien or claim, that Borrower shall procure its release by providing bail or otherwise as the circumstances may require.

14.9 Compliance with laws etc.

Each Borrower shall:

- (a) comply, or procure compliance with the ISM Code, the ISPS Code, all Environmental Laws and all other laws or regulations applicable to the Ship owned by it, its ownership, operation and management or to the business of that Borrower;
- (b) not employ the Ship owned by it nor allow its employment in any manner contrary to any applicable law or regulation in any relevant jurisdiction including but not limited to the ISM Code and the ISPS Code;
- (c) in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit the Ship owned by it to enter or trade to any zone which is declared a war zone by any government or by the Ship's war risks insurers unless the prior written consent of the war risk insurers has been given and that Borrower has (at its expense) effected any special, additional or modified insurance cover which the war risk insurers may require; and
- (d) comply with the PATRIOT Act and the United States Foreign Corrupt Practices Act.

14.10 Provision of information

Each Borrower shall promptly provide the Security Trustee with any information which it requests regarding:

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

14.11 Notification of certain events

Each Borrower shall ~~immediately notify~~ (and shall procure in respect of paragraph (a) of this Clause 14.11 that each Collateral Owner shall immediately notify (and (i) in respect of subparagraphs 14.12(a) and 14.12(b), such notice shall be as soon as practicable after the entry into such time or consecutive voyage charter and (ii) in respect of sub-paragraph (f)), such notice shall be reasonably in advance of the relevant event or circumstance set out therein) the Security Trustee by fax and email, of:

- (a) in respect of any Tasman Ship and Ship B, any time or consecutive voyage charter in respect of that Tasman Ship or, as the case may be, Ship B;
- ~~(b) otherwise in respect of Ship A, any time or consecutive voyage charter in respect of the Ship owned by it~~ permitted without the prior written consent of the Agent (acting with the authorisation of the Majority Lenders) pursuant to Clause 14.12(a);
- ~~(b) in respect of Ship A or Ship B, any time or consecutive voyage charter in respect of the Ship owned by it for a term which exceeds, or which by virtue of any optional extensions may exceed, 12 months;~~
- (c) any casualty which is a Major Casualty;
- (d) any occurrence as a result of which the Ship owned by it has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (e) any requirement or recommendation made by any insurer or classification society or by any competent authority which is not immediately complied with;
- (f) any arrest or detention of the Ship owned by it, any exercise or purported exercise of any lien on that Ship or its Earnings or any requisition of that Ship for hire;
- (g) any intended dry docking of the Ship owned by it;
- (h) any Environmental Claim made against that Borrower or in connection with the Ship owned by it, or any Environmental Incident;
- (i) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, an Approved Manager or otherwise in connection with the Ship owned by it; or
- (j) 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 that Borrower shall keep the Security Trustee advised in writing on a regular basis and in such detail as the Security Trustee shall require of that Borrower's, the Approved Managers or any other person's response to any of those events or matters.

14.12 Restrictions on chartering, appointment of managers etc.

None of the Borrowers shall, in relation to the Ship owned by it (and shall procure that no Collateral Owner shall, in relation to the Tasman Ship owned by it):

- (a) in respect of ~~any Tasman Ship A~~, enter into any time or consecutive voyage charter in respect of ~~any Tasman Ship A~~ for a term which exceeds, or which by virtue of any optional extensions may exceed 12 months (+/- 45 days) unless (i) Borrower A uses commercially reasonable efforts to ensure that such charter contains a "sales clause" entitling ~~the Borrower owning that Tasman Ship A~~ to sell its ~~Tasman Ship A~~ subject to the consent of the charterer, such consent not to be unreasonably withheld and (ii) the last day of the charter period (including any optional extensions) does not fall after the final Maturity Date in respect of Tranche B;

- (b) let that Ship on demise charter for any period;
- (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 that Ship is fixed;
- (e) appoint a manager of that Ship other than the Approved Managers or agree to any alteration to the terms of the Approved Managers' appointment;
- (f) de-activate or lay up that Ship; or
- (g) put that Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed \$500,000 (or the equivalent in any other currency) unless that person has first given to the Security Trustee and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or its Earnings for the cost of such work or for any other reason.

14.13 Notice of Mortgage

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

14.14 Sharing of Earnings

None of the Borrowers shall:

- (a) enter into any agreement or arrangement for the sharing of any Earnings;
- (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 a Borrower to any Earnings.

14.15 ISPS Code

Each Borrower shall comply with the ISPS Code and in particular, without limitation, shall:

- (a) procure that the Ship owned by that Borrower and the company responsible for that Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain for that Ship an ISSC; and
- (c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

14.16 Charterparty Assignment

If a Borrower enters into any Charter, that Borrower shall at the request of the Agent, execute in favour of the Security Trustee a Charterparty Assignment and shall procure to use its best endeavors:

- (i) serve notice of the Charterparty Assignment on the charterer and use its best endeavours to procure that the charterer acknowledges such notice in such form as the Agent may approve or require; and

- (ii) deliver to the Agent such other documents equivalent to those referred to at paragraphs 3, 4 and 5 of Schedule 3, Part A as the Agent may require.

14.17 Green Award

If and for so long as the Initial Lender is a Green Award Incentive Provider and a Creditor Party under this Agreement, in the event that any of the Borrowers or either of the Approved Managers complies with the requisite application, auditing and surveying process of Green Award and receives the Green Award certification and the Ship owned by that Borrower or managed by that Approved Manager becomes Green Award certified, the Initial Lender shall reimburse the Borrowers up to an amount equal to 25 per cent of the auditing and annual membership fees required in respect of that Ship (for the avoidance of doubt, such reimbursement shall not be applicable to any application fees).

14.18 Responsible Ship Recycling

If a Ship is sold for scrapping, the Borrower owning that Ship shall use its best endeavours to ensure that that Ship shall be dismantled in a safe, sustainable and socially and environmentally responsible way (the requirements for that Ship to be dismantled in a safe, sustainable, socially and environmentally responsible way shall be determined by the Agent in consultation with the relevant Borrower at the relevant time) and shall include, without limitation, the requirement that such Ship is recycled at a recycling yard which conducts its recycling business in a safely, socially and environmentally responsible manner and, to the extent applicable, in accordance with the provisions of The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 and the EU Ship Recycling regulation.

For the purposes of this clause “EU Ship Recycling Regulation” means Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling, and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (Text with EEA relevance).

15 SECURITY COVER

15.1 Minimum required security cover

Clause 15.2 applies if, at any time ~~other than during~~ following the end of the Waiver Period, the Agent notifies the Borrowers that the Security Cover Ratio is below ~~125 percent;~~

- (a) commencing from 1 January 2020 through 30 June 2020, 100 per cent.; or
(b) commencing from 1 July 2020 and at any time thereafter, 110 per cent.,

of the aggregate amount of (i) the Loan and (ii) the Swap Exposure.

15.2 Provision of additional security; prepayment

If the Agent (acting on the instructions of the Majority Lenders) serves a notice on the Borrowers under Clause 15.1, the Borrowers shall prepay such part at least of the Loan as will eliminate the shortfall on or before the date falling 30 days after the date on which the Agent's notice is served under Clause 15.1 (the “**Prepayment Date**”) unless at least 1 Business Day before the Prepayment Date the Borrowers have provided, or ensured that a third party has provided, additional security which, in the opinion of the Majority 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 the Majority Lenders, reasonably approve or require.

15.3 Valuation of Ships

The Market Value of a Borrower Ship (or, when applicable, a Tasman Ship) at any date is that shown by taking the arithmetic means of two valuations addressed to the Agent, each valuation to be prepared:

- (a) as at a date not more than 30 days previously;
- (b) by an Approved Broker nominated by the Borrowers or, as the context may require, the relevant Collateral Owner, and approved by the Agent;
- (c) with or without physical inspection of the Ship (as the Agent may require); and
- (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, free of any existing charter or other contract of employment.

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 valuations under Clause 15.2, ~~15.3 or~~ 15.3 or 15.4 and any valuations provided under Clause 11.6(d) (including any additional valuations provided pursuant to Clause 15.8 at the option of the Borrowers) shall be binding and conclusive as regards the Borrowers, as shall be any valuation which the Majority 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 Approved Broker 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 Majority Lenders (or the expert appointed by them) consider prudent.

15.7 Frequency of valuations

Each Borrower acknowledges and agrees that the Agent may commission valuation(s) of ~~the~~ each Ship at least semi-annually and at such other times as the Agent shall deem necessary (subject to Clause 15.8 of this Agreement).

15.8 Payment of valuation expenses

Without prejudice to the generality of the Borrowers' obligations under Clauses 20.2 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 **Provided that** so long as (i) no Event of Default has occurred which is continuing and (ii) no mandatory prepayment is required to be made pursuant to Clauses 8.8(a) or 8.8(b), the Borrowers shall not be obliged to pay any such fees or expenses in respect of more than two sets of valuations of each Ship in any calendar year (and, in respect of the Tasman Ships, any sets of valuations obtained under the terms, and for the purposes, of the Senior Facility Agreement shall be acceptable to satisfy the required two sets of valuations under this Agreement). At the cost and option of the Borrowers, the Borrowers shall be entitled to provide, in addition to the valuations under Clause 11.6(d) (for the other two quarters on which semi-annual valuations have not been provided together with the PIK Compliance Certificate), an additional set of valuations to determine the Market Values of the Borrower Ships to be utilised for the calculation of the PIK Amount.

15.9 Application of prepayment

Clause 8.10 shall apply in relation to any prepayment pursuant to Clause 15.2.

16 PAYMENTS AND CALCULATIONS

16.1 Currency and method of payments

All payments to be made by the Lenders or by any Borrower under a Finance Document shall be made to the Agent or to the Security Trustee, in the case of an amount payable to it:

- (a) by not later than 11.00 a.m. (New York City time) on the due date;
- (b) in same day Dollar funds settled through the New York Clearing House Interbank Payments System (or in such other Dollar funds and/or settled in such other manner as the Agent shall specify as being customary at the time for the settlement of international transactions of the type contemplated by this Agreement);
- (c) in the case of an amount payable by a Lender to the Agent or by any Borrower to the Agent or any Lender, to the account of the Agent with correspondent bank Bank of America Intl. New York (correspondent bank SWIFT: BOFAUS3N (SWIFT: ABNANL2A, beneficiary: ABN AMRO Bank N.V. Amsterdam and account number: NL60ABNA0626269504) with reference "~~\$82,459,678.29~~ 64,253,892.38 facility re m.v.'s ORCA I, KATHERINE, TASMAN, DIMITRIS Y AND IAN H", 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 any 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 commitment fee 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, the Swap Bank or the Security Trustee shall be made available by the Agent to that Lender, the Swap Bank or, as the case may be, the Security Trustee by payment, with funds having the same value as the funds received, to such account as the Lender, the Swap Bank 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 and/or the Swap Bank generally shall be distributed by the Agent to each Lender and the Swap Bank 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 or the Swap Bank, deduct and withhold from that amount any sum which is then due and payable to the Agent from that Lender or the Swap Bank under any Finance Document or any sum which the Agent is then entitled under any Finance Document to require that Lender or the Swap Bank 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 any Borrower or any Lender or the Swap Bank any sum which the Agent is expecting to receive for remittance or distribution to that Borrower or that Lender or the Swap Bank 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 or the Swap Bank, without first having received that sum, that Borrower or (as the case may be) the Lender or the Swap Bank 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 the Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers 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 Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers 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 any Borrower under Clauses 20, 21 and 22 of this Agreement or by any Borrower or any Security Party under any corresponding or similar provision in any other Finance Document);
 - (ii) secondly, in or towards satisfaction pro rata of any and all amounts of interest or default interest payable to the Creditor Parties under the Finance Documents (and, for this purpose, the expression “**interest**” shall include any net amount which any Borrower shall have become liable to pay or deliver under section 2(e) (Obligations) of the Master Agreement but shall have failed to pay or deliver to the Swap Bank at the time of application or distribution under this Clause 17); and
 - (iii) thirdly, in or towards satisfaction pro rata of the Loan and the Swap Exposure (in the case of the latter, calculated as at the actual Early Termination Date applying to each particular Designated Transaction, or if no such Early Termination Date shall have occurred, calculated as if an Early Termination Date occurred on the date of application or distribution hereunder);
- (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 either 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 provisions of Clause 17.1(a); 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 the Majority Lenders and the Swap Bank, by notice to the Borrowers, the 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 any Borrower or any Security Party.

18 APPLICATION OF EARNINGS; SWAP PAYMENTS

18.1 Payment of Earnings and Swap Payments

Each Borrower undertakes with each Creditor Party to ensure that, throughout the Security Period (and subject only to the provisions of the General Assignments):

- (a) all Earnings of the Ship owned by it are paid to the Earnings Account for that Ship; and
- (b) all payments by the Swap Bank to any Borrower under each Designated Transaction are paid to the Earnings Account of that Borrower.

18.2 Application of Earnings

Each Borrower undertakes with the Lenders that any funds from time to time credited to, or standing to the credit of, its Earnings Account shall, unless and until an Event of Default shall have occurred and is continuing (whereupon the provisions of Clause 17.1 shall apply), be available for application in the following manner:

- (a) in or towards making payments of all amounts due and payable by the Borrowers under this Agreement and the Master Agreement (other than payments of principal and interest pursuant to Clauses 5.1, 7.2 and/or 8.1);
- (b) in or towards making the transfers to the Retention Account required pursuant to Clause 18.3; and
- (c) any surplus shall be applied in accordance with Clause 8.14 and once Clause 8.14 is no longer applicable, any surplus shall be released to the Borrowers **Provided that** no Event of Default has occurred and is continuing or will occur following such release to the Borrowers.

18.3 Monthly retentions

Each Borrower undertakes with each Creditor Party to ensure that, as of 1 January 2020 in each calendar month of the Security Period, on such dates as the Agent may from time to time specify, there is transferred to the Retention Account out of the Earnings received in its Earnings Account (or any of them) during the preceding calendar month:

- (a) one-third of the amount of the repayment instalment ~~in respect of Tranche A~~ falling due under Clause 8.1 on the next Repayment Date ~~in respect of Tranche A~~;
- (b) the relevant fraction of the aggregate amount of interest on ~~that~~ the Tranche which is payable on the next due date for payment of interest under this Agreement; and
- (c) the relevant fraction of the net amount which is payable by the Borrowers to the Swap Bank in respect of any Designated Transaction on the next due date for payment of such amount under the relevant Confirmation.

The “**relevant fraction**” is:

- (i) in relation to paragraph (b) a fraction of which the numerator is 1 and the denominator the number of months comprised in the then current Interest Period applicable to the relevant Tranche (or, if the current Interest Period ends after the next due date for payment of interest under this Agreement for the ~~relevant~~ Tranche, the number of months from the later of the commencement of the current Interest Period for the ~~relevant~~ Tranche or the last due date for payment of interest for ~~that the~~ the Tranche to the next due date for payment of interest for ~~that the~~ the Tranche under this Agreement); and
- (ii) in relation to paragraph (c), a fraction of which the numerator is one and the denominator is the number of months between fixed rate payments specified in the relevant Confirmation.

18.4 Shortfall in Earnings

If the aggregate Earnings of the Ships received in the Earnings Accounts are insufficient in any month for the required amount to be transferred to the Retention Account under Clause 18.3, the Borrowers shall make up the amount of the insufficiency on demand from the Agent; but, without thereby prejudicing the Agent’s right to make such demand at any time, the Agent may, if so authorised by the Majority Lenders, permit the Borrowers to make up all or part of the insufficiency by increasing the amount of any transfer under Clause 18.3 from the Earnings of the Ships received in the next or subsequent months.

18.5 Application of retentions

Until an Event of Default occurs which is continuing, the Agent shall on each Repayment Date and on each due date for the payment of interest under this Agreement distribute to the Lenders in accordance with Clause 16.4 so much of the then balance on the Retention Account as equals:

- (a) the repayment instalment ~~in respect of the relevant Tranche~~ due on that Repayment Date; or
- (b) the amount of interest ~~in respect of the relevant Tranche~~ payable on that interest payment date,
- (c) in discharge of the Borrowers’ liability for that repayment instalment or that interest.

18.6 Interest accrued on Accounts

Any credit balance on the Accounts shall bear interest at the rate from time to time offered by the Agent to its customers for Dollar deposits of similar amounts and for periods similar to those for which such balances appear to the Agent likely to remain on the Accounts.

18.7 No release of accrued interest

Interest arising under Clause 18.6 shall be credited to the Retention Account but shall not be released to the Borrowers or, as the case may be, the Collateral Owners, until the end of the Security Period.

18.8 Location of accounts

Each Borrower shall (and Shall procure that each Collateral Owner shall) promptly:

- (a) comply with any requirement of the Agent as to the location or re-location of the relevant Accounts (or any of them); and
- (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 Accounts.

18.9 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.

18.10 Borrowers' obligations unaffected

The provisions of this Clause 18 (as distinct from a distribution effected under Clause 18.5) do not affect:

- (a) the liability of the Borrowers to make payments of principal and interest on the due dates; or
- (b) any other liability or obligation of the Borrowers or any Security Party or K&T Marine under any Finance Document.

19 EVENTS OF DEFAULT

19.1 Events of Default

An Event of Default occurs if:

- (a) any 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 unless payment is made within 3 Business Days of its due date due to an administrative or technical error or a disruption event in the payment and/or communication system which, in each case, is beyond the control of the Creditor Parties; or
- (b) any breach occurs of Clause 8.16, 9.2, 10.18, 10.19, 11.2, 11.3, 11.18, 11.20, 11.21, 12.2, 12.3, 13.2, 13.4, 14.2, 14.8, 18.1 or 18.3 (and, in the case of Clause 18.3, such breach is not remedied as provided in Clause 18.4) or clause 11.19 of the Corporate Guarantee (unless (i) in respect of any breach under Clause 11.18, the Borrowers remedy any shortfall of the Minimum Liquidity Amount within 5 Business Days of the earlier of (A) the date on which the Agent becomes aware of such breach or (B) the date on which the Borrowers become aware of such breach or (ii) in respect of any breach under Clause 14.8, the arrest of the relevant Ship is discharged within 25 days (or such longer period as may be requested by the Borrowers and approved by the Agent acting with the authorisation of the Majority Lenders)); or
- (c) any breach by any Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a) or (b)) which, in the opinion of the Majority Lenders, is capable of remedy, and such default continues unremedied 10 days after the earlier of (i) the written notice from the Agent requesting action to remedy the same and (ii) the Borrower or the relevant Security Party becoming aware of the breach; or
- (d) (subject to any applicable grace period specified in any Finance Document) any breach by any Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach falling within 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 or K&T Marine in a Finance Document or in a Drawdown Notice or any other notice or document relating to a Finance Document is untrue or misleading when it is made or repeated; or
- (f) at any time other than during the Refinancing Period, any of the following occurs in relation to any Financial Indebtedness of a Relevant Person (any Financial Indebtedness, exceeding in aggregate, in the case of the Corporate Guarantor \$3,000,000 (or the equivalent in any other currency or currencies) and, in the case of a Borrower or a Collateral Owner, \$1,000,000 (or the equivalent in any other currency or currencies)):

- (i) any Financial Indebtedness of a Relevant Person is not paid when due; 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 (howsoever described in the relevant agreement or instrument) and irrespective of whether that event of default is or may be remedied or waived by the creditor(s) of that Relevant Person **Provided that:**
 - (A) in the case of an event of default that is remedied or waived by the creditor(s) of that Relevant Person, an Event of Default shall cease to exist under this Agreement once the Borrowers have provided written notice to the Agent of such remedy or waiver; and
 - (B) in the case of any Financial Indebtedness created under:
 - (1) any guarantee and indemnity of the Corporate Guarantor, a demand is made by the relevant creditor(s) under such guarantee and indemnity; or
 - (2) any guarantee and indemnity of the Corporate Guarantor securing the obligations of any Subsidiary, the Financial Indebtedness of that Subsidiary is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of that Subsidiary's payment default or that Subsidiary's declaration of bankruptcy or insolvency and, in the opinion of the Agent in its discretion, that payment default or, as the case may be, that default due to that declaration of bankruptcy or insolvency, may adversely affect the ability of the Corporate Guarantor to comply with its obligations under the Corporate Guarantee unless, in the case of any payment default, the Corporate Guarantor is able to provide evidence to the Agent that such payment default has been remedied within 10 days of the date on which the overdue payment(s) became due and payable; ~~or,~~
and for the avoidance of doubt, the above proviso shall not apply in respect of any event of default under the Senior Facility Agreement (howsoever described therein) as any such event of default shall trigger an automatic Event of Default under this Agreement; or
- (iii) a lease or hire purchase agreement (other than a time charter in connection with a Ship) creating any Financial Indebtedness of a Relevant Person is terminated by the lessor or owner or becomes capable of being terminated as a consequence of any termination event; or
- (iv) any overdraft, loan, note issuance, acceptance credit, letter of credit, guarantee, foreign exchange or other facility, or any swap or other derivative contract or transaction, relating to any Financial Indebtedness of a Relevant Person ceases to be available or becomes capable of being terminated as a result of any event of default, or cash cover is required, or becomes capable of being required, in respect of such a facility as a result of any event of default; or
- (v) any Security Interest securing any Financial Indebtedness of a Relevant Person becomes enforceable; or

- (g) any of the following occurs in relation to a Relevant Person:
- (i) at any time other than during the Refinancing Period, a Relevant Person becomes, in the opinion of the Majority Lenders, unable to pay its debts as they fall due (in respect of a sum of, or sums aggregating, \$1,000,000 (in the case of a Borrower or a Collateral Owner) or \$3,000,000 (in the case of the Corporate Guarantor) or more or the equivalent in another currency or currencies, **Provided that** no Event of Default will occur under this paragraph if that debt is paid by that Relevant Person within 3 Business Days); or
 - (ii) any assets of a Relevant Person are subject to any form of execution, attachment, arrest, sequestration or distress or any form of freezing order (in respect of a sum of, or sums aggregating, \$500,000 (in the case of a member of the Group (other than the Corporate Guarantor)) or \$2,000,000 (in the case of the Corporate Guarantor) or more or the equivalent in another currency or currencies, **Provided that** no Event of Default will occur under this paragraph if that execution, attachment, arrest, sequestration or distress or any form of freezing order is discharged or released within 25 days (or such longer period as may be requested by the Borrowers and approved by the Agent acting with the authorisation of the Majority Lenders) of its commencement; or
 - (iii) any administrative or other receiver is appointed over any asset of a Relevant Person; or
 - (iv) an administrator is appointed (whether by the court or otherwise) in respect of a Relevant Person; or
 - (v) any formal declaration of bankruptcy or any formal statement to the effect that a Relevant Person is insolvent or likely to become insolvent is made by a Relevant Person or by the directors of a Relevant Person or, in any proceedings, by a lawyer acting for a Relevant Person; or
 - (vi) a provisional liquidator is appointed in respect of a Relevant Person, a winding up order is made in relation to a Relevant Person or a winding up resolution is passed by a Relevant Person; or
 - (vii) a resolution is passed, an administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by (aa) a Relevant Person, (bb) the members or directors of a Relevant Person, (cc) a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person, or (dd) a government minister or public or regulatory authority of a Pertinent Jurisdiction for or with a view to the winding up of that or another Relevant Person or the appointment of a provisional liquidator or administrator in respect of that or another Relevant Person, or that or another Relevant Person ceasing or suspending business operations or payments to creditors, save that this paragraph does not apply to a fully solvent winding up of a Relevant Person (other than a Borrower-, a Collateral Owner or the Corporate Guarantor-) which is, or is to be, effected for the purposes of an amalgamation or reconstruction previously approved by the Majority Lenders; 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,

No Event of Default shall occur under paragraphs (ix) and (x) above if any Subsidiary of the Corporate Guarantor or the Corporate Guarantor (together, the **“Negotiating Parties”** and each a **“Negotiating Party”**) take or resolve to take any steps or actions (the **“Steps and Actions”**) with a view to obtaining 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 in respect of any Financial Indebtedness (the **“Subsidiary Indebtedness”**) of any Negotiating Party **Provided that:**

- (A) if that Negotiating Party has granted a Security Interest, guarantee or other form of assurance or security in favour of any creditor, that creditor has neither demanded any payment from that Negotiating Party nor exercised any of its enforcement rights in respect of that Subsidiary Indebtedness;
 - (B) the Agent is immediately notified by that Negotiating Party (or, in the case of a Subsidiary of the Corporate Guarantor, by the Corporate Guarantor) that it takes or resolves to take the Steps and Actions (together with any details, as may be reasonably requested by the Agent and to the extent that the same may be disclosed under any relevant non-disclosure arrangements entered into with the relevant creditor(s) in good faith, in connection with the Steps and Actions); and
 - (C) any Steps and Actions taken by that Negotiating Party do not have a material adverse effect (in the reasonable opinion of the Agent) on the financial condition, state of affairs or operations of that Negotiating Party and/or result in the non-compliance of any of the provisions of Clause 11.26 (*Most favoured nation clause*); or
- (xi) in a country other than England, any event occurs, any proceedings are opened or commenced or any step is taken which, in the opinion of the Majority Lenders is similar to any of the foregoing; or

- (h) any Borrower or any Collateral Owner 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
- (i) it becomes unlawful in any Pertinent Jurisdiction or impossible:
 - (i) for any Borrower, the Corporate Guarantor or any Security Party to discharge any liability under a Finance Document or to comply with any other obligation which the Majority Lenders consider material under a Finance Document; or
 - (ii) for the Agent, the Security Trustee, the Lenders or the Swap Bank to exercise or enforce any right under, or to enforce any Security Interest created by, a Finance Document; or
- (j) any official consent necessary to enable any Borrower or any Collateral Owner to own, operate or charter the Ship owned by it or to enable any Borrower or any Security Party or K&T Marine to comply with any provision which the Majority 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
- (k) without the prior written consent of the Agent (to be given with the authorisation of the Majority Lenders (such consent not to be unreasonably withheld)) the Corporate Guarantor is listed on any stock exchange;
- (l) any provision which the Majority Lenders consider material of a Finance Document proves to have been or becomes invalid or unenforceable, or a Security Interest created by a Finance Document proves to have been or becomes invalid or unenforceable or such a Security Interest proves to have ranked after, or loses its priority to, another Security Interest or any other third party claim or interest except the Permitted Security Interests; or
- (m) the security constituted by a Finance Document is in any way imperilled or in jeopardy or the state of the Approved Flag of a Ship is or becomes involved in hostilities or civil war or there is a seizure of power in such state by unconstitutional means, or any other event occurs in relation to that Ship, the Mortgage or the Approved Flag in respect of that Ship and in the reasonable opinion of the Agent such event is likely to have a Material Adverse Effect unless the Borrower or, as the case may be, the Collateral Owner owning that Ship, within 14 days of the occurrence of such event (or such longer period as may be agreed by the Agent acting with the authorisation of the Lenders) re-registers that Ship on an alternative Approved Flag and subject to:
 - (i) the Ship remaining subject to a Security Interest created by a first (or, as the case may be, in the case of a Tasman Ship, second) priority or preferred ship mortgage on the Ship and, if appropriate, a first (or, as the case may be, in the case of a Tasman Ship, second) priority deed of covenant collateral to that mortgage (or equivalent first or, as the case may be in the case of a Tasman Ship, second, priority security) on substantially the same terms as the Mortgage in respect of the Ship in Agreed Form; and
 - (ii) the execution of such other documentation amending and supplementing the Finance Documents, as the Agent, acting with the authorisation of the Lenders, shall reasonably approve or require; or
- (n) an Event of Default (as defined in section 14 of the Master Agreement) occurs; or
- (o) the Master Agreement or any other Finance Document is terminated, cancelled, suspended, rescinded or revoked or otherwise ceases to remain in full force and effect for any reason except with the consent of the Agent, acting with the authorisation of the Majority Lenders; or

- (p) any breach occurs of Clause 15.2, and such default continues un-remedied 14 days after written notice from the Agent requesting action to remedy the same; or
- (q) the authority or ability of a Borrower-, a Collateral Owner or the Corporate Guarantor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to such Borrower ~~or~~, such Collateral Owner or the Corporate Guarantor (as the case may be) or any of its assets (unless, in the case of any Borrower or any Collateral Owner, any such occurrence would otherwise be considered a Total Loss as a result of which a mandatory prepayment would be required pursuant to Clause 8.8(b) (*Mandatory prepayment*), and the Borrowers prepay the required amount in accordance with Clause 8.8(b) (*Mandatory prepayment*)); or
- (r) a Borrower or a Security Party (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document; or
- (s) any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to any of the Finance Documents or the transactions contemplated in any of the Finance Documents or against a Borrower-, a Collateral Owner or the Corporate Guarantor or its respective assets which has or could reasonably be expected to have a Material Adverse Effect; or
- (t) 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-, any Collateral Owner or the Corporate Guarantor; or
 - (ii) any accident or any Environmental Incident or other event involving any Ship or another vessel owned, chartered or operated by a Relevant Person,
 which constitutes a Material Adverse Change.

19.2 Actions following an Event of Default

On, or at any time after, the occurrence of an Event of Default:

- (a) the Agent may, and if so instructed by the Majority Lenders, the Agent shall:
 - (i) serve on the Borrowers a notice stating that all or part of the Commitments and all other obligations of each Lender to the Borrowers under this Agreement are cancelled; and/or
 - (ii) serve on the Borrowers a notice stating that all or part of the Loan together with 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
 - (iv) the Security Trustee may, and if so instructed by the Agent, acting with the authorisation of the Majority Lenders, the Security Trustee shall take any action which, as a result of the Event of Default or any notice served under paragraph (a)(i) or (a)(ii), the Security Trustee, the Agent and/or the Lenders and/or the Swap Bank are entitled to take under any Finance Document or any applicable law.

19.3 Termination of Commitments

On the service of a notice under Clause 19.2(a)(i), the Commitments and all other obligations of each Lender to the Borrowers under this Agreement shall be cancelled.

19.4 Acceleration of Loan

On the service of a notice under Clause 19.2(a)(ii), all or, as the case may be, part of the Loan, specified in the notice together with 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) or 19.2(a)(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 Swap Bank, 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 any Borrower or any Security Party with any form of claim or defence.

19.7 Creditor Party's rights unimpaired

Nothing in this Clause shall be taken to impair or restrict the exercise of any right given to individual Lenders or the Swap Bank 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 Corporate Guarantor, a Borrower, any other Security Party (other than (i) an Approved Manager, (ii) K&T Marine and, for the avoidance of doubt, (iii) the Poseidon Shareholders).

19.10 Interpretation

In Clause 19.1(g) 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.

19.11 Position of Swap Bank

Neither the Agent nor the Security Trustee shall be obliged, in connection with any action taken or proposed to be taken under or pursuant to the foregoing provisions of this Clause 19, to have any regard to the requirements of the Swap Bank except to the extent that the Swap Bank is also a Lender.

20 FEES AND EXPENSES

20.1 Costs of negotiation, preparation etc.

The Borrowers shall pay to the Agent on its demand the amount of all expenses (including legal and insurance consultant fees) reasonably and properly incurred by the Agent or the Security Trustee in connection with the negotiation, preparation, printing, execution, syndication, perfection or registration of any Finance Document, the Equity Undertaking, or any related document or with any transaction contemplated by a Finance Document, the Equity Undertaking or a related document (including, but not limited to, any costs incurred by the Agent in connection with the insurance opinion to be provided to it in accordance with paragraph 7 of Part B, Schedule 3).

20.2 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 reasonably and properly incurred by a Creditor Party in connection with:

- (a) any amendment or supplement to a Finance Document ~~and the Equity Undertaking~~, or any proposal for such an amendment to be made;
- (b) any consent or waiver by the Lenders, the Swap Bank, the Majority Lenders or the Creditor Party concerned under or in connection with a Finance Document ~~and the Equity Undertaking~~, or any request for such a consent or waiver;
- (c) the valuation of any security provided or offered under Clause 15 (save as otherwise provided in Clause 15.8) or any other matter relating to such security; or
- (d) where the Security Trustee, 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 that Ship pursuant to Clause 13.17; and
- (e) any step taken by the Creditor Party concerned with a view to the protection, exercise or enforcement of any right or Security Interest created by a Finance Document or ~~the Equity Undertaking~~ 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.

20.3 Documentary taxes

The Borrowers shall promptly pay any tax payable on or by reference to any Finance Document ~~and the Equity Undertaking~~, 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 Borrowers to pay such a tax.

20.4 Agent's management time

Any indemnity amount payable to the Agent under the Agency and Trust Agreement or this Agreement shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrowers (and always subject to the Borrowers' prior consent, such consent not to be unreasonably withheld) and the other Creditor Parties, and is in addition to any fee paid or payable to the Agent under Clause 20.

20.5 Security Trustee's management time

Any indemnity amount payable to the Security Trustee under the Agency and Trust Agreement or this Agreement shall include the cost of utilising the Security Trustee's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Trustee may notify to the Borrowers (and always subject to the Borrowers' prior consent, such consent not to be unreasonably withheld) and the other Creditor Parties, and is in addition to any fee paid or payable to the Security Trustee under Clause 20.

20.6 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 20 and is accompanied by a breakdown which indicates the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

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) ~~a~~ the Tranche 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 payment in respect 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 the Borrowers 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); and
- (d) the occurrence and/or continuance of an Event of Default or a Potential 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 or any FATCA deduction) 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, 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 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 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; or
- (b) any other Pertinent Matter,
other than claims, expenses, liabilities and losses which are shown to have been directly and mainly caused by the dishonesty or wilful misconduct of the officers or employees of the Creditor Party concerned.

Without prejudice to its generality, this Clause 21.3 covers any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code, the ISPS Code or any Environmental Law.

21.4 Environmental Indemnity

Without prejudice to its generality, Clause 21.3 covers any claims, demands, proceedings, liabilities, taxes, losses or expenses of every kind which arise, or are asserted, under or in connection with any law relating to safety at sea, pollution or the protection of the environment, the ISM Code or the ISPS Code.

21.5 Currency indemnity

If any sum due from any 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 (Rotterdam 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 their other liabilities under the Finance Documents and which shall not be merged in any judgment or order relating to those other liabilities.

21.6 Application to Master Agreement

For the avoidance of doubt, Clause 21.5 does not apply in respect of sums due from a Borrower to the Swap Bank under or in connection with the Master Agreement as to which sums the provisions of section 8 (Contractual Currency) of the Master Agreement shall apply.

21.7 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 is accompanied by a breakdown which indicates the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

21.8 Sums deemed due to a Lender

For the purposes of this Clause 21, a sum payable by the Borrowers to the Agent or the Security Trustee for distribution to a Lender shall be treated as a sum due to that Lender.

21.9 Mandatory cost

The Borrowers shall, on demand by the Agent, pay to the Agent for the account of the relevant Lender, such amount which any Lender certifies in a notice to the Agent to be its good faith determination of the amount necessary to compensate it for complying with:

- (a) in the case of a Lender lending from a lending office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank or any other authority or agency which replaces all or any of its functions) in respect of loans made from that facility office; and
- (b) in the case of any Lender lending from a lending office in the United Kingdom, any reserve asset, special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England (or any other governmental authority or agency) and/or paying any fees to the Financial Conduct Authority and/or the Prudential Regulation Authority (or any other governmental authority or agency which replaces all or any of their functions), which, in each case, is referable to that Lender’s participation in the Loan.

21.10 Notice of prepayment

If the Borrowers are not willing to continue to indemnify the Creditor Parties for any tax for which the Creditor Parties liable under Clause 21.1, the Borrowers may give the Agent not less than 14 days’ notice of their intention to prepay the Loan at the end of an Interest Period.

21.11 Prepayment

A notice under Clause 21.10 shall be irrevocable; and on the date specified in the Borrowers' notice of intended prepayment, the Commitments shall terminate and the Borrowers shall prepay the Loan, (without premium or penalty) together with accrued interest thereon at the applicable rate plus the applicable Margin and the Mandatory Cost (if any).

22 NO SET-OFF OR TAX DEDUCTION

22.1 No deductions

All amounts due from the Borrowers 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) that Borrower shall notify the Agent as soon as it becomes aware of the requirement;
- (b) that 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 Borrower concerned 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, excluding any FATCA Deduction, except tax on a Creditor Party's overall net income.

22.5 Application to Master Agreement

For the avoidance of doubt, Clause 22 does not apply in respect of sums due from a Borrower to the Swap Bank under or in connection with the Master Agreement as to which sums the provisions of section 2(d) (Deduction or Withholding for Tax) of the Master Agreement shall apply.

22.6 Notice of prepayment

If the Borrowers are not willing to continue to make a tax deduction under Clause 22.2, the Borrower may give the Lender not less than 14 days' notice of its intention to prepay the Loan at the end of an Interest Period.

22.7 Prepayment

A notice under Clause 22.6 shall be irrevocable; and on the date specified in the Borrowers' notice of intended prepayment, the Commitments shall terminate and the Borrowers shall prepay (without premium or penalty) the Loan, together with accrued interest thereon at the applicable rate plus the applicable Margin and the Mandatory Cost (if any).

22.8 FATCA

(a) FATCA Information

- (i) Subject to paragraph (iii) below, each party to a Finance Document shall, within 10 Business Days of a reasonable request by another party to the Finance Documents:
 - (A) confirm to that other party whether it is a FATCA Exempt Party or is not a FATCA Exempt Party; and
 - (B) supply to the requesting party such forms, documentation and other information relating to its status under FATCA (including its applicable "passthru percentage" or other information required under the US Treasury regulations or other official guidance including intergovernmental agreements) as the requesting party reasonably requests for the purposes of such requesting party's compliance with FATCA.
- (ii) If a party to any Finance Document confirms to another party pursuant to Clause ~~22.6(a)~~(i22.8(a)(i)) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that party shall notify that other party reasonably promptly;
- (iii) Sub-clause (i) above shall not oblige any Creditor Party to do anything which would or might in its reasonable opinion constitute a breach of any law or regulation, any policy of that party, any fiduciary duty or any duty of confidentiality, or to disclose any confidential information (including, without limitation, its tax returns and calculations); provided, however, that information required (or equivalent to the information so required) by United States Internal Revenue Service Forms W-8 or W-9 (or any successor forms) shall not be treated as confidential information of such party for purposes of this sub-clause (iii);
- (iv) If a party to any Finance Document fails to confirm its status or to supply forms, documentation or other information requested in accordance with sub-clause (i) above (including, for the avoidance of doubt, where sub-clause (iii) above applies), then:
 - (A) if that party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
 - (B) if that party failed to confirm its applicable passthru percentage then such party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable passthru percentage is 100 per cent.,

until (in each case) such time as the party in question provides the requested confirmation, forms, documentation or other information.

(b) FATCA Withholding

- (i) Each party to any Finance Document may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

- (ii) Each party to any Finance Document shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the party to whom it is making the payment and, in addition, shall notify the Borrower, the Agent and the other Creditor Parties.

23 ILLEGALITY, ETC.

23.1 Illegality

This Clause 23 applies if a Lender (for the purposes of this Clause 23, a “**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 and applicable law, an amendment to an existing and applicable law or a change in the manner in which an existing and applicable law is or will be interpreted or applied; or
- (b) contrary to, or inconsistent with, any applicable 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 any 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 23.2, the relevant 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.

23.4 Mitigation

If circumstances arise which would result in a notification under Clause 23.1 then, without in any way limiting the rights of the Lenders under Clause 23.3, the Notifying Lender shall use reasonable endeavours to transfer its obligations, liabilities and rights under this Agreement and the Finance Documents to another office or financial institution not affected by the circumstances but the Notifying Lender shall not be under any obligation to take any such action if, in its opinion, to do would or might:

- (a) have an adverse effect on its business, operations or financial condition; or
- (b) involve it in any activity which is unlawful or prohibited or any activity that is contrary to, or inconsistent with, any regulation; or
- (c) involve it in any expense (unless indemnified to its satisfaction) or tax disadvantage.

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 an alteration after the date of this Agreement in the manner in which a law is interpreted or applied (disregarding any effect which relates to the application to payments under this Agreement of a tax on the Lender’s overall net income); or
- (b) complying with any regulation (including any which relates to capital adequacy or liquidity controls or which affects the manner in which the Notifying Lender allocates capital resources to its obligations under this Agreement) which is introduced, or altered, or the interpretation or application of which is altered, after the date of this Agreement; or
- (c) the introduction, implementation, application, administration or compliance with:
 - (i) the “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004, in the form existing on the date of this Agreement (“**Basel II**”) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Creditor Party or any of its Affiliates); or
 - (ii) Basel III, CRD IV or CRR or any law or regulation which implements or applies Basel III, CRD IV or CRR (regardless of the date on which it is enacted, adopted or issued and regardless of whether any such implementation, application or compliance is by a government, regulator, a Creditor Party or any of its Affiliates) after the date of this Agreement, the Notifying Lender (or its Holding Company) has incurred or will incur an “**increased cost**”,

(in each case when compared to the cost of complying with such regulations as determined by the Notifying Lender (or Holding Company or Affiliate of it) on the date of this Agreement (whether such implementation, application or compliance is by a government, regulator, supervisory authority, the Notifying Lender or its Holding Company),

24.2 Meaning of “increased cost”

In this Clause 24, “increased cost” means, in relation to a Notifying Lender:

- (a) an additional or increased cost incurred as a result of, or in connection with, the Notifying Lender having entered into, or being a party to, this Agreement or a Transfer Certificate, of funding or maintaining its Commitment or Contribution or performing its obligations under this Agreement, or of having outstanding all or any part of its Contribution or other unpaid sums;
- (b) a reduction in the amount of any payment to the Notifying Lender under this Agreement or in the effective return which such a payment represents to the Notifying Lender or on its capital;
- (c) an additional or increased cost of funding all or maintaining all or any of the advances comprised in a class of advances formed by or including the Notifying Lender’s Contribution or (as the case may require) the proportion of that cost attributable to the Contribution; or
- (d) a liability to make a payment, or a return foregone, which is calculated by reference to any amounts received or receivable by the Notifying Lender under this Agreement, but not an item attributable to (i) a change in the rate of tax on the overall net income of the Notifying Lender (or a Holding Company of it), (ii) a FATCA Deduction required to be made by a party to a Finance Document or (iii) an item covered by the indemnity for tax in Clause 21.1 or by Clause 22.

For the purposes of this Clause 24.2 the Notifying Lender may in good faith allocate or spread costs and/or losses among its assets and liabilities (or any class of its assets and liabilities) on such basis as it considers appropriate.

24.3 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.

24.4 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.

24.5 Notice of prepayment

If the Borrowers are not willing to continue to compensate the Notifying Lender for the increased cost under Clause 24.4, the Borrowers may give the Agent not less than 14 days' notice of their intention to prepay the Notifying Lender's Contribution at the end of an Interest Period.

24.6 Prepayment; termination of Commitment

A notice under Clause 24.5 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 applicable Margin and the Mandatory Cost (if any).

24.7 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 a Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from that Borrower to that Creditor Party under any of the Finance Documents; and
- (b) for that purpose:
- (c) break, or alter the maturity of, all or any part of a deposit of that Borrower;

- (d) convert or translate all or any part of a deposit or other credit balance into Dollars; and
- (e) 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 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 the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of any Borrower.

26 TRANSFERS AND CHANGES IN LENDING OFFICES

26.1 Transfer by Borrowers

None of the Borrowers may, without the prior written consent of the Agent, given on the instructions of all the Creditor Parties, transfer any of its rights, liabilities or obligations under any Finance Document and the Master Agreement.

26.2 Transfer by a Lender

Subject to Clause 26.4, a Lender (the "**Transferor Lender**") may at any time, with consultation with the Borrowers but without the consent of the Borrowers or any Security Party, 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, another bank or financial institution or a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (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. The Transferee Lender shall be selected by the Transferor Lender with prior consultation with the Borrowers.

No Borrower, Security Party or any other member of the Group or shareholder of any such party shall be entitled to become a Transferee Lender.

However any rights and obligations of the Transferor Lender in its capacity as Agent or Security Trustee will have to be dealt with separately in accordance with the Agency and Trust Agreement

26.3 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 and the Swap Bank;
- (b) on behalf of the Transferee Lender, send to each Borrower 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,

but the Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Transferor Lender and the Transferee Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to that Transferee Lender.

26.4 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.

26.5 No transfer without Transfer Certificate

Except as provided in Clause 26.17, 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, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

26.6 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.

26.7 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 (other than the Master 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 any 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 (other than the Master Agreement) 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 any 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 (other than the Master Agreement) which are applicable to the Lenders generally, including but not limited to those relating to the Majority Lenders and 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 any 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.

26.8 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 the Borrowers during normal banking hours, subject to receiving at least 3 Business Days' prior notice.

26.9 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.

26.10 Authorisation of Agent to sign Transfer Certificates

Each Borrower, the Security Trustee and each Lender and the Swap Bank irrevocably authorise the Agent to sign Transfer Certificates on its behalf.

26.11 Registration fee

In respect of any Transfer Certificate, the Agent shall be entitled to recover a registration fee of \$2,500 from the Transferor Lender or (at the Agent's option) the Transferee Lender.

26.12 Sub-participation; securitisation; subrogation assignment

- (a) A Lender may sub-participate or include in a securitisation or similar transaction all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, any Borrower, any Security Party, the Agent or the Security Trustee or any other Creditor Party; and the Lenders may assign, in any manner and terms agreed by the Majority Lenders, the Agent and the Security Trustee, all or any part of those rights to an insurer or surety who has become subrogated to them.
- (b) The Borrowers shall, and shall procure that each Security Party shall, do everything desirable or necessary to assist a Lender to achieve a successful (in the opinion of that Lender) securitisation (or similar transaction).

26.13 Disclosure of information

- (a) In relation to any information which a Lender has received (other than Confidential Information) in relation to any Borrower, any Security Party or their affairs under or in connection with any Finance Document, that Lender may disclose (save as otherwise provided in Clause 31) any such information without the prior irrevocable authorisation of or notice to that Borrower and the Corporate Guarantor to:
 - (b) a potential transferee lender, sub-participant, Affiliate, any other assignee or transferee or any other person who may propose entering into a contractual relation with that Lender in relation to this Agreement; and/or
 - (c) any direct or indirect Subsidiary, any direct or indirect Holding Company, any Affiliate or any other company in its group; and/or
 - (d) any authorities (including, without limitation, any private, public or internationally recognised authorities) or any party to any Finance Document or any professional adviser to that Lender; and/or
 - (e) a rating agency or their professional advisors; and/or
 - (f) any other person regarding the funding, refinancing, transfer, assignment, sale, sub-participation, insurance arrangement, operational arrangement or other transaction in relation thereto including without limitation any enforcement, preservation, assignment, transfer, sale or sub-participation of that Lender's rights and obligations,
 - (g) and including, without limitation, (x) for purposes in connection with (1) any enforcement or (2) assignment or transfer of that Lender's rights or obligations under any Finance Document or (y) to the extent desirable or necessary in connection with or in contemplation of a securitisation (or similar transaction).

26.14 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.

26.15 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.

26.16 Replacement of Reference Bank

If any Reference Bank ceases to be a Lender or is unable on a continuing basis to supply quotations for the purposes of Clause 5 then, unless the Borrowers, the Agent and the Majority Lenders otherwise agree, the Agent, acting on the instructions of the Majority Lenders, and after consulting the Borrowers, shall appoint another bank (whether or not a Lender) to be a replacement Reference Bank; and, when that appointment comes into effect, the first-mentioned Reference Bank's appointment shall cease to be effective.

26.17 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 26, each Lender may without consulting with or obtaining consent from any Borrower or any Security Party, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities;
except that no such charge, assignment or Security Interest shall:
 - (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for that Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by any Borrower or any Security Party or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

27 VARIATIONS AND WAIVERS

27.1 Variations, waivers etc. by Majority Lenders

Subject to Clause 27.2, 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 or K&T Marine is a party, by that Security Party or K&T Marine.

27.2 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 27.1 applies as if the words "by the Agent on behalf of the Majority Lenders" were replaced by the words "by or on behalf of every Lender and the Swap Bank":

- (a) a reduction in the Margin;
- (b) a postponement to the date for, or a reduction in the amount of, any payment of principal, interest, fees or other sum payable under this Agreement;
- (c) an increase in any Lender's Commitment;

- (d) a change to the definition of “**Majority Lenders**”;
- (e) a change to any of the definitions of “**Restricted Party**”, “**Sanctions**”, “**Sanctions Authority**” or “**Sanctions List**” or a change to Clause 11.20;
- (f) ~~(e)~~a change to Clause 3 or this Clause 27;
- (g) ~~(f)~~any release of, or material variation to, a Security Interest, guarantee, indemnity or subordination arrangement set out in a Finance Document (except to the extent expressly provided for in any Finance Document); and
- (h) ~~(g)~~any other change or matter as regards which this Agreement or another Finance Document expressly provides that each Lender’s consent is required.

27.3 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 27.1 and 27.2, 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 a Security Party of an obligation under a Finance Document or the general law; or
- (d) any right or remedy conferred by any Finance Document or by the general law,

and there shall not be implied into any Finance Document any term or condition requiring any such provision to be enforced, or such right or remedy to be exercised, within a certain or reasonable time.

28 NOTICES

28.1 General

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

28.2 Addresses for communications

A notice by letter or fax shall be sent:

- (a) to the Borrowers: c/o the Technical Manager
3-5 Menandrou Street
145 61 Kifissia
Greece
Facsimile No: +30 210 80 84 224

- (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, Arranger and Security Trustee: ABN AMRO Bank N.V.
93 Coolingsingel,
3012 AE Rotterdam
The Netherlands

Fax No: +3110401 5323
- (d) to the Swap Bank: ABN AMRO Bank N.V.

c/o Markets Documentation Unit
Gustav Mahlerlaan 10
NL-1082PP Amsterdam
The Netherlands mdu@nl.abnamro.com

Fax No: +31 10 459 0538

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.

28.3 Effective date of notices

Subject to Clauses 28.4 and 28.5:

- (a) a notice which is delivered personally or posted shall be deemed to be served, and shall take effect, at the time when it is delivered; and
- (b) a notice which is sent by fax shall be deemed to be served, and shall take effect, 2 hours after its transmission is completed.

28.4 Service outside business hours

However, if under Clause 28.3 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 28.5) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

28.5 Illegible notices

Clauses 28.3 and 28.4 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.

28.6 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.

28.7 Electronic communication

Any communication to be made between the Agent and a Lender or Swap Bank or the Agent and the Borrowers under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent and the relevant Creditor Party and the Borrower:

- (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 or the Swap Bank or the Borrowers will be effective only when actually received in readable form and, in the case of any electronic communication made by a Creditor Party or the Borrowers to the Agent, only if it is addressed in such a manner as the Agent shall specify for this purpose.

28.8 English language

Any notice under or in connection with a Finance Document shall be in English.

28.9 Meaning of “notice”

In this Clause 28, “**notice**” includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

29 JOINT AND SEVERAL LIABILITY

29.1 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 29.2, joint.

29.2 No impairment of Borrower’s 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 any other Borrower;

- (b) any Lender, the Swap Bank or the Security Trustee entering into any rescheduling, refinancing or other arrangement of any kind with any other Borrower;
- (c) any Lender, the Swap Bank or the Security Trustee releasing any other Borrower or any Security Interest created by a Finance Document; or
- (d) any combination of the foregoing.

29.3 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 none of the Borrowers shall in any circumstances be construed to be a surety for the obligations of ~~any~~ the other Borrower under this Agreement.

29.4 Subordination

Subject to Clause 29.5, during the Security Period, none of the Borrowers shall:

- (a) claim any amount which may be due to it from any 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 any 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 any other Borrower; or
- (c) set off such an amount against any sum due from it to any other Borrower; or
- (d) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving any other Borrower or other Security Party; or
- (e) exercise or assert any combination of the foregoing.

29.5 Borrower's 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 29.4, in relation to any other Borrower, that Borrower shall take that action as soon as practicable after receiving the Agent's notice.

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.

30.5 PATRIOT Act Notice

Each of the Agent and the Lenders hereby notifies the Borrowers that pursuant to the requirements of the PATRIOT Act and the policies and practices of the Agent and each Lender, the Agent and each of the Lenders is required to obtain, verify and record certain information and documentation that identifies each Borrower and any Security Party, which information includes the name and address of each Security Party and such other information that will allow the Agent and each of the Lenders to identify each Security Party in accordance with the PATRIOT Act.

31 CONFIDENTIALITY

31.1 Confidential Information

The Creditor Parties agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 31.2, and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

31.2 Disclosure of Confidential Information

The Creditor Parties may disclose:

- (a) to any of its Affiliates and any of their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as the Creditor Parties shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person (if that person to whom the Confidential Information is to be given is informed in writing of its confidential nature and undertakes in writing not to disclose such Confidential Information to any third party and/or make use of it in case the dealings contemplated below are not concluded):
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and/or any Security Party and to any of that person's Affiliates, Representatives and professional advisers;

- (iii) appointed by the Creditor Parties or by a person to whom paragraphs (i) or (ii) applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraphs (i) or (ii);
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom or for whose benefit a Creditor Parties charges, assigns or otherwise creates security (or may do so) pursuant to Clause 26.17;
- (vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (viii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (ix) to whom information is required to be disclosed in connection with, and for the purposes of, any insurance to be effected by a Creditor Party in relation to or in connection with any Finance Document;
- (x) who is a party to this Agreement; or
- (xi) with the consent of the Borrowers,

in each case, such Confidential Information as the Creditor Parties shall consider appropriate;

- (c) to any person appointed by a Creditor Party by a person to whom paragraphs (b)(i) or (b)(ii) of Clause 31.2 applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) provided always that such person will undertake in writing not to disclose such Confidential Information to any third party;
- (d) to any rating agency (including its profession advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents, the Borrower and/or the Security Parties provided always that such rating agency will undertake in writing not to disclose such Confidential Information to any third party.

31.3 Entire agreement

This Clause 31 constitutes the entire agreement between the parties to this Agreement in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

31.4 Inside Information

The Creditor Parties acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Creditor Parties undertake not to use any Confidential Information for any unlawful purpose.

31.5 Notification of disclosure

The Creditor Parties agree (to the extent permitted by law and regulation) to inform the Borrowers and the Security Parties:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 31.2 except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 31.

31.6 Continuing obligations

The obligations of this Clause 31 are continuing and, in particular, shall survive and remain binding on the Creditor Parties for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Borrower and the Security Parties under or in connection with the Finance Documents have been paid in full and all obligations of the Creditor Parties have been cancelled or otherwise cease to be available; and
- (b) the date on which a Creditor Party otherwise ceases to be a party to this Agreement.

32 BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each Party acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

33 LAW AND JURISDICTION

33.1 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.

33.2 Exclusive English jurisdiction

Subject to Clause 33.3, the courts of England shall have exclusive jurisdiction to settle any Dispute.

33.3 Choice of forum for the exclusive benefit of the Creditor Parties

Clause 33.2 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.

None of the Borrowers shall commence any proceedings in any country other than England in relation to a Dispute.

33.4 Process agent

Each Borrower irrevocably appoints Saville & Co. at its registered office for the time being presently at One Carey Lane, London, EC2V 8AE, England to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with a Dispute.

33.5 Creditor Party rights unaffected

Nothing in this Clause 33 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.

33.6 Meaning of “proceedings” and “Dispute”

In this Clause 33, “**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~~ This Agreement has been entered into and amended and restated on the ~~date~~ dates stated at the beginning of this Agreement.

SCHEDULE 1

LENDERS AND COMMITMENTS

Lender
ABN AMRO BANK N.V.

Lending Office
c/o Loans Administration -
Transportation Clients
93 Coolsingel
3012 AE Rotterdam
The Netherlands

Commitment
(US Dollars)
~~82,459,678.29~~ 64,253,892.38

SCHEDULE 2

DRAWDOWN NOTICE

To: ABN AMRO BANK N.V.
93 Coolsingel
3012 AE Rotterdam
The Netherlands

Attention: Loans Administration

[●]

DRAWDOWN NOTICE

- 1 We refer to the loan agreement (the "Loan Agreement") dated [●] 2017 and made between ourselves, as Borrowers, the Lenders referred to therein, and yourselves as Agent, Arranger, Security Trustee and Swap Bank in connection with a facility of ~~US\$82,459,678.29~~US\$64,253,892.38. Terms defined in the Loan Agreement have their defined meanings when used in this Drawdown Notice.
- 2 We request to borrow the Tranche ~~{A}{B}~~ as follows:
 - (a) Amount of Tranche: US\$[●];
 - (b) Drawdown Date: [●];
 - (c) Duration of the first Interest Period shall be [●] months; and
 - (d) Payment instructions: account in our name and numbered [●] with [●] of [●].
- 3 We represent and warrant that:
 - (a) the representations and warranties in ~~Clause~~ 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; and
 - (b) no Event of Default or Potential Event of Default has occurred or will result (save as otherwise provided in ~~Clause~~ clause 9.1(c) of the Loan Agreement) from the borrowing of the Tranche.
- 4 This notice cannot be revoked without the prior consent of the Majority Lenders.

[Name of Signatory]

for and on behalf of
ZEUS ONE MARINE LLC
IKAROS MARINE LLC
~~TASMAN MARINE LLC~~
~~HUDSON MARINE LLC~~
~~DRAKE MARINE LLC~~

SCHEDULE 3

CONDITION PRECEDENT DOCUMENTS

PART A

The following are the documents referred to in ~~Clause~~ clause 9.1(a) required before service of the first Drawdown Notice.

1 A duly executed original of:

- (a) this Agreement;
- (b) the Master Agreement;
- (c) the Master Agreement Assignment;
- (d) the Corporate Guarantee;
- (e) the Agency and Trust Agreement;
- ~~(f) the Equity Undertaking;~~
- ~~(g) the Accounts Pledge;~~
- ~~(h) the Shares Security Deeds; and~~
- ~~(i) any Subordination Agreement,~~

each document required to be delivered under each Finance Document referred to in paragraphs (a) to (i) inclusive above and any other Finance Document that the Agent may require, in the Agreed Form.

2 Copies of the certificate of formation and constitutional documents (and a certificate of goodstanding) of each Borrower, the Corporate Guarantor and any other Security Party.

3 Copies of appropriate evidence of authorisation by the members (or, as the case may be, the directors) of each Borrower and each Security Party authorising the execution of each of the Finance Documents to which that Borrower or that Security Party is a party and, in the case of a Borrower, authorising named officers to give the Drawdown Notices and other notices under this Agreement.

4 The original of any power of attorney under which any Finance Document and the Master Agreement is executed on behalf of a Borrower, the Corporate Guarantor and any other Security Party.

5 An original certificate of a duly authorised officer of the Borrower and each Security Party:

- (a) certifying that each copy document relating to it specified in paragraphs 2, 3 and 4 of this Part A of Schedule 3 is correct, complete and in full force and effect;
- (b) setting out the names of the directors, officers and members of that Borrower and Security Party and the proportion of shares held by each member; and

- (c) setting out a specimen of the signature of each person authorised by the resolutions referred to in paragraph 3 of this Part A of Schedule 3.
- 6 Copies of all consents which any Borrower, the Corporate Guarantor or any Security Party requires to enter into, or make any payment under, any Finance Document.
- 7 The originals of any mandates or other documents required in connection with the opening or operation of the Earnings Accounts and the Retention Account.
- 8 Such documents and other evidence in such form as is requested by the Agent in order for the Lenders to comply with all necessary “know your customer” or “client acceptance” or other similar identification procedures (including, but not limited to, specimen signatures of all the members or directors, as the case may be, and other officers of the Borrowers and each Security Party) in relation to the transactions contemplated in the Finance Documents.
- 9 Evidence of the ultimate beneficial ownership in respect of each Borrower, each Collateral Owner, the Corporate Guarantor, each Shareholder and each Approved Manager.
- 10 Favourable legal opinions from lawyers appointed by the Agent on such matters concerning the laws of the Marshall Islands, the Netherlands and such other relevant jurisdictions as the Agent may require, ~~including without limitation, any legal opinion on the due execution of the Equity Undertaking by the Poseidon Shareholders~~ and any documents required to be delivered for the purposes of such opinion.
- 11 If available and applicable, a certified true copy of any Charter (and any addenda thereto) in respect of a Ship together with, if required by the Agent, evidence of due execution of such Charter by the parties thereto.
- 12 Documentary evidence that the agent for service of process named in Clause 33 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) required before or, as the context may require, the Drawdown Date (but prior to the making of any advance).

In this Part B of Schedule 3, the following definitions have the following meanings:

- 1 In respect of each Ship, a duly executed original of the Mortgage, the General Assignment and, as the case may be, the Charterparty Assignment (and of each document to be delivered by each of them).
- 2 Documentary evidence that:
 - (a) each Ship is definitively and permanently registered in the name of the relevant Borrower or, as the case may be, relevant Collateral Owner, under an Approved Flag;
 - (b) each Ship is in the absolute and unencumbered ownership of the relevant Borrower or, as the case may be, the relevant Collateral Owner, save as contemplated by the Finance Documents or, in the case of the Tasman Ships, the Senior Finance Documents;
 - (c) each Ship maintains the class with a first class classification society which is a member of IACS (as the Agent may approve) free of all overdue recommendations and conditions of such classification society affecting class;
 - (d) the Mortgage relating to each Ship has been duly registered or recorded against that Ship as a valid first (or, in the case of a Tasman Ship, second) preferred or, as the case may be, priority ship mortgage in accordance with the laws of the applicable Approved Flag State; and
 - (e) each Ship is insured in accordance with the provisions of this Agreement and all requirements therein in respect of insurances have been complied with.
- 3 Documents establishing that each will, as from the Drawdown Date relating thereto, be managed by the Approved Managers on terms acceptable to the Lenders, together with:
 - (a) the Approved Managers' Undertakings relative thereto; and
 - (b) copies of the Technical Manager's Document of Compliance and of that Ship's Safety Management Certificate (together with any other details of the applicable safety management system which the Agent requires), the ISSC and the IAPPC.
- 4 A valuation of each Mortgaged Ship addressed to the Agent by Kontiki Shipbrokers with date 17 June 2017.
- 5 An original of the a deed of release in Agreed Form and each document to be delivered under or pursuant to it, together with evidence satisfactory to the Agent of its due execution by the parties to it and evidence that all Security Interests under the Existing Facility Agreement have been released, reassigned or, as the case may be, discharged.
- 6 ~~Evidence satisfactory to the Agent that the shareholders' equity of \$5,000,000 has been paid into the Group.~~
- 6 ~~Favourable legal opinions from lawyers appointed by the Agent on such matters concerning the law of the Marshall Islands, the Approved Flag State on which each relevant Ship is registered and such other relevant jurisdictions as the Agent may require.~~

- 7 ~~8~~A favourable opinion from an independent insurance consultant acceptable to the Agent on such matters relating to the insurances for each Ship as the Agent may require.
- 8 ~~9~~Documentary evidence that the Agent for service of process named in Clause 33 has accepted its appointment.
- 9 ~~10~~Evidence satisfactory to the Agent that the Minimum Liquidity Amount is standing to the credit of each Earnings Account in respect of each Borrower Ship pursuant to Clause 11.18.
- 10 ~~11~~Copies of any further consents which any Borrower or any Security Party requires to enter into, or make any payment under, any Finance Document.
- 11 ~~12~~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.

Each of the documents specified in paragraphs 2, 3 and 6 of Part A and every other 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 a Borrower.

SCHEDULE 4

DESIGNATION NOTICE

To: ABN AMRO BANK N.V.
93 Coolsingel
3012 AE Rotterdam
The Netherlands as Agent
Attn: [Ship Finance Portfolio Management]

[date]

Dear Sirs

Loan Agreement dated [●] 2017 (the “Loan Agreement”) and made between (i) Zeus One Marine LLC, and Ikaros Marine LLC, ~~Tasman Marine LLC, Hudson Marine LLC and Drake Marine LLC~~ as joint and several Borrowers, (ii) the Lenders, (iii) the Swap Bank, (iv) and yourselves as Agent, Arranger and Security Trustee

We refer to:

- 1 the Loan Agreement;
- 2 the Master Agreement dated as of [●] made between ourselves and the Swap Bank; and
- 3 a Confirmation delivered pursuant to the said Master Agreement dated [●] and addressed by the Swap Bank to us.

In accordance with the terms of the Loan Agreement, we hereby give you notice of the said Confirmation and hereby confirm that the Transaction evidenced by it will be designated as a “Designated Transaction” for the purposes of the Loan Agreement and the Finance Documents.

Yours faithfully

for and on behalf of
ZEUS ONE MARINE LLC
IKAROS MARINE LLC

~~TASMAN MARINE LLC~~
~~HUDSON MARINE LLC~~
~~DRAKE MARINE LLC~~

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: ABN AMRO Bank N.V. for itself and for and on behalf of each Borrower, each Security Party, the Security Trustee, each Lender and the Swap Bank, as defined in the Loan Agreement referred to below.

[●]

- 1 This Certificate relates to a Loan Agreement (the **“Loan Agreement”**) dated [●] 2017 and made between (1) [●], [●], [●], [●] and [●] as joint and several Borrowers, (2) the banks and financial institutions named therein as Lenders, (3) ABN AMRO Bank N.V. as Swap Bank, (4) ABN AMRO Bank N.V. as Agent, (5) ABN AMRO Bank N.V. as Arranger and (6) ABN AMRO Bank N.V. as Security Trustee for a loan facility of ~~US\$82,459,678.29~~US\$ 64,253,892.38.
- 2 In this Certificate, terms defined in the Loan Agreement shall, unless the contrary intention appears, have the same meanings and:
“Relevant Parties” means the Agent, each Borrower, each Security Party, the Security Trustee, each Lender and the Swap Bank;
“Transferor” means [full name] of [lending office]; and
“Transferee” means [full name] of [lending office].
- 3 The effective date of this Certificate is [●] **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 (other than the Master Agreement) in relation to [●] per cent. of its Contribution, which percentage represents \$[●].
- 5 By virtue of this Certificate and ~~Clause clause~~ 26 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 (other than the Master Agreement) which ~~Clause clause~~ 26 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 clause~~ 26 of the Loan Agreement.
- 8 The Transferor:
 - (a) warrants to the Transferee and each Relevant Party that:

- (i) 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) 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; and
- (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 of the other Finance Documents;
 - (b) agrees that it will have no rights of recourse on any ground against either the Transferor, the Agent, the Security Trustee, any Lender or the Swap Bank in the event that:
 - (i) any of 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 any of 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 Borrowers 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, any Lender or the Swap Bank in the event that this Certificate proves to be invalid or ineffective;
 - (d) warrants to the Transferor and each Relevant Party that:
 - (i) it has full capacity to enter into this transaction and has taken all corporate action and obtained all consents which it needs to take or obtain in connection with this transaction; and
 - (ii) 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 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 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]

By:

Date:

Agent

Signed for itself and for and on behalf of itself
as Agent and for every other Relevant Party
ABN AMRO Bank N.V.

By:

Date:

[Name of Transferee]

By:

Date:

Administrative Details of Transferee

Name of Transferee:

Lending Office:

Contact Person
(Loan Administration Department):

Telephone:

Fax:

Contact Person
(Credit Administration Department):

Telephone:

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

PIK COMPLIANCE CERTIFICATE

To: ABN AMRO BANK N.V.
93 Coolsingel
3012 AE Rotterdam
The Netherlands
Attn: [Loans Administration]

[date]

Dear Sirs
Loan Agreement dated [●] 2017 and made between (i) Zeus One Marine LLC and ~~others~~ another (as borrowers), (ii) the banks and financial institutions therein listed (as lenders), (iii) ABN AMRO Bank N.V. as agent, arranger, swap bank and security trustee in connection with a facility of ~~US\$82,459,678.29~~ US\$ 64,253,892.38 (the "Loan Agreement")

Terms defined in the Loan Agreement have their defined meanings when used in this PIK Compliance Certificate.

We refer to the undertaking set out in ~~Clause~~ clause 11.6(d) of the Loan Agreement and confirm that, as at the [3-month period ending [●]]:

- (a) aggregate Market Value of the Borrower Ships _____
Minimum Liquidity Amount + the net realisable value of any additional _____
- (b) security provided under ~~Clause~~ clause 15.1 of the Loan Agreement _____

- (c) = (b) + (a) VMC _____
Outstanding Loan plus _____
Outstanding Swap Exposure _____
- (d) Required Security Cover Ratio (130%) _____
- (e) = (d) -(c) Delta between required Security Cover Ratio and VMC* _____
PIK Amount of 200bps over Delta _____
aggregate PIK Amount allocated on ~~Tranche A~~ Balloon Instalment _____

* if delta positive

[•]
for and on behalf of
ZEUS ONE MARINE LLC
IKAROS MARINE LLC

~~**TASMAN MARINE LLC**~~
~~**HUDSON MARINE LLC**~~
~~**DRAKE MARINE LLC**~~

BORROWERS

SIGNED by)
)
for and on behalf of)
ZEUS ONE MARINE LLC)
in the presence of:)

SIGNED by)
)
for and on behalf of)
IKAROS MARINE LLC)
in the presence of:)

~~**SIGNED by**)~~
~~)~~
~~for and on behalf of)~~
~~**TASMAN MARINE LLC**)~~
~~in the presence of:)~~

~~**SIGNED by**)~~
~~)~~
~~for and on behalf of)~~
~~**HUDSON MARINE LLC**)~~
~~in the presence of:)~~

~~**SIGNED by**)~~
~~)~~
~~for and on behalf of)~~
~~**DRAKE MARINE LLC**)~~
~~in the presence of:)~~

LENDERS

SIGNED by)
)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

SWAP BANK

SIGNED by)
)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

AGENT

SIGNED by)
)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

ARRANGER

SIGNED by)
)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

SECURITY TRUSTEE

SIGNED by)
)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

SCHEDULE 5

**FORM OF AMENDED AND RESTATED CORPORATE GUARANTEE MARKED TO INDICATE
AMENDMENTS**

Amendments are indicated as follows:

- (a) Additions are indicated by underlined text; and
- (b) Deletions are shown by the relevant text being struck out.

Dated 30 August 2017

POSEIDON CONTAINERS HOLDINGS LLC
as Guarantor

ABN AMRO BANK N.V.
as Security Trustee

GUARANTEE

relating to a Loan Agreement dated 30 August 2017
(as amended and restated by an Amending and Restating Agreement dated 9 October 2018)
in respect of a loan facility of up to ~~US\$82,459,678,29~~US\$64,253,892,38

WATSON FARLEY
&
WILLIAMS

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PARTIES

- (1) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, The Marshall Islands MH 96960 (the “**Guarantor**”); and
- (2) **ABN AMRO BANK N.V.**, acting through its office at 93 Coolsingel, 3012 AE, Rotterdam, The Netherlands (the “**Security Trustee**”, which expression includes its successors and assigns).

BACKGROUND

- (A) By a loan agreement dated 30 August 2017 (as amended and restated by an Amending and Restating Agreement dated 9 October 2018) and made originally between (i) Tasman Marine LLC, Hudson Marine LLC, Drake Marine LLC, Zeus One Marine LLC and Ikaros Marine LLC as joint and several borrowers (together, the “**Original Borrowers**”), (ii) certain banks and financial institutions as lenders (together, in such capacity, the “**Lenders**”), (iii) ABN AMRO Bank N.V. as swap bank (in such capacity, the “**Swap Bank**”), (iv) ABN AMRO Bank N.V. as arranger, (v) ABN AMRO Bank N.V. as agent (in such capacity, the “**Agent**”) and (vi) the Security Trustee as security trustee, it was agreed that the Lenders would make available to the Original Borrowers a secured term loan facility of \$82,459,678.29.
- (B) By a master agreement (on the 2002 ISDA Master Agreement form including the Schedule thereto) dated 30 August 2017 and made between (i) the Original Borrowers and (ii) the Swap Bank, the Original Borrowers may enter into Designated Transactions pursuant to separate Confirmations providing for amongst other things the payment of certain amounts by the Original Borrowers to the Swap Bank.
- (C) The execution and delivery to the Security Trustee of this Guarantee and of the other Finance Documents to which the Guarantor is a party are conditions precedent to the availability of the facility under the said Loan Agreement and to the Swap Bank entering into Designated Transactions under the Master Agreement.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Defined expressions

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

1.2 Construction of certain terms

In this Guarantee:

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers;

“**Bail-In Legislation**” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EL) Bail-In Legislation Schedule from time to time; and

(b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation;

“**bankruptcy**” includes a liquidation, receivership or administration and any form of suspension of payments, arrangement with creditors or reorganisation under any corporate or insolvency law of any country;

“**Book Leverage Ratio**” means the ratio of Total Interest Bearing Debt to Total Assets, as shown in the applicable financial statements of the Guarantor for any accounting period determined in accordance with IFRS;

“**Compliance Certificate**” means a certificate in the form set out in Schedule 1 (in respect of the time frame from the date of this Agreement until the end of the Waiver Period) and Schedule 2 (in respect of the time from after the end of the Waiver Period and throughout the remainder of the Security Period) or in any other form agreed between the Guarantor and the Security Trustee acting on the instructions of the Lenders;

“**EEA Member Country**” means any member state of the European Union, Iceland, Liechtenstein and Norway;

“**EU Bail-In Legislation Schedule**” means the document described as such and published by the Loan Market Association (or any successor person) from time to time;

“**Existing Fleet Vessel**” means any vessel (including the Ships) wholly owned by the Guarantor (directly or indirectly) at any point during the Refinancing Period;

“**Fleet Vessel**” means each vessel owned by a member of the Group;

“**Latest Accounts**” means, at any date, the then most recent semi-annual unaudited or (as the case may be) annual consolidated financial statements of the Guarantor delivered to the Security Trustee pursuant to Clause 11.3 (*Provision of financial statements*);

“**Loan Agreement**” means the loan agreement referred to in Recital (A) and includes any existing or future amendments, restatements and/or supplements, whether made with the Guarantor’s consent or otherwise;

“**Net Worth**” means equity payments already advanced in respect of the Fleet Vessels less accumulated dividends plus retained earnings of the Fleet Vessels, as each such term is defined in the applicable financial statements in respect of the Guarantor determined in accordance with IFRS;

“**Original Financial Statements**” means annual audited consolidated financial statements of the Guarantor for the year ending 31 December 2016;

“**Party**” means a party to this Guarantee:

“**Resolution Authority**” means anybody which has authority to exercise any Write-down and Conversion Powers;

“**Shareholders’ Equity**” means the equity contribution referred to in the Equity Undertaking in the amount of \$13,000,000 injected by the Guarantor and paid in to the Group utilising funds advanced to the Guarantor pursuant to the K&T Loan Agreement as of the effective date of the Amending and Restating Deed:

“Third Parties Act” has the meaning given to Clause 14.10 (*Third party rights*);

“Total Assets” means, in respect of the Guarantor, the amount of total assets of the Guarantor at any time on a consolidated basis which would be included in the Latest Accounts of the Guarantor determined in accordance with IFRS;

“Total Interest Bearing Debt” means, in respect of the Guarantor, the amount of total liabilities of the Guarantor (as such term is defined in the Latest Accounts of the Guarantor) at any time on a consolidated basis which would be included in the Latest Accounts of the Guarantor as total interest bearing debt in accordance with IFRS including the current portion of interest bearing debt (as such term is defined in the Latest Accounts of the Guarantor) but excluding any cash which is credited as collateral in favour of a Lender and is intended for the purposes of repaying such debt;

“Value Adjusted Leverage Ratio” means, at any date, the ratio (expressed as a percentage) of:

- (a) the Total Interest Bearing Debt divided by
- (b) the Value Adjusted Total Assets;

“Value Adjusted Total Assets” means the Total Assets of the Guarantor adjusted (upwards or downwards) in each case for the difference of the book value of all Fleet Vessels (as evidenced in the Latest Accounts) and the aggregate Market Value of all Fleet Vessels based on recent valuations; and

“Write-down and Conversion Powers” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

1.3 Application of construction and interpretation provisions of Loan Agreement and construction of “continuing” in this Guarantee

- (a) Clauses 1.2 to 1.6 of the Loan Agreement apply, with any necessary modifications, to this Guarantee.
- (b) In this Guarantee, an Event of Default is **“continuing”** if it has not been expressly waived before acceleration of the Loan and/or before the relevant enforcement actions are taken.

1.4 References to Majority Lenders

References in this Deed to an approval, consent or requirement of the Majority Lenders include references to an approval, consent or requirement of:

- (a) the Agent or the Security Trustee acting with the authority of the Majority Lenders; or
- (b) the Security Trustee acting with the authority of the Agent acting, in turn, with the authority of the Majority Lenders.

2 GUARANTEE

2.1 Guarantee and indemnity

The Guarantor unconditionally and irrevocably:

- (a) guarantees the due payment of all amounts payable by each Borrower under or in connection with the Loan Agreement and every other Finance Document;
- (b) guarantees to each Creditor Party punctual performance by the Borrowers of all of their obligations under the Finance Documents;
- (c) undertakes to pay to the Security Trustee, on the Security Trustee's demand, any such amount which is not paid by any Borrower when payable; and
- (d) fully indemnifies the Security Trustee and each other Creditor Party on the Security Trustee's demand in respect of all claims, expenses, liabilities and losses which are made or brought against or incurred by the Security Trustee or the other Creditor Party concerned as a result of or in connection with any obligation or liability guaranteed by the Guarantor being or becoming unenforceable, invalid, void or illegal; and the amount recoverable under this indemnity shall be equal to the amount which the Security Trustee or the other Creditor Party concerned would otherwise have been entitled to recover.

2.2 No limit on number of demands

The Security Trustee may serve more than one demand under Clause 2.1 (*Guarantee and indemnity*).

2.3 Continuing Guarantee

This Guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Security Party under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

3 LIABILITY AS PRINCIPAL AND INDEPENDENT DEBTOR

3.1 Principal and independent debtor

The Guarantor shall be liable under this Guarantee as a principal and independent debtor and accordingly it shall not have, as regards this Guarantee, any of the rights or defences of a surety.

3.2 Waiver of rights and defences

Without limiting the generality of Clause 3.1 (*Principal and independent debtor*), the Guarantor shall neither be discharged by, nor have any claim against any Creditor Party in respect of:

- (a) any amendment or supplement being made to the Finance Documents (or any of them);
- (b) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, the Finance Documents (or any of them);
- (c) any release or loss (even if negligent) of any right or Security Interest created by the Finance Documents (or any of them);
- (d) any failure (even if negligent) promptly or properly to exercise or enforce any such right or Security Interest, including a failure to realise for its full market value an asset covered by such a Security Interest;
- (e) any other Finance Document or any Security Interest now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it; or
- (f) any insolvency or similar proceedings.

4 EXPENSES

4.1 Costs of preservation of rights, enforcement etc.

The Guarantor shall pay to the Security Trustee on its demand the amount of all expenses incurred by the Security Trustee or any other Creditor Party in connection with any matter arising out of this Guarantee, ~~the Equity Undertaking~~ or any Security Interest connected with this Guarantee, including any advice, claim or proceedings relating to this Guarantee, ~~the Equity Undertaking~~ or any Security Interest connected with this Guarantee.

4.2 Fees and expenses payable under Loan Agreement

Clause 4.1 (*Costs of preservation of rights, enforcement etc.*) is without prejudice to the Guarantor's liabilities in respect of the Borrowers' obligations under clause 20 of the Loan Agreement and under similar provisions of other Finance Documents.

5 ADJUSTMENT OF TRANSACTIONS

5.1 Reinstatement of obligation to pay

The Guarantor shall pay to the Security Trustee on its demand any amount which any Creditor Party is required, or agrees, to pay pursuant to any claim by, or settlement with, a trustee in bankruptcy of any Borrower or of another Security Party (or similar person) on the ground that the Loan Agreement or any other Finance Document, or a payment by any Borrower or of another Security Party, was invalid or on any similar ground.

6 PAYMENTS

6.1 Method of payments

Any amount due under this Guarantee shall be paid:

- (a) in immediately available funds;

- (b) to such account as the Security Trustee may from time to time notify to the Guarantor;
- (c) without any form of set-off, cross-claim or condition; and
- (d) free and clear of any tax deduction except a tax deduction which the Guarantor is required by law to make.

6.2 Grossing-up for taxes

If the Guarantor is required by law to make a tax deduction, the amount due to the Security Trustee shall be increased by the amount necessary to ensure that the Security Trustee and (if the payment is not due to the Security Trustee for its own account) the Creditor Party beneficially interested in the payment receives and retains a net amount which, after the tax deduction, is equal to the full amount that it would otherwise have received.

7 INTEREST

7.1 Accrual of interest

Any amount due under this Guarantee shall carry interest after the date on which the Security Trustee demands payment of it until it is actually paid, unless interest on that same amount also accrues under the Loan Agreement.

7.2 Calculation of interest

Interest under this Guarantee shall be calculated and accrue in the same way as interest under clause 7 of the Loan Agreement.

7.3 Guarantee extends to interest payable under Loan Agreement

For the avoidance of doubt, it is confirmed that this Guarantee covers all interest payable under the Loan Agreement, including that payable under clause 7 of the Loan Agreement.

8 SUBORDINATION

8.1 Subordination of rights of Guarantor

All rights which the Guarantor at any time has (whether in respect of this Guarantee or any other transaction) against any Borrower, any Security Party or their respective assets shall be fully subordinated to the rights of the Creditor Parties under the Finance Documents and until the end of the Security Period and unless the Security Trustee otherwise directs, the Guarantor will not exercise any rights which it may have (whether in respect of any Finance Document to which it is a party or any other transaction) by reason of performance by it of its obligations under the Finance Documents or by reason of any amount having been paid, or liability having arisen, under this Guarantee:

- (a) to be indemnified by a Borrower or any other Security Party;
- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Borrower or any Security Party's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Creditor Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Creditor Party;

- (d) to bring legal or other proceedings for an order requiring any Borrower or any Security Party to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under this Guarantee;
- (e) to exercise any right of set-off against any Borrower or any Security Party; and/or
- (f) to claim or prove as a creditor of any Borrower or any Security Party in competition with any Creditor Party.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Creditor Parties by the Borrowers or the Security Parties under or in connection with the Finance Documents to be repaid in full on trust for the Creditor Parties and shall promptly pay or transfer the same to the Security Trustee for onward payment to the Agent or, as the Security Trustee acting on the instructions of the Agent may direct, for application in accordance with clause 17.1 (*application of receipts*) of the Loan Agreement.

9 ENFORCEMENT

9.1 No requirement to commence proceedings against Borrowers

The Guarantor waives any right it may have of first requiring any Creditor Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person (including without limitation to commence any proceedings under any Finance Document or to enforce any Security Interest under the Finance Documents) before claiming or commencing proceedings under this Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

9.2 Conclusive evidence of certain matters

However, as against the Guarantor:

- (a) any judgment or order of a court in England in connection with the Loan Agreement; and
- (b) any statement or admission of any Borrower in connection with the Loan Agreement, shall be binding and conclusive as to all matters of fact and law to which it relates.

9.3 Appropriations

Until all amounts which may be or become payable by the Borrower or any Security Party under or in connection with the Finance Documents have been irrevocably paid in full, each Creditor Party (or any trustee or agent on its behalf) may:

- (i) refrain from applying or enforcing any other moneys, security or rights held or received by that Creditor Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (ii) hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Guarantee.

10 REPRESENTATIONS AND WARRANTIES

10.1 General

The Guarantor represents and warrants to the Security Trustee as follows.

10.2 Status

The Guarantor is duly formed and validly existing and in good standing as a limited liability company under the laws of the Republic of the Marshall Islands.

10.3 Corporate power

The Guarantor has the limited liability capacity, and has taken all limited liability company action and obtained all consents necessary for it:

- (a) to execute this Guarantee and the other Finance Documents to which the Guarantor is a party; and
- (b) to make all the payments contemplated by, and to comply with, this Guarantee and the other Finance Documents to which the Guarantor is a party.

10.4 Consents in force

All the consents referred to in Clause 10.3 (*Corporate power*) remain in force and nothing has occurred which makes any of them liable to revocation.

10.5 Legal validity and effective Security Interests

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

- (a) are in full force and effect;
- (b) constitute the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with their respective terms; and
- (c) 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 the Legal Reservations.

10.6 No third party Security Interests

Without limiting the generality of Clause 10.5 (*Legal validity and effective Security Interests*), at the time of the execution and delivery of this Guarantee and each of the other Finance Documents to which the Guarantor is a party:

- (a) the Guarantor 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.

10.7 No conflicts

The execution by the Guarantor of this Guarantee and the other Finance Documents to which it is a party and its compliance with this Guarantee and the other Finance Documents to which it is a party will not involve or lead to a contravention of:

- (a) any existing applicable law or regulation to which the Guarantor is subject;
- (b) the constitutional documents of the Guarantor; or
- (c) any contractual or other obligation or restriction which is binding on the Guarantor or any of its assets, which in either case has or could reasonably be expected to have a material adverse change on the financial position or state of affairs of the Guarantor.

10.8 No withholding taxes

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

10.9 No default

To the knowledge of the Guarantor, no Event of Default (excluding, for the duration of the Refinancing Period up until the Refinancing Date, any Events of Default having occurred and being continuing in connection with and under the Existing Facility Agreement) has occurred and is continuing.

10.10 Information

All information which has been provided in writing by or on behalf of the Guarantor to the Security Trustee or any other Creditor Party in connection with any Finance Document satisfied the requirements of Clause 11.2 (*Information provided to be accurate*); all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.4 (*Form of financial statements*); and there has been no Material Adverse Change in the financial position or state of affairs of the Guarantor from that disclosed in the Latest Accounts.

10.11 No litigation

No legal or administrative action involving the Guarantor has been commenced or taken or, to the Guarantor's knowledge, is likely to be commenced or taken which legal or administrative action has or is likely to have a Material Adverse Effect.

10.12 Immunity

The Guarantor is not, nor are any of its assets, entitled to immunity on the grounds of sovereignty or otherwise from any legal action or other proceedings (which shall include, without limitation, suit, attachment prior to the judgement, execution or other enforcement).

10.13 No money laundering

- (a) In relation to the borrowing by each Borrower, the performance and discharge of their obligations and liabilities under the Finance Documents, and the transactions and other arrangements affected or contemplated by the Finance Documents to which each Borrower is a party, the Guarantor undertakes to procure that each Borrower (i) is acting for its own account; (ii) it will use the proceeds of the Loan for its own benefit, under its full responsibility

and exclusively for the purposes specified in the Loan Agreement; and (iii) that the foregoing will not involve or lead to a contravention of any law, official requirement or other regulatory measure or procedure implemented to combat “money laundering” (as defined in Article 1 of Directive (2005/60/EC) of the European Parliament and of the Council).

- (b) The Guarantor will promptly inform the Agent by written notice, if the Borrowers are not or cease to be the beneficiaries and will provide in writing the name and address of the beneficiary.
- (c) The Agent shall promptly notify the Lenders of any written notice it receives under this Clause 10.13 (*No money laundering*).

10.14 Pari passu ranking

The obligations of the Guarantor under the Finance Documents to which it is a party rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

10.15 Taxes paid

The Guarantor has paid once due for payment all taxes applicable to, or imposed on or in relation to the Guarantor or its business or, if applicable, is contesting same in good faith by taking all appropriate steps.

10.16 Patriot Act and anti-terrorism laws

The Guarantor shall procure that to the extent applicable each Borrower is in compliance with (i) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, (ii) the PATRIOT Act and Executive Order No. 13224 on Terrorist Financing, effective 24 September 2001. The Guarantor shall procure that no part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

10.17 Repetition

The representations and warranties in this Clause 10 (*Representations and Warranties*) shall be deemed to be repeated by the Guarantor:

- (a) on the date of service of each Drawdown Notice;
 - (b) on each Drawdown Date; and
 - (c) with the exception of Clauses 10.8 (*No withholding taxes*), 10.9 (*No default*), 10.10 (*Information*) and 10.11 (*No litigation*), on the first day of each Interest Period and on the date of any Compliance Certificate,
- as if made with reference to the facts and circumstances existing on each such day.

11 UNDERTAKINGS

11.1 General

The Guarantor undertakes with the Security Trustee to comply with the following provisions of this Clause 11 (*Undertakings*) at all times during the Security Period, except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit (and in the case of Clauses 11.12 (*Principal place of business*) and 11.14 (*No disposal of assets, change of business*) such permission not to be unreasonably withheld or delayed, and always subject to paragraph (a) of clause 8.8 of the Loan Agreement).

11.2 Information provided to be accurate

All financial and other information which is provided in writing by or on behalf of the Guarantor under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration.

11.3 Provision of financial statements

The Guarantor will send to the Agent:

- (a) as soon as available, but in no event later than 180 days after the end of each Financial Year of the Guarantor, the annual audited consolidated financial statements of the Guarantor for that Financial Year (commencing with the financial statements for the year ending 31 December 2016);
- (b) as soon as available, but in no event later than 90 days after the end of the 6-month period ending on 30 June in each Financial Year of the Guarantor, the unaudited consolidated financial statements of the Guarantor in respect of the preceding 6-month period (commencing with the 6-month period ending 30 June 2017 which are certified as to their correctness by an authorised officer of the Guarantor);
- (c) as soon as available, but in no event later than 60 days after the end of the 3-month period ending on 30 September and 31 March in each Financial Year of the Guarantor, the unaudited consolidated financial statements of the Guarantor in respect of the preceding 3-month period (commencing with the 3-month period ending 30 June 2017) which are certified as to their correctness by an authorised officer of the Guarantor;
- (d) on or prior to the 10th Business Day of each quarter in each Financial Year of the Guarantor (commencing with the quarter starting on 1 July 2017), a cash flow forecast in an Agreed Form evidencing all anticipated income and expenses in respect of the Fleet Vessels and the aggregate cash balances held or to be held by members of the Group in restricted and unrestricted accounts on a consolidated and projected basis for the 12-week period commencing as from the date on which the cash flow forecast is determined; and
- (e) promptly after each request by the Agent, such further information regarding its financial condition, business and operation as the Agent may reasonably require, and

the Guarantor shall ensure that all cash flow forecasts of the Guarantor received pursuant to paragraph (d) of this Clause for the duration of the Waiver Period shall evidence a positive balance in respect of the Group for that Financial Year that is satisfactory to the Agent.

11.4 Form of financial statements

All financial statements (audited and unaudited) delivered under Clause 11.3 (*Provision of financial statements*) will:

- (i) be prepared in accordance with all applicable laws and IFRS consistently applied and financial reference periods consistent with those applied in preparation of the Original Financial Statements of the Guarantor unless, in relation to any set of financial statements, it notifies the Security Trustee that there has been a change in IFRS, the accounting practices or reference periods and its auditors deliver to the Security Trustee:

- (A) a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which the Guarantor's Original Financial Statements were prepared; and
- (B) sufficient information, upon request by the Security Trustee, in form and substance as may be reasonably required by the Security Trustee, to enable the Lenders to determine whether Clause 11.19 (*Financial covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Guarantor's Original Financial Statements.

Any reference in this Guarantee to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

- (ii) give a true and fair view of the state of affairs of the Guarantor at the date of those financial statements and of its profit for the period to which those financial statements relate; and
- (iii) fully disclose or provide for all significant liabilities of the Guarantor.

11.5 Shareholder and creditor notices

Upon the occurrence of an Event of Default, the Guarantor will send to the Agent, at the same time as they are despatched, copies of all communications which are despatched to the Guarantor's shareholders or creditors or any class of them.

11.6 Provision of further information

The Guarantor will, as soon as practicable after receiving the request, provide the Security Trustee with any additional financial or other information relating to:

- (a) the Guarantor; or
- (b) any other matter relevant to, or to any provision of, this Guarantee or any other Finance Document (and for those Finance Documents to which the Guarantor is not a party, to the extent the Guarantor may be able to provide such information),

which may be requested by the Security Trustee at any time.

11.7 Consents

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

- (a) for the Guarantor to perform its obligations under this Guarantee and any Finance Document to which it is a party; and
 - (b) for the validity or enforceability of this Guarantee and any other Finance Document to which it is a party,
- and the Guarantor will comply with the terms of all such consents.

11.8 Maintenance of Security Interests

The Guarantor will:

- (a) at its own cost, do all that it reasonably can to ensure that any Finance Document to which it is a party validly creates the obligations and the Security Interests which it purports to create; and
- (b) without limiting the generality of paragraph (a) above, at its own cost, promptly register, file, record or enrol any Finance Document to which it is a party 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 to which it is a party, give any notice or take any other step which, in the reasonable opinion of the Majority Lenders, is or has become necessary for any Finance Document to which the Guarantor is a party to be valid, enforceable or admissible in evidence or to ensure or protect the priority of any Security Interest which that Finance Document creates.

11.9 Notification of litigation

The Guarantor will provide the Agent with details of any legal or administrative action involving the Guarantor or any other member of the Group as soon as such action is instituted or it becomes apparent to the Guarantor that it is likely to be instituted, unless it is clear that the legal or administrative action cannot be considered material in the context of this Guarantee or any other Finance Document and the Guarantor shall procure that reasonable measures are taken to defend any such legal or administrative action.

11.10 Notification of default

The Guarantor will notify the Security Trustee as soon as the Guarantor becomes aware of the occurrence of an Event of Default or Potential Event of Default and will, for so long as it remains to be continuing unremedied or unwaived, thereafter keep the Security Trustee fully up-to-date with all developments.

11.11 Maintenance of status

The Guarantor will maintain its separate limited liability company existence and remain in good standing under the laws of the Republic of the Marshall Islands.

11.12 Principal place of business

The Guarantor will not establish nor do anything as a result of which it would be deemed to have a place of business other than the United States of America, unless the Guarantor has provided the Agent with prior written notice of any such new place of business.

11.13 Negative pledge and pari passu ranking

- (a) The Guarantor shall not, and shall procure that no Borrower will, create or permit to arise any Security Interest over any of its assets (present or future) except for (i) Security Interests created by the Finance Documents, (ii) Permitted Security Interests and (iii) in the case of the Guarantor any Security Interest arising in the normal course of its business of acquiring and financing vessels to be owned by the Guarantor or any of its Subsidiaries (present or future).
- (b) The Guarantor will ensure that its liabilities under this Guarantee and the other Finance Documents to which it is a party will rank at least pari passu with all its other present and future unsecured and/or unsubordinated liabilities, except for liabilities which are mandatorily preferred by law.

11.14 No disposal of assets, change of business

The Guarantor shall not, and shall procure that no Borrower will:

- (a) save in the ordinary course of that party's business pursuant to a transaction on commercial arms' length terms for full consideration, transfer, lease or otherwise dispose of:
 - (i) all or a substantial part of that party's assets, whether by one transaction or a number of transactions, whether related or not (except as otherwise provided in the Finance Documents); or
 - (ii) any debt payable to that party or any other right (present, future or contingent right) to receive a payment, including any right to damages or compensation; or
- (b) make any substantial change to the nature of that party's business from that existing at the date of this Guarantee.

11.15 Restrictions on other liabilities or obligations to be incurred

- (a) The Guarantor shall not incur any liability or obligation except:
 - (i) any liabilities or obligations incurred under any Permitted Loan;
 - (ii) any liabilities or obligations reasonably incurred in the normal course of its business (including, without limitation, (A) issuing guaranties to secure the obligations of any of its present or future Subsidiaries, (B) receiving credit under unsecured loans in its normal course of business and (C) any other guarantees previously disclosed by the Guarantor to the Security Trustee on or prior to the date of this Guarantee).
- (b) The Guarantor shall procure that no Borrower shall incur any liability or obligation including, without limitation, giving or allowing to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person, except:
 - (i) liabilities and obligations under the Existing Facility Agreement (up until the relevant Drawdown Date) and the Finance Documents to which each is a party;
 - (ii) liabilities or obligations reasonably incurred in the normal course of its business of trading, operating and chartering the Ship owned by it;
 - (iii) the Designated Transactions; and
 - (iv) liabilities or obligations under any Permitted Loans.

11.16 No payment of dividends

The Guarantor will not pay any dividend or make any other form of distribution or effect any form of redemption, purchase or return of share capital for the duration of the Security Period.

11.17 No merger etc.

The Guarantor shall not, and shall procure that no Borrower shall, enter into any form of amalgamation, merger or de-merger or any form of reconstruction or reorganisation or any form of acquisition, including any joint venture (save for an IPO).

11.18 Maintenance of ownership of Borrowers

The Guarantor shall remain the legal holder and direct (and, in the case of Borrower B, indirect) beneficial owner of all limited liability company interests of all the Borrowers, free from any Security Interest, except for: (i) any Security Interest created in favour of the Security Trustee and (ii) for the duration of the Existing Indebtedness Grace Period, any Security Interest created under the Existing Facility Agreement.

11.19 Financial covenants

The Guarantor shall ensure that at all times during the Security Period (and in the case of subclauses (i) and (ii) below, other than during the Waiver Period):

- (i) the Value Adjusted Leverage Ratio shall not exceed 75 per cent.;
- (ii) the minimum Net Worth shall not be less than \$50,000,000; and
- (iii) the Book Leverage Ratio shall not exceed (i) 85 per cent, of the Total Assets from the Drawdown Date and until 31 December 2018 and (ii) 75 per cent, from 1 January 2019 and at all times thereafter.

11.20 Compliance Check

Compliance with the undertakings contained in Clause 11.19 (*Financial covenants*) shall be determined in each Financial Year of the Guarantor:

- (a) at the time the Agent receives the annual audited consolidated financial statements and the semi-annual unaudited consolidated financial statements of the Guarantor in each Financial Year (pursuant to Clause 11.13(a) and (b)), the Guarantor shall deliver to the Agent a Compliance Certificate, signed by the Chief Financial Officer of the Guarantor or an authorised officer of the Guarantor demonstrating its compliance (or not, as the case may be) with the provisions of Clause 11.19 (*Financial covenants*) as at the date to which such accounts are prepared and supported by calculations and evidence referring to those accounts (audited or, as the case may be, unaudited) and setting out in reasonable detail the materials underlying the statements made in such compliance certificate (including, without limitation, valuations (in a form acceptable to the Agent) showing the Market Value of each Fleet Vessel); and
- (b) at any other time as the Agent may reasonably request by reference to such evidence as the Lenders may require to determine and calculate the financial covenants referred to in Clause 11.19 (*Financial covenants*).

11.21 Other negative undertakings

The Guarantor shall not allow any Borrower to:

- (a) open or maintain, any account with any bank or financial institution except accounts with the Agent for the purposes of the Finance Documents;
- (b) issue, allot or grant any person any limited liability company interests other than the Guarantor or the respective Shareholder; and
- (c) 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 other than the Designated Transactions.

11.22 "Know your customer" checks

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Guarantee;
- (b) any change in the status of the Guarantor after the date of this Guarantee; or

- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under the Loan Agreement to a party that is not a Lender prior to such assignment or transfer, obliges the Agent or any Lender (or, in the case of paragraph (c), any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Guarantor shall promptly upon the request of the Agent or the Lender concerned supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or the Lender concerned (for itself or, in the case of the event described in paragraph (c), on behalf of any prospective new Lender) in order for the Agent, the Lender concerned or, in the case of the event described in paragraph (c), any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents, including without limitation obtaining, verifying and recording certain information and documentation that will allow the Agent and each of the Lenders to identify the Guarantor in accordance with the requirements of the PATRIOT Act.

11.23 Subordination of Permitted Loans

The Guarantor shall procure that each Borrower shall cause (i) all Permitted Loans to be fully subordinated to the Secured Liabilities and (ii) any creditor’s rights under such Permitted Loans to any Borrower(s) to be assigned in favour of the Creditor Parties, in accordance with the provisions of the relevant Subordination Agreement.

11.24 Employees and ERISA Compliance

The Guarantor shall procure that no Borrower shall employ any individuals (other than the master and crew members of the Ship owned by it), or sponsor, maintain or become obligated to contribute to any Plan and undertakes to provide, and shall procure that the Borrower provides, prompt written notice to the Agent in the event that it or, as the case may be, a Borrower becomes aware that it has incurred or is reasonably likely to incur any liability with respect to any Plan, that, individually or in the aggregate with any other such liability, would be reasonably expected to have a Material Adverse Effect.

11.25 Sanctions and compliance with laws

(a) Compliance with laws

The Guarantor shall, and shall procure that any other member of the Group and each Affiliate or of any of them shall, comply in all respect with all applicable Sanctions.

(b) Sanctions

~~(i) The Guarantor undertakes that it, and shall procure that any other member of the Group or any Affiliate of any of them, or any director, officer, agent, employee or person acting on behalf of the foregoing, is not a Restricted Person and does not act directly or indirectly on behalf of a Restricted Person.~~

(i) The Guarantor shall not, and shall that none of its Affiliates shall, become a Restricted Party or act on behalf of or as an agent of, a Restricted Party, to the extent this would lead to non-compliance by it or any other Party with any applicable Sanctions.

(ii) The Guarantor shall not, and shall procure that any other member of the Group or any Affiliate of any of them shall not none of its Affiliates shall, use any revenue or benefit derived from any activity or dealing with a Restricted Person Party in discharging any obligation due or owing to the Creditor Parties to the extent such use would lead to non-compliance by it or any other Party with any applicable Sanctions.

(iii) The Guarantor shall, and shall procure that each of its Affiliates shall, procure that no proceeds from any activity or dealing with a Restricted Person Party are credited to any bank account held with any Creditor Party in its name or in the name of any Borrower, the Guarantor or any other member of the Group or any Affiliate of any of them or any Affiliate of a Creditor Party, to the extent crediting such bank account would lead to non-compliance by it, any Creditor Party or any Affiliate of a Creditor Party with any applicable Sanctions.

(iv) The Guarantor shall, and shall procure that each ~~other member of the Group~~ of its Affiliates shall, to the extent permitted by law and promptly upon becoming aware of them—, supply to the Agent details of any claim, action, suit, proceedings or investigation against it with respect to any applicable Sanctions by any Sanctions Authority.

(c) Use of proceeds

~~The Guarantor shall not, and shall procure that no other member of the Group and any Affiliate of any of them shall not, permit or authorise any other person to, directly or indirectly, make available, all or any part of the proceeds of the Loan or other transactions contemplated by the Loan Agreement to fund or facilitate trade, business or other activities: (a) involving or for the benefit of any Restricted Person; or (b) in any other manner that could result in any Borrower, the Guarantor or a Creditor Party being in breach of any Sanctions or becoming a Restricted Person.~~

(e) The Guarantor acknowledges and agrees that it goes not undertake under paragraphs (a) to (c) (inclusive) above in favour of any Lender incorporated or having its registered office in the Federal Republic of Germany and no such Lender shall have any right thereunder and shall be deemed not to be a party to the provisions of this Clause 11.25 (~~Sanctions and compliance with laws~~).

The Guarantor shall not, and shall procure that none of its Affiliates shall, use, lend, contribute or otherwise make available the proceeds of the Loan or any other transaction contemplated by this Guarantee directly or indirectly for the purpose of financing any trade, business or other activities with any Restricted Party to the extent, in each case, such use, lending, contributing or otherwise making available the proceeds would lead to non-compliance by it or any other Party with any applicable Sanctions.

11.26 Most favoured nation clause

The Guarantor undertakes to procure that, (i) during the Waiver Period in respect of items listed in sub-paragraphs (b), (d) and (f) and (ii) throughout the duration of the Security Period in respect of items listed in sub-paragraphs (a), (c) and (e), the Creditor Parties shall receive no less favourable treatment under this Agreement than that provided or to be provided under any Group Facility Agreement or under the Senior Facility Agreement (by way of amendment or supplement to, or refinancing of, that Group facility Agreement or, as the case may be, the Senior Facility Agreement) in relation to:

- (a) any amendment to a maturity date under any such Group Facility Agreement or, as the case may be, the Senior Facility Agreement as a result of which the maturity date will fall before 31 December 2020;
- (b) the existence of any amortization principal payment profile/schedule until 31 December 2019 (inclusive);
- (c) the provisions relevant to the calculation of the Excess Cash Flow and generally the cash sweep mechanism;
- (d) the waiver of the security cover ratio at the Borrowers' level;
- (e) the financial covenants relevant to the Value Adjusted Leverage Ratio, Book Leverage Ratio and minimum Net Worth of the Guarantor; and

- (f) any increase to the aggregate of any amounts to be paid in respect of interest solely related to margin (howsoever defined) for the duration of the Waiver Period (calculated as at the date of that Group Facility Agreement or, as the case may be, the Senior Facility Agreement).

Accordingly, should any member of the Group or the Guarantor provide to any other creditor more favourable treatment in relation to (a) to (f) above (and, in relation to subparagraphs (b), (d) and (f) for the duration of the Waiver Period) than those which the Creditor Parties have been provided with under this Agreement or any other Finance Document, each Borrower and the Guarantor shall promptly advise the Agent of those arrangements and covenants and shall, upon the Agent's request, enter into such documentation supplemental to the Finance Documents as the Lenders may require in order to achieve parity with the creditors under such relevant Group Facility Agreement or, as the case may be, the Senior Facility Agreement.

11.27 Additional mandatory prepayment event

If the aggregate of the excess Earnings applied in prepayment of the Loan pursuant to clause 8.14 (Prepayment out of Excess Earnings) of the Loan Agreement is less than \$1,300,000 for the duration of the period commencing on 1 January 2019 until the Cash Sweep Period ending on 31 December 2019, the Guarantor shall procure that ~~part of the shareholders' equity (as provided in Schedule 3, Part B, paragraph 6 of the Loan Agreement and Clause 11.29) is injected, and the Borrowers shall be obliged to utilise such equity~~ the Borrowers utilise that part of the Shareholders' Equity to prepay the Shortfall Amount to the Lenders on the next Repayment Date falling due after receipt of the Excess Cash Flow Notice relevant to that Cash Sweep Period. Such Shortfall Amount shall be applied in or towards prepayment of the then outstanding Repayment Instalments and Balloon Instalments in order of maturity.

11.28 Guarantor's Shareholders' Equity Contribution

- (a) ~~The Guarantor shall procure that an equity contribution of \$8,000,000 is paid in to the Group utilising funds to be advanced to the Guarantor pursuant to the K&T Loan Agreement.~~
- (b) ~~In the event that the equity contribution is less than \$8,000,000 on 31 December 2019, then the Guarantor will contribute the difference between the actual capital contribution and \$8,000,000 in the form of equity injection by 31 December 2019.~~
- (c) ~~The Guarantor shall procure that such contribution of \$8,000,000 (in addition to the \$5,000,000 contribution injected as a condition precedent under the Loan Agreement)~~ The Guarantor shall procure that such part of the Shareholders' Equity shall be utilised in or towards payment of the Shortfall Amount set out in Clause 11.27 and, as the case may, any cash flow shortfall in connection with the Existing Fleet Vessels, including, but not limited to, any operating expenses or any other cash flow shortfall in connection with their operation, trading and financing under the Loan Agreement or, as the case may be, under any Group Facility Agreement (as necessary).

~~11.29 Group Facility Agreement~~

~~The Guarantor undertakes to ensure that (i) each Group Facility Agreement is duly executed by the parties to it and (ii) the loan made or to be made available under each Group Facility Agreement is drawn by the relevant borrower in each case on or before the last day of the Refinancing Period, unless the relevant creditor(s) under the relevant Group Facility Agreement have given their written consent to an extension of drawdown under the relevant Group facility Agreement after the last day of the Refinancing Period **Provided that** the Security Trustee (acting with the authorisation of the Majority Lenders) has also given its prior written consent to such corresponding extension of the Refinancing Period.~~

12 JUDGMENTS AND CURRENCY INDEMNITY

12.1 Judgments relating to Loan Agreement and other Finance Documents

This Guarantee shall cover any amount payable by any Borrower under or in connection with any judgment relating to the Loan Agreement and/or any other Finance Document.

12.2 Currency indemnity

In addition, clause 21.5 (*currency indemnity*) of the Loan Agreement shall apply, with any necessary adaptations, in relation to this Guarantee.

13 SET-OFF

13.1 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 the Guarantor at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Guarantor to that Creditor Party under this Guarantee or any of the other Finance Documents; and
- (b) for that purpose:
 - (i) break, or alter the maturity of, all or any part of a deposit of the Guarantor;
 - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars; and
 - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

13.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 13.1 (*Application of credit balances*); 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).

13.3 Sums deemed due to a Lender

For the purposes of this Clause 13 (*Set-Off*), a sum payable by the Guarantor 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 that Lender.

14 SUPPLEMENTAL

14.1 Continuing guarantee

This Guarantee shall remain in force as a continuing security at all times during the Security Period.

14.2 Rights cumulative, non-exclusive

The Security Trustee's rights under and in connection with this Guarantee are cumulative, may be exercised as often as appears expedient and shall not be taken to exclude or limit any right or remedy conferred by law.

14.3 No impairment of rights under Guarantee

If the Security Trustee omits to exercise, delays in exercising or invalidly exercises any of its rights under this Guarantee, that shall not impair that or any other right of the Security Trustee under this Guarantee.

14.4 Severability of provisions

If any provision of this Guarantee is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity, legality or enforceability of its other provisions.

14.5 Guarantee not affected by other security

This Guarantee shall not impair, nor be impaired by, any other guarantee, any Security Interest or any right of set-off or netting or to combine accounts which the Security Trustee or any other Creditor Party may now or later hold in connection with the Loan Agreement.

14.6 Guarantor bound by Loan Agreement

The Guarantor agrees with the Security Trustee to be bound by all provisions of the Loan Agreement which are applicable to the Security Parties (to the extent that they may apply to the Guarantor as well) in the same way as if those provisions had been set out (with any necessary modifications) in this Guarantee.

14.7 Applicability of provisions of Guarantee to other Security Interests

Any Security Interest which the Guarantor creates (whether at the time at which it signs this Guarantee or at any later time) to secure any liability under this Guarantee shall be a principal and independent security, and Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall, with any necessary modifications, apply to it, notwithstanding that the document creating the Security Interest neither describes it as a principal or independent security nor includes provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*).

14.8 Applicability of provisions of Guarantee to other rights

Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall also apply to any right of set-off or netting or to combine accounts which the Guarantor creates by an agreement entered into at the time of this Guarantee or at any later time (notwithstanding that the agreement does not include provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*)), being an agreement referring to this Guarantee.

14.9 Authority of Security Trustee to sign Transfer Certificates

The Guarantor irrevocably authorises the Security Trustee to sign Transfer Certificates on its behalf.

14.10 Third party rights

A person (other than a Creditor Party) who is not a party to this Guarantee has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Guarantee.

15 ASSIGNMENT

15.1 Assignment by Security Trustee

The Security Trustee may assign its rights under and in connection with this Guarantee to the same extent as it may assign its rights under the Loan Agreement.

16 NOTICES

16.1 Notices to Guarantor

Any notice or demand to the Guarantor under or in connection with this Guarantee shall be given by letter or fax at:

c/o the Technical Manager
3-5 Menandrou Street
145 61 Kifissia
Greece

Fax No: +30 210 80 84 224,

or to such other address which the Guarantor may notify to the Security Trustee.

16.2 Application of certain provisions of Loan Agreement

The following provisions of the Loan Agreement apply to this Guarantee as if they were expressly incorporated in this Guarantee with any necessary modifications:

- (a) Clause 28 (*Notices*);
- (b) Clause 26.13 (*Disclosure of information*); and
- (c) Clause 30.3 (*Counterparts*).

16.3 Validity of demands

A demand under this Guarantee shall be valid notwithstanding that it is served:

- (a) on the date on which the amount to which it relates is payable by any Borrower under the Loan Agreement; and/or
 - (b) at the same time as the service of a notice under clause 19.2 (*Actions following an Event of Default*) of the Loan Agreement,
- and a demand under this Guarantee may refer to all amounts payable under or in connection with the Loan Agreement without specifying a particular sum or aggregate sum.

16.4 Notices to Security Trustee

Any notice to the Security Trustee under or in connection with this Guarantee shall be sent to the same address and in the same manner as notices to the Security Trustee under the Loan Agreement.

17 INVALIDITY OF LOAN AGREEMENT

17.1 Invalidity of Loan Agreement

In the event of:

- (a) the Loan Agreement now being or later becoming, with immediate or retrospective effect, void, illegal, unenforceable or otherwise invalid for any other reason whatsoever, whether of a similar kind or not; or
- (b) without limiting the scope of paragraph (a), a bankruptcy of any Borrower, the introduction of any law or any other matter resulting in any Borrower being discharged from liability under the Loan Agreement, or the Loan Agreement ceasing to operate (for example, by interest ceasing to accrue),

this Guarantee shall cover any amount which would have been or become payable under or in connection with the Loan Agreement if the Loan Agreement had been and remained entirely valid, legal and enforceable, or the relevant Borrower had not suffered bankruptcy, or any combination of such events or circumstances, as the case may be, and both Borrowers had remained fully liable under it for liabilities whether invalidly incurred or validly incurred but subsequently retrospectively invalidated; and references in this Guarantee to amounts payable by any Borrower under or in connection with the Loan Agreement shall include references to any amount which would have so been or become payable as aforesaid.

17.2 Invalidity of Finance Documents

Clause 17.1 (*Invalidity of Loan Agreement*) also applies to each of the other Finance Documents to which any Borrower is a party.

18 BAIL-IN

18.1 Contractual recognition of bail-in

- (a) Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each party to this Guarantee acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:
 - (i) any Bail-In Action in relation to any such liability, including (without limitation):
 - (A) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (B) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (C) a cancellation of any such liability; and
 - (ii) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.
- (b) Each Creditor Party may enforce and enjoy the benefit of this Clause 18 (*Bail-In*) subject to the provisions of the Third Parties Act.

19 GOVERNING LAW AND JURISDICTION

19.1 English law

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

19.2 Exclusive English jurisdiction

Subject to Clause 19.3 (*Choice of forum for the exclusive benefit of the Security Trustee*), the courts of England shall have exclusive jurisdiction to settle any Dispute.

19.3 Choice of forum for the exclusive benefit of the Security Trustee

Clause 19.2 (*Exclusive English jurisdiction*) is for the exclusive benefit of the Security Trustee, 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.

The Guarantor shall not commence any proceedings in any country other than England in relation to a Dispute.

19.4 Process agent

The Guarantor irrevocably appoints Saville & Co. at its principal office for the time being, presently at One Carey Lane, London EC2V 8AE, England, to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with a Dispute.

19.5 Creditor Parties' rights unaffected

Nothing in this Clause 19 (*Governing Law and Jurisdiction*) 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.

19.6 Meaning of "proceedings"

In this Clause 19 (*Governing Law and Jurisdiction*), "**proceedings**" means proceedings of any kind, including an application for a provisional or protective measure and "**Dispute**" means any dispute arising out of or in connection with this Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee) or any non-contractual obligation arising out of or in connection with this Guarantee.

This Guarantee has been entered into (and amended and restated) on the date dates stated at the beginning of this Guarantee.

FORM OF COMPLIANCE CERTIFICATE DURING WAIVER PERIOD

To: ABN AMRO BANK N.V.
93 Coolsingel
3012 AE Rotterdam
The Netherlands

Attn: [Loans Administration]

[date]

Dear Sirs

Guarantee dated [●] August 2017 (the “Guarantee”) and made between (i) Poseidon Containers Holdings LLC and (ii) ABN AMRO Bank N.V. in connection with a Term Loan Facility of up to ~~US\$82,459,678.29~~ US\$64,253,892.38

Terms defined in the Guarantee have their defined meanings when used in this Compliance Certificate.

We refer to the financial covenants set out in Clause 11.19 (*Financial covenants*) of the Guarantee and confirm that, as at the [6-month period ending 30 June [●]] [Financial Year ending 31 December [●]] to which the accounts referred to below were prepared, the Guarantor is in compliance with the following covenants:

- (i) the Book Leverage Ratio is [●] per cent.

To evidence such compliance, we attach a copy of the latest [annual audited][semi-annual unaudited] consolidated financial statements of the Group together with calculations and evidence setting out in reasonable detail the data and calculations resulting therefrom which we have used to support the confirmations made above.

No Event of Default or a Potential Event of Default has occurred and is continuing unremedied or unwaived as at the date of this Compliance Certificate [except for the following matter or event *[set out all material details of matter or event]*].

[Chief Financial Officer][authorised signatory]
for and on behalf of
POSEIDON CONTAINERS HOLDINGS LLC

FORM OF COMPLIANCE CERTIFICATE AFTER THE WAIVER PERIOD

To: ABN AMRO BANK N.V.
93 Coolsingel
3012 AE Rotterdam
The Netherlands

Attn: [Loans Administration]

[date]

Dear Sirs

Guarantee dated [●] August 2017 (the “Guarantee”) and made between (i) Poseidon Containers Holdings LLC and (ii) ABN AMRO Bank N.V. in connection with a Term Loan Facility of up to ~~US\$82,459,678.29~~ US\$64,253,892.38

Terms defined in the Guarantee have their defined meanings when used in this Compliance Certificate.

We refer to the financial covenants set out in Clause 11.19 (*Financial covenants*) of the Guarantee and confirm that, as at the [6-month period ending 30 June [●]] [Financial Year ending 31 December [●]] to which the accounts referred to below were prepared, the Guarantor is in compliance with the following covenants:

- (i) the Value Adjusted Leverage Ratio is [●] per cent;
- (ii) the minimum Net Worth is \$[●];
- (iii) the Book Leverage Ratio is [●].

To evidence such compliance, we attach a copy of the latest [annual audited][semi-annual unaudited] consolidated financial statements of the Group together with calculations and evidence setting out in reasonable detail the data and calculations resulting therefrom which we have used to support the confirmations made above (including valuations in a form acceptable to the Agent showing the Market Value of each Fleet Vessel which were used in calculating the Value Adjusted Total Assets of the Group as at [●]).

No Event of Default or a Potential Event of Default has occurred and is continuing unremedied or unwaived as at the date of this Compliance Certificate [except for the following matter or event *[set out all material details of matter or event]*].

[Chief Financial Officer][authorised signatory]
for and on behalf of
POSEIDON CONTAINERS HOLDINGS LLC

GUARANTOR

SIGNED by)
for and on behalf of)
POSEIDON CONTAINERS HOLDINGS LLC)
in the presence of:)

SECURITY TRUSTEE

SIGNED by)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

EXECUTION PAGE

LENDERS

EXECUTED as a DEED
by ABN AMRO BANK N.V.
acting by Georgia Ioanna Asimakopoulos
its duly authorised
attorney-in-fact
in the presence of

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PAT SKALA
WASTON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

AGENT

EXECUTED as a DEED
by ABN AMRO BANK N.V.
acting by Georgia Ioanna Asimakopoulos
its duly authorised
attorney-in-fact
in the presence of

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PAT SKALA
WASTON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SECURITY TRUSTEE

EXECUTED as a DEED
by ABN AMRO BANK N.V.
acting by Georgia Ioanna Asimakopoulos
its duly authorised
attorney-in-fact
in the presence of

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PAT SKALA
WASTON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SWAP BANK

EXECUTED as a DEED
by ABN AMRO BANK N.V.
acting by Georgia Ioanna Asimakopoulos
its duly authorised
attorney-in-fact
in the presence of:

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PAT SKALA
WASTON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

ARRANGER

EXECUTED as a **DEED**
by **ABN AMRO BANK N.V.**
acting by Georgia Ioanna Asimakopoulos
its duly authorised
attorney-in-fact
in the presence of:

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PAT SKALA
WATSON, FARLEY & WILLIAMS
340 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

BORROWERS

EXECUTED as a **DEED**
by **ZEUS ONE MARINE LLC**
acting by
its duly authorised
attorney-in-fact
in the presence of:

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EXECUTED as a **DEED**
by **IKAROS MARINE LLC**
acting by
its duly authorised
attorney-in-fact
in the presence of:

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COLLATERAL OWNERS

EXECUTED as a **DEED**
by **TASMAN MARINE LLC**
acting by
its duly authorised
attorney-in-fact
in the presence of:

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ARRANGER

EXECUTED as a **DEED**
by **ABN AMRO BANK N.V.**
acting by
its duly authorised
attorney-in fact
in the presence of:

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BORROWERS

EXECUTED as a **DEED**
by **ZEUS ONE MARINE LLC**
acting by
its duly authorised
attorney-in-fact
in the presence of :

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FILANTHI P. KATSAFADOU

ALKATERINI C. EMMANOUIL

ATTORNEY-AT-LAW
THEO V. SIOUFAS & CO. LAW OFFICES,
13 Deferas Merarchias Street
Piraeus 185 35, Greece
Tel 210 42 21 210 Fax 210 42 25 146

EXECUTED as a **DEED**
by **IKAROS MARINE LLC**
acting by
its duly authorised
attorney-in-fact
in the presence of:

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FILANTHI P. KATSAFADOU

ALKATERINI C. EMMANOUIL

ATTORNEY-AT-LAW
THEO V. SIOUFAS & CO. LAW OFFICES,
13 Deferas Merarchias Street
Piraeus 185 35, Greece
Tel 210 42 21 210 Fax 210 42 25 146

COLLATERAL OWNERS
EXECUTED as a **DEED**
by **TASMAN MARINE LLC**
acting by
its duly authorised
attorney-in-fact
in the presence of :

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FILANTHI P. KATSAFADOU

ALKATERINI C.EMMANOUIL

ATTORNEY-AT-LAW
THEO V. SIOUFAS & CO. LAW OFFICES,
13 Deferas Merarchias Street
Piraeus 185 35, Greece
Tel 210 42 21 210 Fax 210 42 25 146

EXECUTED as a DEED
by **HUDSON MARINE LLC**
acting by
its duly authorised
attorney-in-fact
in the presence of:

FILANTHI P. KATSAFADOU

ATTORNEY-AT-LAW
THEO V. SIOUFAS & CO. LAW OFFICES,
13 Defteras Merarchias Street
Piraeus 185 35, Greece
Tel 210 42 21 210 Fax 210 42 25 146

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) AIKATERINI C. EMMANOUIL



EXECUTED as a DEED
by **DRAKE MARINE LLC**
acting by
its duly authorised
attorney-in-fact
in the presence of:

FILANTHI P. KATSAFADOU

ATTORNEY-AT-LAW
THEO V. SIOUFAS & CO. LAW OFFICES,
13 Defteras Merarchias Street
Piraeus 185 35, Greece
Tel 210 42 21 210 Fax 210 42 25 146

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) AIKATERINI C. EMMANOUIL




CORPORATE GUARANTOR AND SHAREHOLDER

EXECUTED as a DEED
by **POSEIDON CONTAINERS HOLDINGS LLC**
acting by
its duly authorised
attorney-in-fact
in the presence of:

FILANTHI P. KATSAFADOU

ATTORNEY-AT-LAW
THEO V. SIOUFAS & CO. LAW OFFICES,
13 Defteras Merarchias Street
Piraeus 185 35, Greece
Tel 210 42 21 210 Fax 210 42 25 146

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) AIKATERINI C. EMMANOUIL



EXECUTED as a DEED
by **ODYSSEUS MARINE LLC**
acting by
its duly authorised
attorney-in fact
in the presence of:

FILANTHI P. KATSAFADOU

ATTORNEY-AT-LAW
THEO V. SIOUFAS & CO. LAW OFFICES,
13 Defteras Merarchias Street
Piraeus 185 35, Greece
Tel 210 42 21 210 Fax 210 42 25 146

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) AIKATERINI C. EMMANOUIL



COUNTERSIGNED this 9th day of October, 2018 for and on behalf of the below companies each of which, by its execution hereof, confirms and acknowledges that it has read and understood the terms and conditions of this Amending and Restating Deed, 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 and the other Finance Documents.

MANAGERS

/s/ George Youraukos

George Youraukos

President

for and on behalf of

TECHNOMAR SHIPPING INC.

/s/ Dimitrios Tslaklagkanos

Dimitrios Tslaklagkanos

President

for and on behalf of

CONCHART COMMERCIAL INC.

COUNTERSIGNED this 9th day of October, 2018 for and on behalf of the below company which, by its execution hereof, confirms and acknowledges that it has read and understood the terms and conditions of this Amending and Restating Deed and 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.

SUBORDINATED CREDITOR

/s/ Georglos Glouroukos

Georglos Glouroukos
Chief Executive Officer
for and on behalf of
K&T MARINE LLC

Dated 25 October 2018

**ZEUS ONE MARINE LLC
IKAROS MARINE LLC**
as joint and several Borrowers

and

**TASMAN MARINE LLC
HUDSON MARINE LLC and
DRAKE MARINE LLC**
as Collateral Owners

and

POSEIDON CONTAINERS HOLDINGS LLC
as Corporate Guarantor

and

**ODYSSEUS MARINE LLC
THD MARITIME CO., LIMITED**
as Shareholders

and

**THE BANKS AND FINANCIAL INSTITUTIONS
Listed in Schedule 1**
as Lenders

and

ABN AMRO BANK N.V.
as Agent, Arranger, Swap Bank and as Security Trustee

SECOND AMENDING AND RESTATING DEED

relating to
a secured term loan facility dated 30 August 2017 (as amended and restated by an Amending and Restating Deed on 9 October 2018) of originally up to US\$82,459,678.29 to refinance certain existing indebtedness and secured on m.vs. "ORCA I", "KATHERINE", "TASMAN", "DIMITRIS Y" and "IAN H"

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PARTIES

- (1) **ZEUS ONE MARINE LLC and IKAROS MARINE LLC**, each a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as joint and several borrowers (each a **"Borrower"** and, together, the **"Borrowers"**);
- (2) **TASMAN MARINE LLC, HUDSON MARINE LLC and DRAKE MARINE LLC**, each a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as collateral owners (each a **"Collateral Owner"** and, together, the **"Collateral Owners"**);
- (3) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as corporate guarantor (the **"Corporate Guarantor"**);
- (4) **ODYSSEUS MARINE LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as shareholder (**"Odysseus"**);
- (5) **THD MARITIME CO., LIMITED**, a private company limited with shares incorporated and existing under the laws of the Republic of Cyprus, whose registered office is at 16 Sophouli Street, Chanteclair Building, Floor 4, flat 403, Nicosia, Republic of Cyprus (**"THD Maritime"**);
- (6) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**; and
- (7) **ABN AMRO BANK N.V.** acting through its office at 93 Coolsingel, 3012 AE, Rotterdam, The Netherlands, as **Agent, Arranger and Security Trustee** and acting through its office at Gustav Mahlerlaan 10, NL-1082 PP, Amsterdam, The Netherlands, as **Swap Bank**.

BACKGROUND

- (A) By a loan agreement dated 30 August 2017 (as amended and restated by an amending and restating deed dated 9 October 2018) (the **"Loan Agreement"**) and made between (i) the Original Borrowers (hereinafter defined) as joint and several borrowers, (ii) the Lenders and (iii) ABN AMRO Bank N.V. as Agent, Swap Bank, Arranger and Security Trustee, the Lenders have made available to the Borrowers a loan facility in an amount of (originally) up to US\$82,459,678.29. At the date of this Deed, the outstanding amount of the Loan is US\$64,253,892.38.
- (B) By an agency and trust agreement entered into pursuant to the Loan Agreement, it was agreed that the Security Trustee would hold the Trust Property on trust for the Lenders and the Swap Bank.
- (C) By a master agreement (the **"Master Agreement"**) (on the 2002 ISDA Master Agreement form together with the schedule attached thereto (as amended)) dated 30 August 2017 and made between (i) the Original Borrowers and (ii) the Swap Bank, it was agreed that the Swap Bank would enter into Designated Transactions with the Original Borrowers from time to time.
- (D) By a corporate guarantee dated 30 August 2017 (as amended and restated pursuant to an amending and restating deed dated 9 October 2018) (the **"Corporate Guarantee"**) and made between (i) the Corporate Guarantor and (ii) the Security Trustee, the Corporate Guarantor has guaranteed the obligations of the Original Borrowers under the Loan Agreement and the Master Agreement.

- (E) The Borrowers, the Collateral Owners and the Corporate Guarantor have requested that the Creditor Parties agree to:
- (i) the reverse triangular merger involving the Corporate Guarantor and the New Holding Company (as hereinafter defined), as a result of which (a) the Corporate Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (b) the Poseidon Shareholders would receive shares of the New Holding Company;
 - (ii) the shares and voting rights attaching to the shares in respect of the New Holding Company being in turn legally and beneficially owned by, amongst others, the Poseidon Shareholders and the New Shareholders (as hereinafter defined) in accordance with the Merger Documents;
 - (iii) the change in the ultimate beneficial ownership of the equity interests or, as the case may be, shares in the Borrowers, the Collateral Owners, the Corporate Guarantor, THD Maritime and Odysseus;
 - (iv) the cessation of Mr George Giouroukos from his position as Chief Executive Officer of the Corporate Guarantor; and
 - (v) the termination of the existing management agreements and their replacement by new management agreements to be entered into between the relevant Borrower, Collateral Owner or the Corporate Guarantor (as may be the case) and each Approved Manager on substantially similar terms to the existing management agreements,
- together, the **“Request”**.
- (F) This Deed sets out the terms and conditions on which the Creditor Parties will agree with effect on and from the Effective Date, to the requests of the Borrowers, the Collateral Owners and the Corporate Guarantor outlined in Recital (E) above and to the consequential amendments to the Loan Agreement and the other Finance Documents.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Defined expressions

Words and expressions defined in the Loan Agreement shall have the same meanings when used in this Deed (including the Recitals) unless the context otherwise requires or they are otherwise defined in this Deed.

1.2 Definitions

In this Deed, unless the contrary intention appears:

“Amended and Restated Corporate Guarantee” means the Corporate Guarantee as amended and restated pursuant to this Deed;

“**Amended and Restated Loan Agreement**” means the Loan Agreement as amended and restated pursuant to this Deed;

“**Effective Date**” means the date on which the Agent notifies the Borrowers in writing in the form set out in Schedule 4 that all the conditions precedent in Schedule 2 have been satisfied, which confirmation the Agent shall be under no obligation to give if an Event of Default shall have occurred;

“**Merger**” means a reverse triangular merger involving the Corporate Guarantor and the New Holding Company, as a result of which (a) the Corporate Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (b) the Poseidon Shareholders would receive shares of the New Holding Company;

“**Merger Documents**” means the ancillary agreements entered into by the Poseidon Shareholders and New Shareholders in connection with the definitive agreement in respect of the Merger;

“**New Holding Company**” means the corporation under the name Global Ship Lease Inc. (as may be renamed following the Merger), incorporated in the Republic of the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, P.O. Box 1405, Majuro, Marshall Islands MH96960 and whose shares are publically listed on the New York Stock Exchange;

“**New Shareholder**” means each of:

- (a) Mr Michael Gross (either directly or indirectly through one or more Subsidiaries); and; and
- (b) CMA CGM S.A., a company incorporated in France;

“**Obligor**” means each of the Borrowers, the Collateral Owners, the Corporate Guarantor, THD Maritime and Odysseus;

“**Poseidon Shareholders**” means each of the following:

- (a) KEP VI (Newco Marine), Ltd, a company incorporated in the Cayman Islands;
- (b) KIA VIII (Newco Marine), Ltd, a company incorporated in the Cayman Islands;
- (c) MAAS Capital Investments B.V., a company incorporated in the Netherlands; and
- (d) Management Investor Co, a corporation incorporated in the Marshall Islands; and

“**Relevant Shareholding**” means, in respect of the New Holding Company, the percentage of ownership of shares and voting power being held by each of the Poseidon Shareholders and the New Shareholders, as such percentage shall be set out in the Merger Documents and disclosed in writing to the Agent on the date of the Merger.

1.3 Application of construction and interpretation provisions of Loan Agreement

Clauses 1.2, 1.4 and 1.5 of the Loan Agreement apply, with any necessary modifications, to this Deed.

2 REPRESENTATIONS AND WARRANTIES

2.1 Repetition of Loan Agreement representations and warranties

Each Borrower represents and warrants to the Agent that the representations and warranties in clause 10 of the Amended and Restated Loan Agreement would remain true and not misleading if repeated on the date of this Deed with reference to the circumstances now existing as if the references to the “Finance Documents” included a reference to this Deed.

2.2 Repetition of Finance Documents representations and warranties

Each of the Obligors represents and warrants to the Agent that the representations and warranties in the Finance Documents (other than the Loan Agreement) to which it is a party would remain true and not misleading if repeated on the date of this Deed with reference to the circumstances now existing and with appropriate modifications to refer to this Deed.

3 AMENDMENT OF FINANCE DOCUMENTS

3.1 Amendment and restatement of the Loan Agreement

With effect on and from (and subject to the occurrence of) the Effective Date, the Loan Agreement shall be, and shall be deemed by this Deed to be, amended and restated in the form set out in Schedule 5.

3.2 Amendment and restatement of the Corporate Guarantee

With effect on and from (and subject to the occurrence of) the Effective Date, the Corporate Guarantee shall be, and shall be deemed by this Deed to be, amended and restated in the form set out in Schedule 6.

3.3 Amendments to remaining Finance Documents

With effect on and from (and subject to the occurrence of) the Effective Date, each of the Finance Documents (other than the Loan Agreement and the Corporate Guarantee) shall be, and shall be deemed by this Deed to be amended as follows:

- (a) the definition of, and references throughout each of such Finance Documents to, the “Loan Agreement” and the “Corporate Guarantee” (howsoever defined therein) and any of the other Finance Documents shall be construed as if the same referred to, respectively:
 - (i) the Amended and Restated Loan Agreement;
 - (ii) the Amended and Restated Corporate Guarantee; and
 - (iii) the other Finance Documents as supplemented and amended by this Clause 3.3;
- (b) the references throughout each of such Finance Documents to “this Agreement”, “this Deed”, “hereunder” and other like expressions shall be construed as if the same referred to those Finance Documents as supplemented and amended by this Deed.

3.4 Finance Documents to remain in full force and effect

Each of the Finance Documents shall remain in full force and effect as supplemented and amended by:

- (a) the amendments contained or referred to in Clause 3.1 through 3.3; and
- (b) such further or consequential modifications as may be necessary to give full effect to the terms of this Deed.

4 EFFECTIVE DATE

4.1 General

The agreement contained in Recital (E) and Clause 3 is subject to the fulfilment of the conditions precedent in Clause 4.2.

4.2 Conditions precedent

The conditions referred to in Clause 4.1 are that the Agent shall have received, on or before the Effective Date, the documents and evidence referred to in Schedule 2 in all respects in form and substance satisfactory to the Agent and its lawyers on the date of this Deed or such later date as may be applicable. Upon receipt of the documents and evidence referred to above, the Agent shall promptly deliver to the Borrowers a written confirmation in the form set out in Schedule 3.

4.3 Conditions subsequent

The Borrowers further undertake to provide the Agent with the documents and evidence referred to in Schedule 3 in all respects in form and substance satisfactory to the Agent and its lawyers on the date falling three (3) Business Days following the date of the Merger or such later date as may be agreed between the Borrowers and the Agent (acting on the instructions of the Majority Lenders).

4.4 Waiver of conditions precedent

If the Agent, in its discretion, confirms that the Effective Date has taken place before certain of the conditions referred to in Clause 4.2 are satisfied, the Borrowers shall, in each case, ensure that those conditions are satisfied within a maximum of 5 Business Days after the date of the Effective Date.

4.5 Void Second Amending and Restating Deed

If for any reason whatsoever (including, but not limited to, the Merger not having taken place), the Borrowers fail to fulfil the conditions subsequent in Clause 4.3 by 31 December 2018 (or such later date as may be agreed by the Agent, acting on the instructions of the Majority Lenders), this Deed shall be rendered void ab initio.

5 FURTHER ASSURANCES

5.1 Obligation to execute further documents etc.

Each Obligor shall, and shall procure that each Approved Manager 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 laws of England or such other country as the Agent may, in any particular case, specify; and
- (b) effect any registration or notarisation, give any notice or take any other step,

which the Agent may, by notice to such party, specify for any of the purposes described in Clause 5.2 or for any similar or related purpose.

5.2 Purposes of further assurances

The purposes referred to in Clause 5.1 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 this Deed or any Finance Document, each as amended and restated or supplemented by this Deed; and
- (b) implementing the terms and provisions of, and the transactions contemplated in this Deed or any Finance Document.

5.3 Terms of further assurances

The Agent may specify the terms of any document to be executed by the Obligors or the Approved Manager under this Clause 5, and those terms may include any covenants, powers and provisions which the Agent considers appropriate to protect its interests.

5.4 Obligation to comply with notice

Each of the Obligors shall, and the Obligors shall procure that the Approved Manager shall, comply with a notice under Clause 5.1 by the date specified in the notice.

5.5 Corporate or limited liability company action

At the same time as the relevant Obligor or, as the case may be, Approved Manager, delivers to the Agent any document executed under Clause 5.1(a), that Obligor or, as the case may be, Approved Manager, shall also deliver to the Agent a certificate signed by an officer of that Obligor or, as the case may be, Approved Manager, which shall:

- (a) set out the text of a resolution of that Obligor's or, as the case may be, that Approved Manager's, applicable governing body specifically authorising the execution of the document specified by the Agent unless the execution of the relevant document is authorised by the existing resolutions and general power of attorney of that Obligor or, as the case may be, that Approved Manager; and
- (b) state that either the resolution was duly passed by the member or board of directors, as applicable, validly convened and held throughout and is valid under that Obligor's or as the case may be, that Approved Manager's, limited liability agreement or other constitutional documents.

6 EXPENSES

The Borrowers shall reimburse to the Agent on demand all reasonable costs, fees and expenses (including, but not limited to, legal fees and expenses) and taxes thereon incurred by the Agent or any other Creditor Party in connection with the negotiation, preparation and execution of this Deed and any other documents required thereunder.

7 NOTICES

The provisions of clause 28 (Notices) of the Loan Agreement and clause 16 of the Corporate Guarantee, as amended and restated by this Deed, shall apply to this as if they were expressly incorporated in this Deed with any necessary modifications.

8 SUPPLEMENTAL

8.1 Counterparts

This Deed may be executed in any number of counterparts.

8.2 Third party rights

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

9 LAW AND JURISDICTION

9.1 Governing law

This Deed 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 Incorporation of the Loan Agreement provisions

The provisions of clause 33 (Law and Jurisdiction) of the Loan Agreement, as amended and restated by this Deed, shall apply to this Deed as if they were expressly incorporated in this Deed with any necessary modifications.

This Deed has been duly executed by or on behalf of the parties and has, on the date stated at the beginning of this Deed, been delivered as a Deed.

SCHEDULE 1

LENDERS

Lender	Lending Office
ABN AMRO Bank N.V.	c/o Loans Administration Transportation Clients 93 Coolsingel 3012 AE Rotterdam The Netherlands

SCHEDULE 2

CONDITIONS PRECEDENT DOCUMENTS

The following are the documents referred to in Clause 4.2:

- 1 A certificate signed by an officer of each Obligor confirming that there has been no change to the constitutional documents since those previously provided to the Agent.
- 2 In respect of each Obligor, documents of the kind specified in paragraphs 2, 3, 4 and 5 of Schedule 3, Part A of the Loan Agreement as amended and supplemented by this Deed with appropriate modifications to refer to this Deed (as applicable) and, in respect of each Approved Manager and K&T Marine LLC, an up-to-date certificate of incumbency.
- 3 Evidence satisfactory to the Agent that each Obligor and each Approved Manager, is currently existing in good standing in accordance with the laws of its country of incorporation.
- 4 A duly executed original of this Deed.
- 5 Such documents and other evidence in such form required and satisfactory to the Creditor Parties in order for the Creditor Parties to comply with all necessary “know your customer” or other similar identification procedures (including, but not limited to, specimen signatures of all the members or directors, as the case may be, and other officers of the Borrowers and the Corporate Guarantor) in relation to the transactions contemplated in this Deed and the other Finance Documents.
- 6 A confirmation satisfactory to the Agent from the Borrowers and the Corporate Guarantor that no Events of Default has occurred or is continuing.
- 7 Documentary evidence that the agent for service of process named in clause 33 of the Loan Agreement has accepted its appointment in respect of this Deed.
- 8 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 Deed (including without limitation) all necessary governmental and other official approvals and consents in such pertinent jurisdictions as the Agent deems appropriate.
- 9 Favourable legal opinions from lawyers appointed by the Agent on such matters concerning the laws of Marshall Islands and such other relevant jurisdictions as the Agent may require.
- 10 Any further authorisations, opinions, consents, agreements and documents in connection with this Deed or any other Finance Document which the Agent may request by notice to the Borrowers prior to the Effective Date.
- 11 A written confirmation from the Guarantor that all other lenders under each of the Group Facility Agreements and the Senior Facility Agreement have provided their consent to the Merger.

SCHEDULE 3

CONDITIONS SUBSEQUENT DOCUMENTS

The following are the documents referred to in Clause 4.3:

- 1 Such documents and other evidence in such form as is requested by the Agent in order for the Lenders to comply with all necessary “know your customer” or “client acceptance” or other similar identification procedures (including, but not limited to, specimen signatures of all the members or directors, as the case may be, and other officers of the New Holding Company) in relation to the transactions contemplated in the Finance Documents.
- 2 Evidence satisfactory to the Agent (acting on the instructions of the Majority Lenders) that the Merger has taken place and that, immediately after the Merger, each Poseidon Shareholder and each New Shareholder is, or will be, the legal and/or beneficial owner of its respective Relevant Shareholding.
- 3 A certified true copy of the amended and restated limited liability company agreement and the certificate of limited liability company interest in respect of the Corporate Guarantor specifying the members/holders of the membership interests in the Corporate Guarantor.
- 4 A certified true copy of the Articles of Association and the Bylaws of the New Holding Company, as amended following the Merger.
- 5 A certified true copy of each of the duly executed Merger Documents.
- 6 A certificate of the Borrowers stating the percentage of ownership of shares and voting power being held by each of the Poseidon Shareholders and the New Shareholders in the New Holding Company.
- 7 Evidence of the change of the name of the New Holding Company (if applicable).
- 8 Certified copies of the new Management Agreements together with such documentation as may be required by the Agent (acting on the instructions of the Lenders) Lender in respect of any amendments to the existing Approved Manager’s Undertakings.
- 9 Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 6 have been paid or will be paid by the Effective Date.
- 10 An amendment fee (if any) in such amount as may also be provided to any creditor under any Group Facility Agreement or the Senior Facility Agreement in connection with, or related to, the Merger.

FORM OF EFFECTIVE DATE NOTICE

To: **ZEUS ONE MARINE LLC**
IKAROS MARINE LLC
TASMAN MARINE LLC
HUDSON MARINE LLC
DRAKE MARINE LLC
POSEIDON CONTAINERS HOLDINGS LLC
c/o Technomar Shipping Inc.
3-5 Menandrou Street
145 61 Kifisia
Athens, Greece
Fax: +30 210 8084224

[•] 2018

Dear Sirs

We refer to the amending and restating deed dated [•] 2018 (the “**Amending and Restating Deed**”) made between (i) yourselves as Borrowers and Collateral Owners, (ii) the Lenders, (iii) the Agent, (iv) the Arranger, (v) the Swap Bank and (vi) Security Trustee.

Words and expressions defined in the Amending and Restating Deed shall have the same meaning when used in this letter.

We write to confirm that the conditions precedent in clause 4.2 of the Amending and Restating Deed have been fulfilled [(other than the conditions precedent listed in paragraph[s] [•] and [•], which shall be fulfilled within [•] Business Days from the Effective Date)].

Yours faithfully

for and on behalf of
ABN AMRO BANK N.V.

SCHEDULE 5

FORM OF AMENDED AND RESTATED LOAN AGREEMENT MARKED TO INDICATE AMENDMENTS

Amendments are indicated as follows:

- (a) Additions are indicated by underlined text; and
- (b) Deletions are shown by the relevant text being struck out.

Dated 30 August 2017

**ZEUS ONE MARINE LLC and
IKAROS MARINE LLC**
as joint and several Borrowers

and

THE BANKS AND FINANCIAL INSTITUTIONS
listed in Schedule 1
as Lenders

and

ABN AMRO BANK N.V.
as Agent, Arranger, Swap Bank
and Security Trustee

LOAN AGREEMENT

as amended and restated by ~~an~~ First Amending and Restating Deed dated 9 October 2018 and as further amended and restated by a Second Amending and Restating Deed dated 25 October 2018 relating to a secured term loan facility of ~~US\$64,253,892.38~~ (originally) US\$64,253,892.38 to refinance certain existing indebtedness and secured on m.vs. "ORCA I", "KATHERINE", "TASMAN", "DIMITRIS Y" and "IAN H"

WATSON FARLEY WATSON FARLEY
& &
WILLIAMS WILLIAMS

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THIS AGREEMENT is made on 30 August 2017 as amended and restated by the First Amending and Restating Deed dated 9 October 2018 and as further amended and restated by the Second Amending and Restating Deed dated 25 October 2018

BETWEEN

- (1) **ZEUS ONE MARINE LLC and IKAROS MARINE LLC**, as joint and several **Borrowers**;
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**;
- (3) **ABN AMRO BANK N.V.**, as **Agent**;
- (4) **ABN AMRO BANK N.V.**, as **Arranger**;
- (5) **ABN AMRO BANK N.V.**, as **Security Trustee**; and
- (6) **ABN AMRO BANK N.V.**, as **Swap Bank**.

BACKGROUND

- (A) By a facility agreement dated 30 August 2017 (as amended and restated on 9 October 2018), and made between the (i) Original Borrowers, (ii) the Lenders, (iii) the Agent, (iv) the Security Trustee and (v) the Swap Bank, the Lenders have agreed to make available to the Original Borrowers a term loan facility of \$82,459,678.29 originally in two Tranches, for the purpose of refinancing the Existing Indebtedness secured on the Ships (as each such term is defined below) (the "**Original Agreement**").
- (B) The Swap Bank has agreed to enter into interest rate swap transactions with the Original Borrowers (at the Original Borrowers' option) from time to time to hedge the Original Borrowers' exposure under this Agreement to interest rate fluctuations and/or exchange rate risks.
- (C) The Lenders and the Swap Bank have agreed to share pari passu in the security to be granted to the Security Trustee pursuant to this Agreement.
- (D) By the Second Amending and Restating Deed, the Creditor Parties agreed to certain amendments to the Original Agreement and the other Finance Documents.
- (E) This Agreement sets out the terms and conditions of the Original Agreement as amended and restated by the Second Amending and Restating Deed.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 Definitions

Subject to Clauses 1.2 through 1.4, in this Agreement:

"**Accounts**" means, together, the Earnings Accounts, the Cash Collateral Account and the Retention Account and, in the singular, means any of them;

"**Accounts Pledge**" means:

- (a) a deed creating security in respect of the Earnings Accounts and the Retention Account;
- (b) a deed creating security in respect of the Cash Collateral Account; and
- (c) a second priority deed creating security in respect of each Collateral Earnings Account, each in the Agreed Form;

“**Affected Lender**” has the meaning given in Clause 5.7;

“**Affiliate**” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

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

“**Agent**” means ABN AMRO Bank N.V., acting in such capacity through its office at 93 Coolingsingel, 3012 AE, Rotterdam, The Netherlands, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

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

~~“**Amending and Restating Deed**” means the Amending and Restating Deed dated 9 October 2018 and made between, amongst others, (i) the Borrowers, (ii) the Corporate Guarantor, (iii) the Collateral Owners, (iv) the Lenders, (v) the Agent, (vi) the Arranger, (vii) the Swap Bank and (viii) the Security Trustee;~~

“**Annex VI**” means Annex VI (Regulations for the Prevention of Air Pollution from Ships) to the International Convention for the Prevention of Pollution from Ships 1973 (as modified in 1978 and 1997);

“**Applicable Percentage**” means during the period commencing on:

- (a) 1 July 2018 (inclusive) and ending on 30 June 2020 (inclusive), 100 per cent.; and
- (b) 1 July 2020 (inclusive) and at all times thereafter, 110 per cent.;

“**Approved Broker**” means:

- (a) in respect of any Borrower Ship, any of Barry Rogliano Salles, Breamar Seascope Ltd., Fearnleys A/S, H. Clarkson & Company Limited, Howe Robinson, Kontiki Shipbrokers, Maersk Brokers and Simpson Spence & Young or any other independent and reputable sale and purchase broker nominated by the Borrowers and, approved and appointed by the Agent and, in the plural, means any or all of them; and
- (b) in respect of any Tasman Ship, any of Howe Robinson, Marine Evaluations Ltd, Barry Rogliano Salles (BRS) Group, Maersk Broker K/S, Kontiki Valuations Ltd and such other brokers as may be agreed between the Senior Security Trustee, the relevant Collateral Owner and ABN Amro Bank N.V. (as junior mortgagee in respect of each such Tasman Ship);

“**Approved Flag**” means the Marshall Islands flag, the Liberian flag, the Panama flag or any other flag which the Agent may approve as the flag on which a Ship may be registered;

“**Approved Flag State**” means the Marshall Islands, Liberia, Panama or any other state in which the Agent may at the request of the Borrowers or, in the case of the Tasman Ships, the Collateral Owner owning that Tasman Ship, approve that a Ship be registered;

“**Approved Manager**” means, in relation to each Ship, Conchart Commercial Inc., a corporation incorporated and existing under the laws of the Marshall Islands, having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as commercial manager (the “**Commercial Manager**”) and Technomar Shipping Inc., a corporation incorporated and existing under the laws of the Republic of Liberia, having its registered office at 80 Broad Street, Monrovia, Liberia and each with management office at 3-5 Menandrou Street, Kifissia 145 61, Athens, Greece as technical manager (the “**Technical Manager**”), or any other company which the Agent may, at the request of the Borrower or, as the case may be, the Collateral Owner, owning that Ship, approve from time to time as the technical and/or commercial manager of that Ship and, in the plural, means both of them;

“Approved Manager’s Undertaking” means, in relation to each Ship, a letter of undertaking (such letter of undertaking being first priority in respect of a Borrower Ship and, in the case of each Tasman Ship, a second priority letter of undertaking) executed or to be executed by each Approved Manager in favour of the Security Trustee, agreeing certain matters in relation to the management of the relevant Ship and subordinating its rights against that Ship and the Borrower or, as the case may be, the Collateral Owner, owning that Ship to the rights of the Lenders under the Finance Documents, in the Agreed Form and, in the plural, means both of them;

“Arranger” means ABN AMRO Bank N.V., acting in such capacity through its office at 93 Coolingsingel, 3012 AE, Rotterdam, The Netherlands, or any successor;

“Availability Period” means the period commencing on the date of this Agreement and ending on 31 August 2017 (or such later date as the Agent may, with the authorisation of all the Lenders, approve) or, if earlier, the date on which the Total Commitments are fully borrowed, fully (or partially as the case may be) cancelled or terminated;

“Bail-In Action” means the exercise of any Write-down and Conversion Powers;

“Bail-In Legislation” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation;

“Balloon Instalment” has the meaning given in Clause 8.1;

“Basel III” means:

- (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and
- (b) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”;

“Book Leverage Ratio” shall have the meaning given to this term in the Corporate Guarantee;

“Borrower” means each of Borrower A and Borrower B and, in the plural, means both of them;

“Borrower A” means Zeus One Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“Borrower B” means Ikaros Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“Borrower Ship” means each of Ship A and Ship B and, in the plural, means both of them;

“Business Day” means a day on which banks are open in London, Athens, and Rotterdam and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City;

“CACIB Facility Agreement” means the facility agreement dated 11th August 2017 entered into by Pericles Marine LLC, Hephaestus Marine LLC and Hector Marine LLC, as joint and several borrowers with Credit Agricole Corporate and Investment Bank, as lender for the purpose of refinancing the existing indebtedness under the facility agreement dated 4 May 2011 entered into by Credit Agricole Corporate and Investment Bank (as lender) and Hector Marine LLC, Pericles Marine LLC and Hephaestus Marine LLC (as joint and several borrowers), as the same may be amended and/or supplemented from time to time;

“Cash Collateral Account” means, in relation to the Tasman Ships, an account in the name of the Collateral Owners with the Agent in Rotterdam designated “[*name of relevant Collateral Owner*]` - Cash Collateral Account”, or any other account (with that or another office of the Agent) which is designated by the Agent as the Cash Collateral Account in relation to the Tasman Ships for the purposes of this Agreement;

“Cash Collateral Amount” means the credit balance being maintained on the Cash Collateral Account from time to time;

“Cash Sweep End Date” means the date which is the earlier of (i) the Final Maturity Date and (ii) the date on which, in aggregate since the Second Amended and Restated Effective Date, at least \$10,211,392.38 of principal amount under the Tranche has been repaid (or, as the case may be, prepaid);

“Cash Sweep Period” means:

- (a) in relation to each Borrower Ship, each three-month period commencing on 1 January, 1 April, 1 July and 1 October in each financial year of the Borrowers, commencing with the period commencing on 1 July 2017 and at all times thereafter until the Cash Sweep End Date; and
- (b) in relation to each Tasman Ship, each period commencing on 1 January, 1 April, 1 July and 1 October in each financial year of the Collateral Owners, commencing with the effective date (as defined therein) of the First Amending and Restating Agreement Deed and at all times thereafter until the Cash Sweep End Date;

“Change of Control” has the meaning given in Clause 8.13;

“Charter” means:

- (a) in relation to a Borrower Ship, any charter or other contract of employment or any consecutive voyage charter or contract of affreightment in respect of that Borrower Ship having a duration (or capable of exceeding a duration) of at least 12 months; and
- (b) in relation to a Tasman Ship, any charter or other contract of employment or any consecutive voyage charter or contract of affreightment in respect of that Tasman Ship having a duration (or capable of exceeding a duration) of at least 12 months;

“Charterparty Assignment” means, in relation to a Ship, a specific assignment (such assignment being a first priority assignment in respect of a Borrower Ship and, in the case of each Tasman Ship, a second priority specific assignment) of the rights of the Borrower or, as the case may be, the Collateral Owner, who is the owner of that Ship under the Charter relative thereto executed or to be executed by that Borrower or, as the case may be, the Collateral Owner, in favour of the Security Trustee in the Agreed Form and, in the plural, means any or all of them;

“**Code**” means the United States Internal Revenue Code of 1986;

“**Collateral Earnings Account**” means, In relation to a Tasman Ship, an account in the name of the Collateral Owner owning that Tasman Ship with the Senior Facility Agent in Amsterdam designated “[*name of relevant Collateral Owner*] — *Earnings Account*” or any other account (with that or another office of the Senior Facility Agent) which is designated by the Senior Facility Agent as the Collateral Earnings Account in relation to that Tasman Ship and, in the plural, means any or all of them;

“**Collateral Guarantee**” means, in respect of each Collateral Owner, a collateral guarantee executed or, as the context may require, to be executed by that Collateral Owner of the obligations of the Borrowers under this Agreement and the other Finance Documents to which each Borrower is a party in the Agreed Form;

“**Collateral Owner**” means each of Collateral Owner A, Collateral Owner B and Collateral Owner C and, in the plural, means all of them;

“**Collateral Owner A**” means Tasman Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“**Collateral Owner B**” means Hudson Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“**Collateral Owner C**” means Drake Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“**Collateral Security**” means each Collateral Guarantee and any other Security Interest granted or to be granted over, or in relation to, a Tasman Ship, in favour of the Security Trustee pursuant to the terms of this Agreement and, in the plural, means all of them;

“**Collateral Ship A**” means the 2000-built container vessel of 5,468 TEU currently registered in the ownership of Collateral Owner A with IMO No. 9189342 under the Marshall Islands flag with the name “TASMAN”;

“**Collateral Ship B**” means the 2000-built container vessel of 5,468 TEU currently registered in the ownership of Collateral Owner B with IMO No. 9189354 under the Liberian flag with the name “DIMITRISY”;

“**Collateral Ship C**” means the 2000-built container vessel of 5,468 TEU currently registered in the ownership of Collateral Owner C with IMO No. 9189500 under the Liberian flag with the name “IAN H”;

“**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 Certificate**” has the meaning given in the Corporate Guarantee;

“**Confidential Information**” means all information relating to the Loan, any Borrower, any Security Party, any member of the Group or the Finance Documents of which the Creditor Parties becomes aware in its capacity as Creditor Party or which is received by the Creditor Parties in relation to the Finance Documents from any member of the Group or any of its advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by a Creditor Party of Clause 31; or
- (b) is identified in writing at the time of delivery as non-confidential by any Borrower, member of the Group or Security Party or any of its advisers; or
- (c) is known by the Creditor Parties before the date the information is disclosed to it or is lawfully obtained by the Creditor Parties after that date, from a source which is, as far as the Creditor Parties are aware, unconnected with the Group and which, in either case, as far as the Creditor Parties are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality;

“**Confirmation**” and “**Early Termination Date**”, in relation to any continuing Designated Transaction, have the meanings given in the Master Agreement;

“**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 Guarantee**” means a corporate guarantee executed or, as the context may require, to be executed by the Corporate Guarantor of the obligations of the Borrowers under this Agreement and the other Finance Documents to which each Borrower is a party in the Agreed Form;

“**Corporate Guarantor**” means Poseidon Containers Holdings LLC, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro, Marshall Islands, MH96960;

“**Corresponding Debt**” means any amount which a Borrower owes to a Creditor Party under or in connection with the Finance Documents;

“**CRD IV**” means Directive 2013/36/EU of the European Union on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;

“**CRR**” means and Regulation (EU) No 575/2013 of the European Union on prudential requirements for credit institutions and investment firms;

“**Creditor Party**” means the Agent, the Arranger, the Security Trustee, any Lender or the Swap Bank, whether as at the date of this Agreement or at any later time;

“**Debt Service**” means the sums incurred by the Borrowers in respect of the payment of principal of, and accrued interest on, the Loan pursuant to this Agreement and any sums paid by the Borrowers pursuant to the Master Agreement, from time to time;

“**Designated Transaction**” means a Transaction which fulfils the following requirements:

- (a) it is entered into by the Borrowers pursuant to the Master Agreement with the Swap Bank;
- (b) its purpose is the hedging of all or part of the Borrowers’ exposure under this Agreement to fluctuations in LIBOR arising from the funding of the Loan (or any part thereof) for a period expiring no later than the last Final Maturity Date; and
- (c) it is designated by the Borrowers, by delivery by the Borrowers to the Agent of a notice of designation in the form set out in Schedule 4, as a Designated Transaction for the purposes of the Finance Documents;

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

“Drawdown Date” means, in relation to the Tranche, the date requested by the Borrowers for the Tranche to be made available to the Borrowers, or (as the context requires) the date on which the Tranche is actually made available to the Borrowers;

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

“DVB Facility Agreement” means the facility agreement dated 18 July 2017 entered into by, *inter alios*, the banks and financial institutions listed therein (as lenders), DVB Bank SE (as arranger, facility agent, security agent and account bank) and Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC (as joint and several borrowers), as the same may be amended and/or supplemented from time to time;

“Earnings” means, in relation to a Ship, all moneys whatsoever which are now, or later become, payable (actually or contingently) to the relevant Borrower or, as the case may be, the Collateral Owner, owning that Ship or the Security Trustee and which arise out of the use or operation of that Ship, including (but not limited to):

- (a) all freight, hire and passage moneys, compensation payable to that Borrower or, as the case may be, the Collateral Owner, or the Security Trustee (or, as the case may be, the Senior Security Trustee) in the event of requisition of that 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 that Ship;
- (b) all moneys which are at any time payable under any Insurances in respect of loss of hire, (if applicable under the Insurances); and
- (c) if and whenever that Ship is employed on terms whereby any moneys falling within paragraphs (a) or (b) 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 the Ship;

“Earnings Account” means, in relation to a Borrower Ship, an account in the name of the Borrower owning that Ship with the Agent in Rotterdam designated “[*name of relevant Borrower*] – Earnings Account”, or any other account (with that or another office of the Agent) which is designated by the Agent as the Earnings Account in relation to that Borrower Ship for the purposes of this Agreement and, in the plural, means any or all of them;

“EEA Member Country” means any member state of the European Union, Iceland, Liechtenstein and Norway;

“EnTrust Facility Agreement” means the facility agreement dated 11 August 2017 entered into by, *inter alios*, the financial institutions listed therein (as lenders), Wilmington Trust, National Association (as agent and security agent) and Leonidas Marine LLC (as borrower), as the same may be amended and/or supplemented from time to time;

“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:

- (a) any release of Environmentally Sensitive Material from a Ship; or
- (b) any incident in which Environmentally Sensitive Material is released from a vessel other than a Ship as a result of a collision between a Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which a Ship is actually or potentially liable to be arrested, attached, detained or enjoined and/or a Ship and/or any Borrower and/or a Collateral Owner and/or any operator or manager of a 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 any Borrower and/or Collateral Owner and/or any operator or manager of a 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;

“Equity Undertaking” means the undertaking executed by the Poseidon Shareholders in favour of the Security Trustee pursuant to the terms of the Original Agreement in relation to the Shareholders’ Equity, in Agreed Form;

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor thereto;

“ERISA Affiliate” means each person (as defined in Section 3(9) of ERISA) which together with the Borrowers (or, as the case may be, the Collateral Owners) or any of them would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Uniform Commercial Code (as from time to time in effect in any applicable jurisdiction);

“EU Bail-In Legislation Schedule” means the document described as such and published by the Loan Market Association (or any successor person) from time to time;

“Event of Default” means any of the events or circumstances described in Clause 19.1;

“Excess Cash Flow” means:

- (a) in respect of the Borrowers’ Ships, the excess cash amount calculated in accordance with Clause 8.14; and
- (b) in respect of the Tasman Ships, the excess cash amount calculated in accordance with Clause 8.16;

“Excess Cash Flow Date” means, in relation to the Borrowers’ Ships or, as the case may be, the Tasman Ships, the last day of each relevant Cash Sweep Period;

“Excess Cash Flow Notice” means, in relation to the Borrowers’ Ships or, as the case may be, the Tasman Ships, a certificate to be provided by the Borrowers or, as the case may be, the Collateral Owners, to the Agent within 45 days from each Excess Cash Flow Date related to the Ships owned by them, evidencing the consolidated Excess Cash Flow (in each case including a break-down of line items and, in respect of the excess cash flow notice related to the Tasman Ships, also identifying the Senior Deferred Amount that remains outstanding) available on such date;

“Existing Facility Agreement” means the facility agreement dated 14 November 2016 and made between (i) the Lenders, (ii) the Borrowers and the Collateral Owners (as joint and several borrowers), (iii) ABN AMRO Bank N.V. as agent, security trustee, the swap bank and arranger, in respect of a loan facility of up to (originally) \$106,417,500;

“Existing Indebtedness” means the outstanding Financial Indebtedness of the Borrowers and the Collateral Owners (as joint and several borrowers) under the Existing Facility Agreement on the Drawdown Date;

“Existing Indebtedness Grace Period” means the period commencing on the date of this Agreement and ending on the Drawdown Date;

“FATCA” means sections 1471 through 1474 of the Code and any US Treasury regulations thereunder;

“FATCA Deduction” means a deduction or withholding from a payment under any Finance Document required by or under FATCA;

“FATCA Exempt Party” means a party to a Finance Document that is entitled under FATCA to receive payments free from any FATCA Deduction;

“Final Maturity Date” means 31 December 2020;

“Finance Documents” means:

- (a) this Agreement;
- (b) the First Amending and Restating Deed;
- (c) the Second Amending and Restating Deed;
- (d) ~~(e)~~the Master Agreement;
- (e) ~~(d)~~the Agency and Trust Agreement;
- (f) ~~(e)~~the Master Agreement Assignment;
- (g) ~~(f)~~the Inter-Creditor Deed;
- (h) ~~(g)~~the Corporate Guarantee;
- (i) ~~(h)~~any Collateral Guarantee;
- (j) ~~(i)~~the General Assignments;
- (k) ~~(j)~~the Mortgages;
- (l) ~~(k)~~the Accounts Pledges;
- (m) ~~(l)~~the Shares Security Deeds;
- (n) ~~(m)~~any Charterparty Assignments;
- (o) ~~(n)~~each Approved Manager’s Undertakings;

(p) ~~(e)~~ any Subordination Agreement;

(q) ~~(p)~~ any other document (whether creating a Security Interest or not) which is executed at any time by any Borrower, any Collateral Owner, the Corporate Guarantor, any Shareholder, either Approved Manager or any other person as security for, or to establish any form of subordination or priorities arrangement in relation to, any amount payable to the Lenders and/or the Swap Bank under this Agreement or any of the other documents referred to in this definition; and

(r) ~~(q)~~ any other document designated as such by the Agent and the Borrowers.

“Financial Indebtedness” means any indebtedness for or in relation to:

(a) moneys borrowed;

(b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with ~~IFRS~~ GAAP, be treated as a balance sheet liability;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

(f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);

(h) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“Financial Year” means, in relation to each Borrower, each Collateral Owner and the Corporate Guarantor, each period of 1 year commencing on 1 January in respect of which its annual ~~(audited, in the case of the Corporate Guarantor only)~~ unaudited accounts are or ought to be prepared;

“First Amending and Restating Deed” means the amending and restating deed dated 9 October 2018 and made between, amongst others, (i) the Borrowers, (ii) the Corporate Guarantor, (iii) the Collateral Owners, (iv) the Lenders, (v) the Agent, (vi) the Arranger, (vii) the Swap Bank and (viii) the Security Trustee;

“Fleet Vessels” means all of the vessels (including, but not limited to, the Ships) from time to time wholly owned by members of the Group (each a “Fleet Vessel”);

“GAAP” means generally acceptable accounting principles in the United States of America, including IFRS;

“General Assignment” means, in relation to a Borrower Ship, a first priority, and, in the case of each Tasman Ship, second priority general assignment of the Earnings, the Insurances and any Requisition Compensation in the Agreed Form and, in the plural, means all of them;

“Green Award” means The Green Award Foundation, an independent foundation, established 1994 on the initiative of the Rotterdam Municipal Port Management and the Dutch Ministry of Transport;

“Green Award Incentive Provider” means the name of any entity that has been appointed as such by the Green Award Foundation;

“Group” means the Corporate Guarantor and its Subsidiaries (including but not limited to the Borrowers and the Collateral Owners) from time to time during the Security Period and **“member of the Group”** shall be construed accordingly;

“Group Facility Agreement” means each of:

- (a) the DVB Facility Agreement;
- (b) the CACIB Facility Agreement; ~~and~~
- (c) the EnTrust Facility Agreement; and
- (d) the Senior Facility Agreement,

and, in the plural, means all of them.

“Holding Company” means, in relation to a person, any other person in respect of which it is a Subsidiary;

“IACS” means the International Association of Classification Societies;

“IAPPC” means a valid international air pollution prevention certificate issued under Annex VI;

“IFRS” means International Financial Reporting Standards promulgated by the International Accounting Standards Board, as amended from time to time, together with its pronouncements thereon from time to time;

“Initial Lender” means ABN AMRO Bank N.V., acting in such capacity through its office at Coolsingel 93, 3012 AG Rotterdam, The Netherlands, or any successor;

“Insurances” means, in relation to a Ship:

- (a) all policies and contracts of insurance, including entries of the Ship in any protection and indemnity or war risks association, effected in respect of the Ship, the Earnings or otherwise in relation to a Ship whether before, on or after the date of this Agreement; 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 and any rights in respect of any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement;

“Inter-Creditor Deed” means an inter-creditor deed executed or, as the context may require, to be executed, amongst others, by (i) the Security Trustee, the (ii) the Senior Security Trustee, (iii) the Borrowers, (iv) the Collateral Owners (as collateral owners under this Agreement and as collateral owners under the Senior Facility Agreement) and (v) THD Maritime (as borrower under the Senior Facility Agreement) in the Agreed Form;

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

~~“IPO” means the initial public offering of part or all of the share capital of the Corporate Guarantor and the subsequent listing of such share capital at a stock exchange acceptable to the Lenders;~~

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

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

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

“K&T Loan Agreement” means the loan facility agreement dated 4 May 2016 (as the same is amended and/or supplemented from time to time) between K&T Marine as lender and the Corporate Guarantor as borrower relating to a loan facility of up to \$12,211,552.74 in the Agreed Form;

“K&T Marine” means K&T Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“K&T Subordination Agreement” means an agreement to be made between K&T Marine (as lender), the Corporate Guarantor (as borrower) and the Security Trustee in respect of the K&T Loan Agreement;

“Legal Reservations” means:

- (a) the limitations on enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; and
- (b) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered as a condition precedent under this Agreement;

“Lender” means 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 26.14) or its transferee, successor or assign and, in the plural, means all of them;

“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 the Screen Rate; or
- (b) if no rate is quoted on the Screen Rate, the rate per annum determined by the Agent to be the rate per annum notified to the Agent by the Reference Bank as the rate at which deposits in Dollars are offered to the Reference Bank by leading banks in the London Interbank Market at the Reference Bank’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,

and, if any such rate is below zero, LIBOR will be deemed to be zero;

“Loan” means the principal amount for the time being outstanding under this Agreement;

“Major Casualty” means, in relation to a Ship, any casualty to the 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 Tranche has been made, Lenders whose Commitments total 66.66 per cent. of the Total Commitments; and
- (b) after the Tranche has been made, Lenders whose Contributions total 66.66 per cent. of the Loan;

“Mandatory Cost” means any cost calculated by the Agent pursuant to Clause 21.9;

“Margin” means:

- (i) commencing on the Drawdown Date up to and including 31 March 2019, 3.42 per cent. per annum; and
- (ii) at all times thereafter, 3.50 per cent. per annum;

“Market Value” means, in relation to:

- (a) each Borrower Ship and each other Fleet Vessel (if not subject to a mortgage), the market value thereof determined in accordance with Clause 15.3;
- (b) each Tasman Ship, the market value thereof determined in accordance with the relevant provisions of the Senior Facility Agreement until the security period thereunder has lapsed, at which point, as determined under paragraph (a) above; and
- (c) each Fleet Vessel (other than the Borrower Ships, the Tasman Ships and the Fleet Vessels referred to in paragraph(s) (a) and (b) above), the market value thereof determined in accordance with the relevant provisions of the loan agreement financing such Fleet Vessel;

“Master Agreement” means the master agreement (on the 2002 ISDA (Multicurrency-Crossborder) form) in the Agreed Form made between the Borrowers and the Swap Bank and includes all Designated Transactions from time to time entered into and Confirmations from time to time exchanged under the master agreement;

“Master Agreement Assignment” means the assignment of the Master Agreement in the Agreed Form;

“Material Adverse Change” means any event or series of events which, in the reasonable opinion of the Majority Lenders, has or could reasonably be expected to have a Material Adverse Effect;

“Material Adverse Effect” means, in the reasonable opinion of the Majority Lenders, a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospect of any Borrower, any Collateral Owners, the Corporate Guarantor and/or the Group taken as a whole; or
- (b) the ability of a Borrower, a Collateral Owner or the Corporate Guarantor to perform its obligations under the Finance Documents; and

(c) the validity or enforceability of, or the effectiveness or ranking of any Security Interest granted or purported to be granted pursuant to any of the Finance Documents or the rights or remedies of any Creditor Party under any of the finance Documents;

“Merger” means a reverse triangular merger involving the Corporate Guarantor and the New Holding Company, as a result of which (a) the Corporate Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (b) the Poseidon Shareholders would receive shares of the New Holding Company;

“Minimum Liquidity Amount” has the meaning given in Clause 11.18;

“Minimum PIK Security Cover Ratio” means, at each PIK Calculation Date, (and notwithstanding anything to the contrary provided in Clause 15 (*Security Cover*), the aggregate of (i) the aggregate of the Market Value of the Borrower Ships, (ii) the net realisable value of any additional security provided at that time under Clause 15 (for the avoidance of doubt, not inclusive of any Collateral Security), (iii) the aggregate of the Minimum Liquidity Amount maintained in the Earnings Accounts of the Borrower Ships in accordance with Clause 11.18 at the relevant time and (iv) the Cash Collateral Amount, being at least 130 per cent. of the aggregate amount of (i) the Loan and (ii) the Swap Exposure;

“Mortgage” means, in relation to a Borrower Ship, the first (and, in the case of each Tasman Ship, second) priority or, as the case may be, preferred ship mortgage on that Ship (and, if required pursuant to the laws of the applicable Approved Flag State, a deed of covenant collateral thereto) (and, in respect of each Borrower Ship, as amended and supplemented by the relevant Mortgage Addendum), in the Agreed Form and, in the plural, means any or all of them;

“Mortgage Addendum” means, in relation to each Borrower Ship, the first addendum to the First Preferred Mortgage over that Borrower Ship;

“Mortgaged Ship” means a Ship which is subject to a Mortgage at the relevant time;

“Negotiation Period” has the meaning given in Clause 5.10;

“Net Worth” has the meaning given to it in the Corporate Guarantee;

“New Holding Company” means the corporation under the name Global Ship Lease Inc. (as to be renamed following the Merger), a corporation incorporated in Trust Company Complex, Ajeltake Road, Ajeltake Island, P.O. Box 1405, Majuro, Marshall Islands MH96960, whose registered office is at the Republic of the Marshall Islands and whose shares are publically listed on the New York Stock Exchange;

“New Shareholder” means each of;

(a) Mr Michael Gross (either directly or indirectly through one or more Subsidiaries); and

(b) CMA CGM S.A., a company incorporated in France;

“Notifying Lender” has the meaning given in Clause 23.1 or Clause 24.1 as the context requires;

“Operating Expenses” means, in respect of each Ship during a Cash Sweep Period, the aggregate expenditure necessarily incurred by the Borrower or, as the case may be, Collateral Owner, which is the owner of that Ship during that Cash Sweep Period in operating, insuring, maintaining, repairing and generally trading its Ship (including, but not limited to, any expenses in respect of dry-docking, special survey (including any projected costs for dry-docking and special surveys during the next 3 month period) and general and administrative expenses paid in respect of the Ship, any voyage expenses, as well as any other capitalised expenses as same are defined as per ~~HFRS~~ GAAP);

“Original Borrowers” means each of the Borrowers and each of the Collateral Owners and, in plural, means all of them;

“Original Financial Statements” means annual audited consolidated financial statements of the Corporate Guarantor for the year ending 31 December 2016;

“Parallel Debt” means any amount which a Borrower owes to the Security Trustee under Clause 3.7;

“Participating Member State” means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;

“Party” means a party to this Agreement;

“PATRIOT Act” means the United States Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Improvement and Reauthorization Act of 2005 (H.R. 3199);

“Payment Currency” has the meaning given in Clause 21.5;

“Permitted Loan” means:

- (a) a loan made to a Borrower or, as the case may be, a Collateral Owner, by any Affiliate, Holding Company or Subsidiary of the Corporate Guarantor or any other person:
 - (i) which is unsecured;
 - (ii) in relation to which no interest, fees, costs or expenses are payable during the Security Period;
 - (iii) in relation to which no repayment or prepayment of principal is capable of being made to the relevant lender in accordance with its terms and conditions during the Security Period;
 - (iv) which is fully subordinated in all respects to the Secured Liabilities; and
 - (v) any creditor’s rights thereunder have been assigned in favour of the Creditor Parties; and
- (b) the loan made to the Corporate Guarantor pursuant to the K&T Loan Agreement, and, in the plural means, any or all of them;

“Permitted Security Interests” means:

- (a) Security Interests created by the Finance Documents;
- (b) liens for unpaid master’s and crew’s wages;
- (c) liens for salvage;
- (d) liens arising by operation of law for not more than 2 months’ prepaid hire under any charter in relation to a Ship not prohibited by this Agreement;
- (e) liens for master’s disbursements incurred in the ordinary course of trading and any other lien arising by operation of law or otherwise in the ordinary course of the trading, chartering, operation, repair or maintenance of a Ship, provided such liens do not secure amounts more than 30 days overdue (unless the overdue amount is being contested by the relevant Borrower or, as the case may be, relevant Collateral Owner, in good faith by appropriate steps) and subject, in the case of liens for repair or maintenance, to Clause 14.12(g);

- (f) any Security Interest created in favour of a plaintiff or defendant in any action of the court or tribunal before whom such action is brought as security for costs and expenses while a Borrower or, as the case may be, a Collateral Owner, is prosecuting or defending such action in good faith by appropriate steps;
- (g) a right of pledge (and set-off) under and pursuant to the general conditions of ABN AMRO Bank N.V.;
- (h) for the duration of the Existing Indebtedness Grace Period only, any Security Interests created under and pursuant to the terms of the Existing Facility Agreement; and
- (i) Security Interests created in relation to the Tasman Ships by the Senior Finance Documents;

“Pertinent Document” means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause 13 or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to a Servicing Bank in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c);

“Pertinent Jurisdiction”, in relation to a company, means:

- (a) England and Wales;
- (b) the country under the laws of which the company is incorporated or formed;
- (c) a country in which the company has the centre of its main interests or 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 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 a main or territorial or ancillary proceedings, or which would have such jurisdiction if their assistance were requested by the courts of a country referred to in paragraphs (b) or (c);

“Pertinent Matter” means:

- (a) any transaction or matter contemplated by, arising out of, or in connection with a Pertinent Document; or

(b) any statement relating to a Pertinent Document or to a transaction or matter falling within paragraph (a),

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

“PIK Amount” means, if at any PIK Calculation Date, the actual Security Cover Ratio on that PIK Calculation Date is less than the Minimum PIK Security Cover Ratio (such amount is evidenced in the PIK Compliance Certificates provided by the Borrowers pursuant to Clause 11.6(d) utilising the most recent semi-annual valuations provided under Clause 11.6(d) or, as the case may be, at the option of the Borrowers, the additional valuations provided pursuant to Clause 15.8), 2 per cent. of the amount of the Loan which would be required to be prepaid so as to eliminate the shortfall in the Minimum PIK Security Cover Ratio;

“PIK Calculation Date” means the date on which each PIK Compliance Certificate is due to be provided by the Borrowers to the Agent pursuant to Clause 11.6(d);

“PIK Compliance Certificate” means the compliance certificate evidencing the PIK Amount to be provided in accordance with Clause 11.6(d) in the form set out in Schedule 6;

“Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA that is subject to Title IV of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed to by any Creditor Party or any of their respective ERISA Affiliates;

“Poseidon Shareholders” means each of the ~~shareholders being the direct legal and beneficial owners of the limited liability company interests in the Corporate Guarantor as disclosed to the Agent at the date of this Agreement before an IPO taking place;~~ following;

(a) KEP VI (Newco Marine), Ltd, a company incorporated in the Cayman Islands;

(b) KIA VIII (Newco Marine), Ltd, a company incorporated in the Cayman Islands;

(c) MAAS Capital Investments B.V., a company incorporated in the Netherlands; and

(d) Management Investor Co, a corporation incorporated in the Marshall Islands;

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

“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 which is 2 Business Days before the first day of that Interest Period or any other period, unless market practice differs in the London Interbank Market for a currency, in which case the Quotation Date will be determined by the Agent in accordance with market practice in the London Interbank Market (and if quotations would normally be given by leading banks in the London Interbank Market on more than one day, the Quotation Date will be the last of those days);

“Reference Banks” means, subject to Clause 26.16, the branch of ABN AMRO Bank N.V. at 93 Coolsingel, 3012 AE, Rotterdam, The Netherlands and the London branch or any other bank or financial institution selected by the Agent;

“Refinancing Date” means, in relation to the Existing Facility Agreement, the date on which the Existing Indebtedness is refinanced by the Loan;

“Refinancing Period” means the period commencing on the date of this Agreement and ending on 31 August 2017 (or such later period as may be agreed by the Agent acting with the authorisation of the Majority Lenders);

“**Relevant Person**” has the meaning given in Clause 19.9;

“**Relevant Shareholding**” means, in respect of the New Holding Company, the percentage of ownership of shares and common (voting power) being held by each of the Poseidon Shareholders and the New Shareholders, as such percentage shall be set out in the Merger Documents and disclosed in writing to the Facility Agent on the date of the Merger;

“**Repayment Date**” means a date on which a repayment is required to be made under Clause 8;

“**Repayment Instalment**” has the meaning given in Clause 8.1;

“**Representative**” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian;

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

“**Resolution Authority**” means any body which has authority to exercise any Write-down and Conversion Powers;

“**Restricted Party**” means a person:

- (a) listed on or owned or controlled by a person listed on any Sanctions List; or
- (b) located in, organised under the laws of or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory which is a subject of country-wide or territory-wide Sanctions (including, without limitation, at the date of this Agreement, Cuba, Iran, North Korea, Syria and Sudan); or
- (c) otherwise a subject of Sanctions;

“**Retention Account**” means, in relation to the Borrowers, a joint account in the names of the Borrowers with the Agent in Rotterdam designated “*name of Borrowers* - Retention Account”, or any other account (with that or another office of the Agent or with a bank or financial institution other than the Agent) which is designated by the Agent as the Retention Account for the purposes of this Agreement and, in the plural means any or all of them;

“**Sanctions**” means any trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by a Sanctions Authority;

“**Sanctions Authority**” means:

- (a) the Security Council of the United Nations;
- (b) the United States of America;
- (c) the United Kingdom;
- (d) the European Union;
- (e) any member state of the European Union (including, without limitation, The Netherlands);
- (f) any country to which any Security Party is bound; and
- (g) the governments and official institutions or agencies of any of paragraphs (a) to (f) above, including without limitation the U.S. Office of Foreign Asset Control (“**OFAC**”), the U.S. Department of State, and Her Majesty’s Treasury (“**HMT**”);

“**Sanctions List**” means the Specially Designated Nationals and Blocked Persons list maintained by OFAC, the Consolidated List of Financial Sanctions Targets maintained by HMT, or any similar list maintained by, or public announcement of a Sanctions designation made by, a Sanctions Authority, each as amended, supplemented or substituted from time to time;

“**Second Amended and Restated Effective Date**” shall have the meaning given to the expression “**Effective Date**” in the Second Amending and Restating Deed;

“**Screen Rate**” means the London interbank offered rate administered by the ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for Dollars for the relevant period displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrowers and the Lenders;

“**Second Amending and Restating Deed**” means the second amending and restating deed dated [•] 2018 and made between, amongst others, (i) the Borrowers, (ii) the Corporate Guarantor, (iii) the Collateral Owners, (iv) the Lenders, (v) the Agent, (vi) the Arranger, (vii) the Swap Bank and (viii) the Security Trustee;

“**Secured Liabilities**” means all liabilities which the Borrowers, the Corporate Guarantor, 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 Cover Ratio**” means, at any relevant time, the aggregate of (i) the aggregate of the Market Value of the Borrower Ships (determined in accordance with Clause 15.3), (ii) the net realisable value of any additional security provided at that time under Clause 15 (not including, for the avoidance of doubt, any Collateral Security), (iii) the aggregate of the Minimum Liquidity Amount maintained in the Earnings Accounts of the Borrower Ships in accordance with Clause 11.18 at the relevant time and (iv) the aggregate of the Cash Collateral Amount at the relevant time, at that time expressed as a percentage of the aggregate amount of (i) the Loan and (ii) the Swap Exposure;

“**Security Interest**” means:

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

“**Security Party**” means the Corporate Guarantor, each Collateral Owner, any Shareholder, either Approved Manager and any other person (other than any Poseidon Shareholder, K&T Marine or any 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 final paragraph of the definition of “Finance Documents”;

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

- (a) all amounts which have become due for payment by any 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 a Borrower nor any Security Party has any future or contingent liability under Clauses 20, 21 or 22 or any other provision of this Agreement or another Finance Document; and
- (d) the Agent, the Arranger, the Security Trustee and the Majority Lenders do not consider that there is a significant risk that any payment or transaction under a Finance Document would be set aside, or would have to be reversed or adjusted, in any present or possible future bankruptcy of 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 Property” means:

- (a) the Transaction Security expressed to be granted in favour of the Security Trustee as trustee for, or for the benefit of, the Creditor Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Borrower or any other Security Party to pay amounts in relation to the Secured Liabilities to the Security Trustee as trustee for, or for the benefit of, the Creditor Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Borrower or any Security Party or any other person in favour of the Security Trustee as trustee for, or for the benefit of, the Creditor Parties;
- (c) the Security Trustee’s interest in any turnover trust created under the Finance Documents;
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Trustee is required by the terms of the Finance Documents to hold as trustee on trust for, or for the benefit of, the Creditor Parties,

except:

- (i) rights intended for the sole benefit of the Security Trustee; and
- (ii) any moneys or other assets which the Security Trustee has transferred to the Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement.

“Security Trustee” means ABN AMRO Bank N.V., acting in such capacity through its office at 93 Coolsingel, 3012 AE, Rotterdam, The Netherlands, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

“Senior Debt Service” means the sums incurred by THD Maritime (as borrower) in respect of the payment of principal of, and accrued interest pursuant to the Senior Facility Agreement from time to time;

“Senior Deferred Amount” means, in respect of the Senior Facility Agreement, an amount equal to four million five hundred thousand Dollars (\$4,500,000), being the amount of principal repayments which have been identified as “deferred” until the end of the waiver period thereunder, as such amount may be reduced from time to time pursuant to the excess cash terms and conditions under the Senior Facility Agreement or as otherwise provided under the Senior Facility Agreement;

“Senior Facility Agent” means Amsterdam Trade Bank N.V., acting in its capacity as such under the Senior Facility Agreement through its office at World Trade Center, Tower 1, Level 6, Stawinskyiaan 1939, Amsterdam 1077 XX, Netherlands (or any successor thereof);

“Senior Facility Agreement” means the facility agreement dated 9 October 2018 and made between, inter alia, (i) THD Maritime (as borrower), (ii) Amsterdam Trade Bank N.V. and others (as lenders), (iii) Amsterdam Trade Bank N.V. as agent, security trustee and arranger, in respect of a loan facility of up to \$17,100,000;

“Senior Finance Documents” means any finance document (howsoever defined) granted or to be granted pursuant to the terms and conditions of the Senior Facility Agreement;

“Senior Mandatory Prepayment Amount” shall have the meaning set out in the Inter-Creditor Deed;

“Senior Security Trustee” means Amsterdam Trade Bank N.V. in its capacity as security trustee under the Senior Facility Agreement, acting through its office at World Trade Center, Tower 1, Level 6, Stawinskyiaan 1939, Amsterdam 1077 XX, Netherlands (or any successor thereof);

“Senior Surplus Proceeds” means, in respect of a sale, scrapping, disposal or Total Loss of a Tasman Ship, the surplus proceeds after the required Senior Mandatory Prepayment Amount has been paid under the Senior Facility Agreement in accordance with the terms and conditions of the Inter-Creditor Deed;

“Servicing Bank” means the Agent or the Security Trustee (or any successor thereof);

“Shareholder” means:

- (a) in relation to Borrower B, Odysseus Marine LLC, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro, Marshall Islands, MH96960;
- (b) in relation to Borrower A, the Corporate Guarantor; and
- (c) in relation to each of the Collateral Owners, THD Maritime;

“Shareholders’ Equity” means the equity contribution referred to in the Equity Undertaking in the amount of \$13,000,000 injected by the Corporate Guarantor and paid in to the Group utilising funds advanced to the Corporate Guarantor pursuant to the K&T Loan Agreement as of the effective date (as defined therein) of the First Amending and Restating Deed;

“Shares Security Deed” means (a) in relation to each Borrower, a deed creating first priority Security Interests over the limited liability company interests in that Borrower; and (b) in relation to each Collateral Owner, a deed creating second priority Security Interests over the limited liability company interests in that Collateral Owner, in each case to be executed by the relevant Shareholder in the Agreed Form and, in the plural, means all of them;

“Ship” means each of Ship A, Ship B, each Tasman Ship and, in the plural, means any or all of them;

“Ship A” means the 2007-built container vessel of 5,100 TEU currently registered in the ownership of Borrower A with IMO No. 9318113 under the Panamanian flag with the name “ORCA I”;

“Ship B” means the 2013-built container vessel of 6,700 TEU currently registered in the ownership of Borrower B with IMO No. 9641235 under the Marshall Islands flag with the name “KATHERINE”;

“Shortfall Amount” means an amount (if any) which when aggregated with the excess Earnings applied towards prepayment of part of the Loan during the period commencing on 1 January 2019 and ending on 31 December 2019 pursuant to Clause 8.14 is equal to \$1,300,000;

“Subordination Agreement” means (i) an agreement to be made between the creditor under a Permitted Loan, the Borrower or Borrowers (or, as the case may be, the Collateral Owner or Collateral Owners) who have received credit under such Permitted Loan and the Security Trustee (and, in the case of any Permitted Loan to a Collateral Owner, also the Senior Security Trustee) and (ii) the K&T Subordination Agreement;

“Subsidiary” means a subsidiary within the meaning of section 1159 of the Companies Act 2006;

“Swap Bank” means ABN AMRO Bank N.V., acting in such capacity through its office at Gustav Mahlerlaan 10, NL-1082 PP, Amsterdam, The Netherlands;

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

“Tasman Ship” means each of Collateral Ship A, Collateral Ship B and Collateral Ship C and, in the plural, means all of them;

“THD Maritime” means THD Maritime Co., Limited, a private company limited with shares incorporated and existing under the laws of the Republic of Cyprus, whose registered office is at 16 Sophouli Street, Chanteclair Building, Floor 4, flat 403, Nicosia, Republic of Cyprus;

“Total Loss” means, in relation to a 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 30 days (or within any such longer period as may be requested by the Borrowers or, as the case may be the Collateral Owner owning that Ship, and approved by the Agent acting with the authorisation of the Majority Lenders) redelivered to the full control of the Borrower or, as the case may be, Collateral Owner, owning that Ship;
- (c) any condemnation of that Ship by any tribunal or by any person or person claiming to be a tribunal whose decision or judgement is enforceable; and
- (d) any arrest, capture, seizure or detention of that Ship (including any hijacking or theft) unless it is within 45 days (or within any such longer period as may be requested by the Borrowers or, as the case may be, the Collateral Owner owning that Ship, and approved by the Agent acting with the authorisation of the Majority Lenders) redelivered to the full control of the Borrower or, as the case may be, Collateral Owner, owning that Ship;

“Total Loss Date” means, in relation to a 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:
- (A) the date on which a notice of abandonment is given to the insurers; and
 - (B) the date of any compromise, arrangement or agreement made by or on behalf of the Borrower or, as the case may be, Collateral Owner, owning that Ship 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;

"Tranche" means an amount of \$64,253,892.38 or, as the context may require, the principal amount outstanding in respect of the Tranche from time to time (as that outstanding amount may be increased by the aggregate PIK Amounts in accordance with Clause 8.1);

"Tranche Amount" means \$64,253,892.38;

"Transaction" has the meaning given in the Master Agreement;

"Transaction Security" means the Security Interests created or evidenced or expressed to be created or evidenced under the Finance Documents.

"Transfer Certificate" has the meaning given in Clause 26.2;

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

"Value Adjusted Leverage Ratio" has the meaning given to it in the Corporate Guarantee;

"Waiver Period" means the period commencing on the Drawdown Date and ending on (inclusive) 31 December 2019; and

"Write-down and Conversion Powers" means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

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 (including, but not limited to, any governmental or third party 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 or fax;

“excess risks” means, in relation to a Ship, the proportion of claims for general average, salvage and salvage charges not recoverable under the hull and machinery policies in respect of the Ship in consequence of its insured value being less than the value at which the 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 a Ship, all insurances effected, or which the Borrower or, as the case may be, the Collateral Owner, owning the Ship is obliged to effect, under Clause 13 or any other provision of this Agreement or another Finance Document;

“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 (either having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

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

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

“war risks” includes the risk of mines, blocking and trapping, terrorism, piracy and confiscation and all other 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 23 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 General Interpretation

In this Agreement:

- (a) references to, or to a provision of, a Finance Document or any other document are references to it as amended or supplemented, whether before the date of this Agreement or otherwise;
- (b) references to, or to a provision of, any law include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (c) words denoting the singular number shall include the plural and vice versa; and
- (d) Clauses 1.1 to 1.4 apply unless the contrary intention appears.

1.5 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.

1.6 Accounting Terms

All accounting terms not specifically defined herein or in any other Finance Document shall be construed in accordance with IFRS GAAP and all financial data submitted pursuant to this Agreement or any other Finance Document shall be prepared in accordance with IFRS GAAP; **Provided however that** if the Corporate Guarantor notifies the Agent that it wishes to amend any covenant or any related definition to eliminate the effect of any change in IFRS GAAP occurring after the date of this Agreement on the determination of such covenant (or if the Agent notifies the Corporate Guarantor that the Majority Lenders wish to amend the covenants or any related definition for such purpose), then the Corporate Guarantor's compliance with such covenant shall be determined on the basis of IFRS GAAP in effect immediately before the relevant change in IFRS GAAP became effective until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Corporate Guarantor and the Majority Lenders **Provided that** if such notice is not withdrawn or such covenant is not amended within 45 Business Days following the service of such notice then the Corporate Guarantor's compliance with such covenant shall be determined on the basis of IFRS GAAP as in effect at the relevant time.

2 FACILITY

2.1 Amount of facility

Subject to the other provisions of this Agreement, the Lenders shall make available to the Borrowers a loan facility, in one Tranche, not exceeding the Tranche Amount.

2.2 Lenders' participations in the Tranche

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

2.3 Purpose of the Tranche

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

3 POSITION OF THE LENDERS, THE SWAP BANK AND THE MAJORITY LENDERS

3.1 Interests of Lenders and Swap Bank several

The rights of the Lenders and the Swap Bank under this Agreement and the Master Agreement are several; accordingly:

- (a) each Lender shall be entitled to sue for any amount which has become due and payable by the Borrowers to it under this Agreement; and
- (b) the Swap Bank shall be entitled to sue for any amount which has become due and payable by the Borrowers to it under the Master Agreement, without joining the Agent, the Security Trustee, any other Lender and the Swap Bank as additional parties in the proceedings.

3.2 Proceedings by individual Lender or Swap Bank

However, without the prior consent of the Majority Lenders, no Lender nor the Swap Bank may bring proceedings in respect of:

- (a) any other liability or obligation of any Borrower or a Security Party under or connected with a Finance Document; or
- (b) any misrepresentation or breach of warranty by any Borrower or a Security Party in or connected with a Finance Document.

3.3 Obligations several

The obligations of the Lenders and the Swap Bank under this Agreement and of the Swap Bank under the Master Agreement are several; and a failure of a Lender or the Swap Bank to perform its obligations under this Agreement or of the Swap Bank to perform its obligations under the Master Agreement shall not result in:

- (a) the obligations of the other Lenders or (as the case may be) the Swap Bank being increased; nor
- (b) any Borrower, any Security Party or any other Creditor Party being discharged (in whole or in part) from its obligations under any Finance Document,

and in no circumstances shall a Lender or the Swap Bank have any responsibility for a failure of another Lender or the Swap Bank to perform its obligations under this Agreement or the Master Agreement.

3.4 Parties bound by certain actions of Majority Lenders

Every Lender, the Swap Bank, 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 (subject always to Clause 27.2); and
- (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.

3.5 Reliance on action of Agent

However, each Borrower 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.

3.6 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.

3.7 Parallel debt

- (a) Each Borrower irrevocably and unconditionally undertakes to pay to the Security Trustee amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of a Borrower:
 - (i) shall become due and payable at the same time as its Corresponding Debt;
 - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For the purposes of this Clause 3.7, the Security Trustee:
 - (i) is the independent and separate creditor of all the Parallel Debt;

- (ii) acts in its own name and not as agent, representative or trustee of the Creditor Parties and its claims in respect of the Parallel Debt shall not be held on trust; and
 - (iii) shall have the independent and separate right to demand payment of any or all the Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).
- (d) The Parallel Debt of a Borrower shall be:
- (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Corresponding Debt has increased.
- (e) The Corresponding Debt of a Borrower shall be:
- (i) decreased to the extent that its Parallel Debt has been irrevocable and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Parallel Debt has increased,
- in each case provided that the Parallel Debt of a Borrower shall never exceed its Corresponding Debt.
- (f) All amounts received or recovered by the Security Trustee in connection with this Clause 3.7, to the extent permitted by applicable law, shall be applied in accordance with Clause 17 (*Application of Receipts*).

3.8 Lender incorporated or having its registered office in the Federal Republic of Germany

On any matter referred to in Clause 11.20 in respect of which the Lenders are to vote but in respect of which a Lender incorporated or having its registered office in the Federal Republic of Germany to whom Clause 11.20(d) applies shall not vote in accordance with such paragraph:

- (a) for the purposes of determining whether approval of the Majority Lenders is obtained the references in the definition of “Majority Lenders” to 66.66 per cent. of the Total Commitments and to 66.66 per cent. of the Loan shall for this purpose be construed to refer to 66.66 per cent. of the Total Commitments or, as the case may be, the Loan only taking account of the other Commitments of, or as the case may be, the participation in the Loan of, the Lenders and ignoring the Commitment of or, as the case may be, the participation in the Loan of, the Lender incorporated or having its registered office in the Federal Republic of Germany; and an action taken by the Majority Lenders as such definition is modified by this paragraph (a) shall be valid in the applicable circumstances and binding on all parties; and
- (b) for the purposes of determining whether the approval of all Lenders is obtained, all Lenders shall be construed to mean all the other Lenders other than any Lender incorporated or having its registered office in the Federal Republic of Germany and an action taken by all Lenders as modified by this paragraph (b) shall be valid in the applicable circumstances and binding on all the parties of this Agreement.

4 DRAWDOWN

4.1 Request for Tranche

Subject to the following conditions, the Borrowers may request the Tranche to be made available by ensuring that the Agent receives a completed Drawdown Notice not later than 11.00 a.m. (Rotterdam time) 2 (two) Business Days prior to the intended Drawdown Date or within such shorter period as the Agent may approve.

4.2 Availability

The conditions referred to in Clause 4.1 are that:

- (a) a Drawdown Date has to be a Business Day during the Availability Period;
- (b) the amount of the Tranche shall not exceed the Tranche Amount; and
- (c) the aggregate amount of the Tranche shall not exceed the Total Commitments.

4.3 Notification to Lenders of receipt of a Drawdown Notice

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

- (a) the amount of the Tranche and the Drawdown Date;
- (b) the amount of that Lender's participation in the Tranche; and
- (c) the duration of the first Interest Period.

4.4 Drawdown Notice irrevocable

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

4.5 Lenders to make available Contributions

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

4.6 Disbursement of Tranche

Subject to the provisions of this Agreement, the Agent shall on the 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 of ABN AMRO Bank N.V. (acting as agent under the Existing Facility Agreement relevant to the Tranche being advanced) which the Borrowers specify in the Drawdown Notice; and
- (b) in the like funds as the Agent received the payments from the Lenders.

4.7 Disbursement of Tranche to third party

The payment by the Agent under Clause 4.6 shall constitute the making of the Tranche and the Borrowers shall at that time become indebted, as principal and direct obligors, to each Lender in an amount equal to that Lender's Contribution.

5 INTEREST

5.1 Payment of normal interest

Subject to Clause 5.3 and the other provisions of this Agreement, interest on the Tranche or the Loan in respect of each Interest Period applicable thereto 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 the Tranche or the Loan in respect of an Interest Period shall be the aggregate of (i) the applicable Margin, (ii) the Mandatory Cost (if any) and (iii) LIBOR for that Interest Period.

5.3 Payment of accrued interest

In the case of an Interest Period longer than 3 months, accrued interest shall be paid every 3 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 Reference Banks to quote

A Reference Bank which is a Lender shall use all reasonable efforts to supply the quotation required of it for the purposes of fixing a rate of interest under this Agreement.

5.6 Absence of quotations by Reference Banks

If any Reference Bank fails to supply a quotation, 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) no screen rate is quoted in the Screen Rate and the Reference Banks (or, if there is only one Reference Bank at the relevant time, that Reference Bank) do not or, as the case may be, does not, before 1.00 p.m. (London time) on the Quotation Date for an Interest Period, provide quotations to the Agent in order to fix LIBOR; or
- (b) at least 1 Business Day before the start of an Interest Period, a Lender may notify the Agent that LIBOR fixed by the Agent would not accurately reflect the cost to that Lender of funding its respective Contribution (or any part of it) during the Interest Period in the London Interbank Market at or about 11.00 a.m. (London time) on the Quotation Date for the Interest Period; or
- (c) at least 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 and the Swap Bank 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 the Tranche is made:

- (a) in a case falling within Clauses 5.7(a) or 5.7(b), the Lenders’ obligations to make the Tranche; and

- (b) in a case falling within Clause 5.7(c), the Affected Lender's obligation to participate in the Tranche, shall be suspended while the circumstances referred to in the Agent's notice continue.

5.10 Negotiation of alternative rate of interest

If the Agent's notice under Clause 5.8 is served after the Tranche is made, the Borrowers, the Agent, the Lenders or (as the case may be) the Affected Lender and the Swap Bank shall use reasonable endeavours to agree, within 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 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, not exceeding 3 months, 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 plus the applicable Margin and the Mandatory Cost (if any) applicable to each Lender's or (as the case may be) to the Affected Lender's Contribution in the Tranche; and the procedure provided for by this Clause 5.12 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 5.12, the Borrowers may give the Agent not less than 30 days' notice of their intention to prepay the Loan 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 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 applicable Margin and the Mandatory Cost (if any) applicable to the Affected Lender's Contribution.

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 the Tranche shall commence on the Drawdown Date in respect of the Tranche 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 shall be:

- (a) 3 months; or
- (b) such other period requested by the Borrowers to the Agent not later than 11.00 a.m. (Rotterdam time) 2 Business Days before the commencement of the Interest Period as the Agent may, with the authorisation of all the Lenders, 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. (Rotterdam 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 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 7.3(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 applicable to it); and
- (b) the aggregate of the applicable Margin and the Mandatory Cost (if any) 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 (after consultation with the Reference Banks) determines that Dollar deposits for any such period are not being made available to any Reference Bank 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 Reference Banks from such other sources as the Agent (after consultation with the Reference Banks) 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 7.3(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.

7.7 Application to Master Agreement

For the avoidance of doubt, this Clause 7 does not apply to any amount payable under the Master Agreement in respect of any continuing Transaction as to which section 2(e) (Default Interest and Compensation) of the Master Agreement shall apply.

8 REPAYMENT AND PREPAYMENT

8.1 Amount of repayment instalments

The Borrowers shall repay the Tranche by:

- (a) 4 equal consecutive quarterly instalments in the amount of \$1,125,000 each (each a "**Repayment Instalment**"); and
- (b) a balloon instalment in the amount of \$60,792,500 (the "**Balloon Instalment**") (as such amount may be reduced pursuant to Clause 8.14 (*Prepayment out of excess Earnings in respect of Borrowers' Ships*), 8.15 (*Additional mandatory prepayment event*) and 8.16 (*Prepayment out of excess Earnings in respect of Tasman Ships*),

Provided that:

- (i) if on each PIK Calculation Date the Security Cover Ratio at that date is less than (1) from 1 January 2018 through 30 June 2020, 100 per cent. and (2) from 1 July 2020 and at all times thereafter, 110 per cent., the principal amount outstanding under the Tranche (and respectively under the Loan) shall be increased on that PIK Calculation Date by an amount equal to the PIK Amount and the Balloon Instalment shall be increased accordingly; and

(ii) the Balloon Instalment may be further increased or reduced in accordance with Clause 8.10.

8.2 Repayment Dates

The first Repayment Instalment shall be repaid on 31 March 2020, each subsequent Repayment Instalment shall be repaid at three-monthly intervals thereafter and the last Repayment Instalment together with the Balloon Instalment shall be repaid not later than the relevant Final Maturity Date.

8.3 Final Repayment Date

On the Final Maturity 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 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 \$250,000 or a higher integral multiple of \$250,000;
- (b) the Agent has received from the Borrowers at least (i) 15 Business Days' prior written indicative notice and (ii) 10 Business Days' prior written confirmative and irrevocable notice, in each case specifying the amount to be prepaid and the date on which the prepayment is to be made (such date shall be the last day of the Interest Period then current);
- (c) the Borrowers have provided evidence satisfactory to the Agent that any consent required by any Borrower or any Security Party in connection with the prepayment has been obtained and remains in force, and that any requirement relevant to this Agreement which affects any Borrower or any Security Party has been complied with; and
- (d) the Borrowers have complied with Clause 8.12 on or prior to the date of prepayment under Clauses 8.4 and 8.5.

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 the Majority 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.

8.8 Mandatory prepayment

The Borrowers shall be obliged to prepay the Relevant Amount (subject to Clauses 8.9 and 8.12) if a Ship is sold (including, without limitation, if it is sold for scrap) or becomes a Total Loss:

- (a) in the case of a sale, on the earlier of (i) the date on which the sale is completed by delivery of that Ship to the buyer and (ii) the date of receipt by the relevant Borrower (or, as the case may be, the relevant Collateral Owner) or the Security Trustee (or, as the case may be, the Senior Security Trustee) of the sale proceeds relating to such Ship,

any such sale shall be subject to the prior written consent (such consent not to be unreasonably withheld) of the Agent (acting with the authorisation of all Lenders) if an Event of Default has occurred and is continuing on the date of the Borrowers' request to sell that Ship and/or on the date of the sale of that Ship (prior to the transfer of ownership to the buyer and to the discharge of the relevant Mortgage); or

- (b) in the case of a Total Loss, on the earlier of (i) the date falling 120 days after the Total Loss Date and (ii) the date of receipt by the Security Trustee (or, in the case of a Tasman Ship, the date of receipt by the Senior Security Trustee) of the proceeds of insurance or the Requisition Compensation relating to such Total Loss.

In this Clause 8.8, "**Relevant Amount**" means:

- (i) in respect of a sale or Total Loss of Ship A or Ship B, in the event that, at the time of such sale or Total Loss, the other Borrower Ship that is not being sold, scrapped, disposed of or has not become a Total Loss, no longer remains a Mortgaged Ship, the aggregate amount of (A) the Loan and (B) the Swap Exposure; and
- (ii) in respect of a sale or Total Loss of Ship A, in the event that at the time of such sale or Total Loss of Ship A, Ship B, remains a Mortgaged Ship (regardless of, in the context of a sale of Ship A, whether the Borrowers or, pursuant to Clause 11.25, the Lenders have initiated such sale), the full amount of the sale, or, as the case may be, insurance proceeds of Ship A; and
- (iii) in respect of a sale or Total Loss of Ship B, in the event that at the time of such sale or Total Loss of Ship B, Ship A, remains a Mortgaged Ship, the greater of (a) the total amount of sale, or, as the case may be, insurance proceeds of Ship B and (b) the total amount which after the application of prepayment to be made pursuant to this Clause 8.8, results in the Security Cover Ratio being equal to (i) from 1 January 2018 — 30 June 2019, 120 per cent. (ii) from 1 July 2019 — 31 December 2019, 125 per cent. and (iii) from 1 January 2020 and at all times thereafter, 130 per cent.; and
- (iv) in respect of a sale or Total Loss of a Tasman Ship, the full amount of the Senior Surplus Proceeds.

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 Application of partial prepayment

Each partial prepayment made pursuant to Clause 8.4 or 8.8 shall be applied first against the Balloon Instalment and then against the then outstanding Repayment Instalments in inverse order of maturity.

8.11 No reborrowing

No amount repaid or prepaid may be reborrowed.

8.12 Unwinding of Designated Transactions

On or prior to any repayment or prepayment of the Loan under this Clause 8 or any other provision of this Agreement, each Borrower shall, on a joint and several basis, wholly or partially reverse, offset, unwind or otherwise terminate one or more of the continuing Designated Transactions so that the notional principal amount of the continuing Designated Transactions thereafter remaining does not and will not in the future (taking into account the scheduled amortisation) exceed the amount of the Loan as reducing from time to time thereafter pursuant to Clause 8.1.

8.13 Mandatory Prepayment in case of Change of Control

If a Change of Control occurs, the Agent may, and on the instructions of all the Lenders shall, serve on the Borrowers a notice demanding the Borrowers to prepay the Loan and all other amounts then outstanding under the Finance Documents and upon receipt of which:

- (a) the Borrowers shall be obliged to prepay the Loan and pay all other amounts then outstanding under the Finance Documents in full within 15 days; and
- (b) any obligations of the Lenders to the Borrowers under this Agreement (including without limitation the obligation to make available the Loan) shall terminate and any undrawn Commitments shall be cancelled.

In this Clause 8.13 “**Change of Control**” means if any of the following occurs in relation to the Borrowers, the Collateral Owners ~~or~~ the Corporate Guarantor or the New Holding Company (as applicable):

- ~~(i) subject to paragraph (ii) below, without the prior consent of the Lenders, a change has occurred after the date of this Agreement in the direct or ultimate, legal or beneficial ownership of any of the limited liability company interests in any of the Borrowers or in any of the Collateral Owners or in the direct or ultimate control of the voting rights attaching to any of those interests; of~~
- ~~(ii) other than in the case of any initial public offering of the limited liability company interests of the Corporate Guarantor on any stock exchange (with the Agent’s prior not to be unreasonably withheld) the members disclosed to the Agent prior to the date of this Agreement as owning the whole of the limited liability interests of the Corporate Guarantor cease to own in aggregate at least 50 per cent of the limited liability company interests (with a right to vote) of the Corporate Guarantor; or~~
- (i) The Poseidon Shareholders and the New Shareholders cease to collectively own (either directly or indirectly through one or more subsidiaries) more than 50% of the shares (and the voting rights attaching to those shares) in the New Holding Company during the six month period following the Merger; or
- (ii) Mr George Giouroukos ceases to be the Executive Chairman (or ceases to hold any other equivalent executive officer position) in the New Holding Company, other than by reason of death or other incapacity in managing his affairs; or
- (iii) Mr George Giouroukos ceases to have a key position (as determined by the Agent, acting on the instructions of all the Lenders) in the executive management of the Corporate Guarantor ceases to be a (direct or indirect) wholly-owned subsidiary of the New Holding Company; or
- (iv) any Borrower or any Collateral Owner ceases to be a (direct or indirect) wholly-owned subsidiary of the relevant Shareholder; or
- (v) each of Odysseus and/or THD Maritime cease to be a (direct or indirect) wholly-owned subsidiary of the Corporate Guarantor; or
- (vi) there is any change of an Approved Manager (other than further to the sale of a Ship pursuant to Clause 8.8 (Mandatory prepayment)).

8.14 Prepayment out of excess Earnings in respect of Borrowers' Ships

If on an Excess Cash Flow Date in respect of the Borrowers' Ships, the aggregate of the daily Earnings of the Borrowers' Ships (for the avoidance of doubt, not inclusive of any commission or brokerage fees which are not otherwise included in the Operating Expenses of such Borrowers' Ships and are payable to a third party) for the preceding Cash Sweep Period of such Borrowers' Ships exceeds the aggregate of:

- (a) the aggregate of the Operating Expenses in respect of the Borrowers' Ships for that Cash Sweep Period; and
- (b) the Debt Service during such three-month period ending on the last day of that Cash Sweep Period; and
- (c) the aggregate Minimum Liquidity Amount held in the Borrowers' Earnings Accounts in respect of the Borrowers' Ships (plus any amounts necessary to cover any shortfall on the aggregate Minimum Liquidity Amount),

the Borrowers shall pay such Excess Cash Flow, as evidenced in the relevant Excess Cash Flow Notice, to the Agent, on the next Repayment Date falling due after receipt of such relevant Excess Cash Flow Notice (and, during the Waiver Period, at the end of the next Interest Period after receipt of such relevant Excess Cash Flow Notice), such amount shall be applied (notwithstanding anything to the contrary provided in Clause 8.10 hereof) in prepayment of the outstanding Repayment Instalments and Balloon Instalment in order of maturity.

This Clause shall only be applicable for the duration of the Cash Sweep Period.

8.15 Additional mandatory prepayment event

If the aggregate of the excess Earnings (i) applied in prepayment of the Loan pursuant to Clause 8.14 and/or (ii) maintained in the Cash Collateral Account pursuant to Clause 8.16, is less than \$1,300,000 for the duration of the period commencing on 1 January 2019 until the Cash Sweep Period ending on 31 December 2019, the Borrowers shall be obliged to utilise such part of the Shareholders' Equity to prepay the Shortfall Amount to the Lenders on the next Repayment Date falling due after receipt of the Excess Cash Flow Notices relevant to that Cash Sweep Period. Such Shortfall Amount shall be applied in or towards prepayment of the then outstanding Repayment Instalments and Balloon Instalment in order of maturity.

8.16 Prepayment out of excess Earnings in respect of Tasman Ships

If on an Excess Cash Flow Date in respect of the Tasman Ships, the aggregate of the daily Earnings of the Tasman Ships (for the avoidance of doubt, not inclusive of any commission or brokerage fees which are not otherwise included in the Operating Expenses of such Tasman Ships and are payable to a third party) for the preceding Cash Sweep Period of such Tasman Ships exceeds the aggregate of:

- (a) the aggregate of the Operating Expenses in respect of the Tasman Ships for that Cash Sweep Period; and
- (b) the Senior Debt Service during such three-month period ending on the last day of that Cash Sweep Period; and
- (c) the outstanding Senior Deferred Amount (if any) (after reducing such amount by an amount equal to the amount (if any) to be paid in or towards payment of such Senior Deferred Amount at the next repayment date under the Senior Facility Agreement in respect of the relevant Cash Sweep Period),

the Borrowers shall procure that the Collateral Owners transfer or procure the transfer by the Senior Facility Agent (within 10 Business Days after the date on which the Excess Cash Flow Notice is provided) seventy five per cent. (75%) of such Excess Cash Flow, as evidenced in the relevant Excess Cash Flow Notice, to the Cash Collateral Account. On the next Repayment Date falling due after the end of the Waiver Period, the relevant Cash Collateral Amount (if any) that has accrued at that time, shall be paid to the Agent. Any subsequent Cash Collateral Amount that has accrued from time to time (as evidenced on each subsequent Excess Cash Flow Notice), shall be paid to the Agent on each next Repayment Date falling after receipt of the relevant Excess Cash Flow Notice. Any such amounts paid to the Agent shall be applied (notwithstanding anything to the contrary provided in Clause 8.10 hereof) in prepayment of the outstanding Repayment Instalments and Balloon Instalment in order of maturity.

This Clause shall only be applicable for the duration of the Cash Sweep Period.

8.17 Excess Cash Flow up to ~~Effective~~ effective date of the First Amending and Restating Deed

The Borrowers shall, following the effective date (as defined therein) of the First Amending and Restating Deed pay the Excess Cash Flow up until that date, as evidenced in the relevant Excess Cash Flow Notice, at the end of the next Interest Period following that effective date.

9 CONDITIONS PRECEDENT

9.1 Documents, fees and no default

Each Lender's obligation to contribute to a Tranche is subject to the following conditions precedent:

- (a) that, on or before the service of the first Drawdown Notice, the Agent receives the documents described in Part A of Schedule 3 in form and substance satisfactory to the Agent and its lawyers;
- (b) that, on the Drawdown Date but prior to the making of any Tranche to be advanced on the Drawdown Date, the Agent receives or is satisfied that it will receive on the making of such Tranche the documents described in Part B of Schedule 3 in form and substance satisfactory to it and its lawyers;
- (c) that both at the date of each Drawdown Notice and at the Drawdown Date:
 - (i) no Event of Default or Potential Event of Default has occurred and is continuing or would result from the borrowing of the relevant Tranche (excluding, for the Refinancing Period up until the Refinancing Date, any Events of Default having occurred and being continuing in connection with and under the Existing Facility Agreement);
 - (ii) the representations and warranties in Clause 10 and those of any 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; and
 - (v) 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 the Majority Lenders, request by notice to the Borrowers prior to the Drawdown Date.

9.2 Waiver of conditions precedent

If the Majority Lenders, at their discretion, permit the Tranche 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 10 Business Days after the Drawdown Date (or such longer period as the Agent may, with the authorisation of the Majority 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 a limited liability company duly formed and validly existing in good standing under the laws of the Marshall Islands.

10.3 Limited Liability Company Interests and ownership

As of the date of this Agreement, each Borrower is authorized to issue 500 limited liability company interests, all of which have been issued to the relevant Shareholder and are owned free of any Security Interest or other claim except, during the Existing Indebtedness Grace Period, for Security Interests created under the Existing Facility Agreement and for the Security Interests created in favour of the Security Trustee under the Finance Documents.

10.4 Limited Liability Company power

Each Borrower has the limited liability capacity, and has taken all limited liability company action and obtained all consents necessary for it:

- (a) to carry out its business carried on or to be carried out by it and own its assets owned or to be owned by it;
- (b) to execute the Finance Documents to which that Borrower is a party; and
- (c) to borrow under this Agreement, to enter into Designated Transactions under the Master Agreement and to make all the payments contemplated by, and to comply with, those Finance Documents to which it 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 each 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) are in full force and effect;
- (b) constitute that Borrower's legal, valid and binding obligations enforceable against that Borrower in accordance with their respective terms; and
- (c) 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 the Legal Reservations.

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 a Borrower is a party:

- (a) each Borrower which is a party to that Finance Document 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 to which it is a party will not involve or lead to a contravention of:

- (a) any applicable 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, which in each case has, or could reasonably be expected to have, a Material Adverse Effect.

10.9 No withholding taxes

All payments which each Borrower is liable to make under the Finance Documents to which it is a party may be made without deduction or withholding for or on account of any tax payable under any law of any Pertinent Jurisdiction. No Finance Document is subject to any filing or stamp duty in any Pertinent Jurisdiction.

10.10 No default

No Event of Default (excluding, for the duration of the Refinancing Period up until the Refinancing Date, any Events of Default having occurred and being continuing in connection with and under the Existing Facility Agreement) has occurred and is continuing.

10.11 Information

All information which has been provided in writing by or on behalf of the Borrowers or any Security Party or K&T Marine 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 there has been no Material Adverse Change.

10.12 No litigation

Other than as previously disclosed to the Agent, no legal or administrative action against any Borrower (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 legal or administrative action has or could reasonably be expected to have a Material Adverse Effect.

10.13 Compliance with certain undertakings

At the date of this Agreement, the Borrowers are in compliance with Clauses 11.2, 11.4, 11.9, 11.13 and 11.20.

10.14 Taxes paid

Each Borrower has paid all taxes applicable to, or imposed on or in relation to that Borrower, its business or the Ship owned by it.

10.15 ISM Code and ISPS Code compliance

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

10.16 No money laundering; anti-bribery

- (a) Without prejudice to the generality of Clause 2.3, in relation to the borrowing by each Borrower, the performance and discharge of its obligations and liabilities under the Finance Documents, and the transactions and other arrangements affected or contemplated by the Finance Documents to which each Borrower is a party, each Borrower confirms (i) it is acting for its own account; (ii) it will use the proceeds of the Loan for its own benefit, under its full responsibility and exclusively for the purposes specified in this Agreement; and (iii) that the foregoing will not involve or lead to a contravention of any law, official requirement or other regulatory measure or procedure implemented to combat "money laundering" (as defined in Article 1 of Directive (2005/60/EC) of the European Parliament and of the Council).
- (b) Each Borrower will promptly inform the Agent by written notice, if it is not or ceases to be the beneficiary and will provide in writing the name and address of the beneficiary.
- (c) The Agent shall promptly notify the Lenders of any written notice it receives under this Clause 10.16.

10.17 No immunity

None of the Borrowers, nor any of their assets are entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding (which shall include, without limitation, suit attachment prior to judgement, execution or other enforcement).

10.18 Pari passu ranking

The obligations of each Borrower, each Security Party and K&T Marine under the Finance Documents to which it is a party rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

10.19 Patriot Act and anti-terrorism laws

To the extent applicable each Borrower is in compliance with (i) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, (ii) the PATRIOT Act and Executive Order No. 13224 on Terrorist Financing, effective 24 September 2001. No part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

10.20 Repetition

The representations and warranties in this Clause 10 shall be deemed to be repeated by the Borrowers:

- (a) on the date of service of each Drawdown Notice;
- (b) on the Drawdown Date;
- (c) with the exception of Clauses 10.9, 10.10, 10.11 and 10.12, on the first day of each Interest Period and on the date of any Compliance Certificate issued pursuant to clause 11.20 of the Corporate Guarantee; ~~and~~
- (d) on the effective date (as defined therein) of the ~~Amending and Restating Deed, First Amending and Restating Deed; and~~
- (e) on the effective date (as defined therein) of the Second Amending and Restating Deed,
as if made with reference to the facts and circumstances existing on each such day.

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 in writing (and in the case of Clauses 11.3 and 11.13 such permission not to be unreasonably withheld or delayed).

11.2 Title; negative pledge

Each Borrower will:

- (a) hold the legal title to, and own the entire beneficial interest in the Ship owned by it, her Insurances and Earnings, free from all Security Interests (except during the Existing Indebtedness Grace Period, Security Interests created under the Existing Facility Agreement) and other interests and rights of every kind, except for those created by the Finance Documents and the effect of assignments contained in the Finance Documents and except for Permitted Security Interests;
- (b) not create or permit to arise any Security Interest (except for Permitted Security Interests) over any other asset, present or future (including, but not limited to, that Borrower's rights against the Swap Bank under the Master Agreement or all or any part of that Borrower's interest in any amount payable to that Borrower by the Swap Bank under the Master Agreement); 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 and unsubordinated liabilities, except for liabilities which are mandatorily preferred by law.

11.3 No disposal of assets

None of the Borrowers will transfer, lease or otherwise dispose of (without the Agent's prior written consent, but always subject to Clause 8.8(a) of this Agreement and provided that, any sale or scrapping of a Borrower Ship under Clause 8.8(a) shall not be effected for less than the Market Value of that Borrower Ship at the relevant time):

- (a) all or a substantial part of its assets, whether by one transaction or a number of transactions, whether related or not; or

- (b) any debt payable to it or any other right (present, future or contingent right) to receive a payment, including any right to damages or compensation,
but paragraph (a) does not apply to any charter of a Ship as to which Clause 14.12 applies.

11.4 No other liabilities or obligations to be incurred

None of the Borrowers will incur any liability or obligation, including, without limitation, giving or allowing to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person, except:

- (a) liabilities and obligations under the Existing Facility Agreement (up until the Drawdown Date) and the Finance Documents to which it is a party;
(b) liabilities or obligations reasonably incurred in the normal course of its business of trading, operating and chartering the Ship owned by it;
(c) in respect of the Designated Transactions; and
(d) liabilities or obligations under any Permitted Loans.

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

Each Borrower will send or procure that each of the following are sent to the Agent:

- (a) as soon as they become available, but in ~~no any~~ event ~~later than 180~~ within 120 days after the end of each ~~of the respective Financial Year~~ Years of the New Holding Company and of the Corporate Guarantor, ~~the annual audited (consolidated (i) in respect of the New Holding Company, publicly available annual financial statements of the New Holding Company prepared in accordance with NYSE rules (as shown and available in the website of the New Holding Company) and (ii) in respect of the Corporate Guarantor), the unaudited consolidated financial statements of the Corporate Guarantor for that Financial Year (commencing with the financial statements for the year ended 31 December 2016~~ such annual consolidated financial statements to be supplemented to include updated details of all off-balance sheet and employment commitments), together with a certification from the Chief Financial Officer of the Corporate Guarantor confirming that the figures are in the same form as those figures used in the audited financial statements provided in respect of the New Holding Company);
- (b) as soon as available, but in no event later than 90 days after the end of the 6-month period ending on 30 June in each Financial Year of the Corporate Guarantor, each Borrower and each Collateral Owner, the unaudited (consolidated in respect of the Corporate Guarantor) financial statements of the Corporate Guarantor, each Borrower and each Collateral Owner in respect of the preceding 6-month period (commencing with the 6-month period ending 30 June 2017) which are certified as to their correctness by an authorised officer of the Corporate Guarantor, each Borrower and the Collateral Owner (as the case may be);
- (c) as soon as available, but in no event later than 60 days after the end of the 3-month period ending on 30 September and 31 March in each Financial Year of the Corporate Guarantor, each Borrower and each Collateral Owner, the unaudited (consolidated in respect of the Corporate Guarantor) financial statements of the Corporate Guarantor, each Borrower and each Collateral Owner in respect of the preceding 3-month period (commencing with the 3-month period ending 30 June 2017) which are certified as to their correctness by an authorised officer of the Corporate Guarantor, each Borrower and each Collateral Owner (as the case may be);

- (d) at the end of each 3-month period in each Financial Year of the Borrowers (commencing with the 3-month period ending on 30 June 2017), the PIK Compliance Certificate (together with the set of valuations to determine the Market Value of each Borrower Ship and the PIK Amount, such set of valuations to be provided on a semi-annual basis commencing with the 3-month period ending on 31 March 2017 and thereafter, at the option of the Borrowers, as provided for and in accordance with the provisions of Clause 15.8) which is to be certified as to its correctness by an authorised officer of the Borrowers;
 - (e) on or prior to the 10th Business Day of each quarter in each Financial Year of the Corporate Guarantor (commencing with the quarter starting on 1 July 2017), a cash flow forecast in an Agreed Form evidencing all anticipated income and expenses in respect of the Fleet Vessels and the aggregate cash balances held or to be held by members of the Group in restricted and unrestricted accounts on a consolidated and projected basis for the 12-week period commencing as from the date on which the cash flow forecast is determined;
 - (f) promptly after each request by the Agent, such further information regarding the financial condition, business and operation of the Borrowers, the Collateral Owners, the Ships and the Corporate Guarantor as the Agent may reasonably require; and
 - (g) promptly, within 45 days from each Excess Cash Flow Date in relation to each of the Borrowers' Ships and, as the case may be, the Tasman Ships, an Excess Cash Flow Notice in respect of those Ships, in each case addressed to the Agent,
- and each Borrower shall, and shall procure that the Corporate Guarantor shall, ensure that all cash flow forecasts of the Corporate Guarantor received pursuant to paragraph (e) of this Clause for the duration of the Waiver Period shall evidence a positive balance in respect of the Group for that Financial Year that is satisfactory to the Agent.

11.7 Form of financial statements

All accounts delivered under Clause 11.6 will:

- (a) ~~(A)~~ be prepared in accordance with all applicable laws and ~~IFRS-GAAP~~ consistently applied and, in respect of the Corporate Guarantor, financial reference periods consistent with those applied in preparation of the Original Financial Statements unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in ~~IFRS-GAAP~~, the accounting practices or reference periods and its auditors deliver to the Agent:
 - (i) ~~(A)~~ a description of any change necessary for those financial statements to reflect the ~~IFRS-GAAP~~, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
 - (ii) ~~(B)~~ sufficient information, upon request by the Agent, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether clause 11.19 of the Corporate Guarantee has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

Any reference in the Corporate Guarantee to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared;

- (b) give a true and fair view of the state of affairs of the relevant Borrower, the Corporate Guarantor and Collateral Owner at the date of those accounts and of its profit for the period to which those accounts relate; and

- (c) fully disclose or provide for all significant liabilities of the relevant Borrower, the relevant Collateral Owner and the Corporate Guarantor.

11.8 Shareholder and creditor notices

Upon the occurrence of an Event of Default each Borrower will send to the Agent, at the same time as they are despatched, copies of all communications which are despatched to that Borrower's members or creditors or any class of them.

11.9 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 that Borrower to perform its obligations under any Finance Document to which it is a party;
 - (b) for the validity or enforceability under any Finance Document to which it is a party; and
 - (c) for that Borrower to continue to own and operate the Ship owned by it,
- and that Borrower will comply with the terms of all such consents.

11.10 Maintenance of Security Interests

Each Borrower will:

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

11.11 Notification of litigation

Each Borrower will provide the Agent with details of any legal or administrative action involving that Borrower or the Ship owned by it, the Earnings or the Insurances or involving any Collateral Owner, any Tasman Ship or any Shareholder 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 that the legal or administrative action cannot be considered material in the context of any relevant Finance Document and the Borrowers shall procure that reasonable measures are taken to defend any such legal or administrative action.

11.12 No amendment to Master Agreement

None of the Borrowers will agree to any amendment or supplement to, or waive or fail to enforce, the Master Agreement or any of its provisions.

11.13 Principal place of business

Each Borrower will maintain a place of business, and keep its corporate documents (or copies thereof) and records (or copies thereof), at the address stated in Clause 28.2(a); and none of the Borrowers will establish, or do anything as a result of which it would be deemed to have, a place of business in any country other than Greece and, in respect of the Corporate Guarantor, Greece or the United States of America.

11.14 Confirmation of no default

Each Borrower will, within 5 Business Days after service by the Agent of a written request, serve on the Agent a notice which is signed by the authorised representative or senior officer of that Borrower and which:

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

The Agent may serve requests under this Clause 11.14 from time to time but only if asked to do so by a Lender or Lenders having Contributions exceeding 10 per cent. of the Loan or (if no Tranche has been made) Commitments exceeding 10 per cent. of the Total Commitments; and this Clause 11.14 does not affect the Borrowers' obligations under Clause 11.15.

11.15 Notification of default

Each Borrower will notify the Agent as soon as that Borrower becomes aware (and in respect of sub-paragraph (c), as soon as practicable) of:

- (a) the occurrence of an Event of Default or a Potential Event of Default; or
- (b) any matter which indicates that an Event of Default or a Potential Event of Default may have occurred; or
- (c) any extension of the security period under the Senior Facility Agreement,
and will keep the Agent fully up-to-date with all developments.

11.16 Provision of further information

- (a) Each Borrower will, as soon as practicable after receiving the request, provide the Agent with any additional financial or other information relating:
 - (i) to the Borrowers, the Collateral Owners, the Group, the Ships, the other Fleet Vessels, their Insurances or their Earnings (including, but not limited to, any sales or purchases of any Fleet Vessels, the incurrence of Financial Indebtedness by members of the Group, the refinancing or restructuring of any loan or credit facilities to which any members of the Group are a party (to the extent permitted to disclose information under the terms of such loan or credit facilities)) as the Agent may reasonably require; or
 - (ii) to any other matter relevant to, or to any provision of, a Finance Document,
which may be requested by the Agent, the Security Trustee or any Lender at any time; and
- (b) Each Borrower will immediately notify the Agent if, prior to the delivery of the Compliance Certificate pursuant to clause 11.20 of the Corporate Guarantee, it becomes aware that the financial covenants included in clause 11.19 of the Corporate Guarantee will not be complied with.

11.17 Provision of copies and translation of documents

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

11.18 Minimum Liquidity

Each Borrower undertakes to maintain in its Earnings Account from the Drawdown Date and at all times thereafter throughout the Security Period, a credit balance of not less than \$500,000 (the “**Minimum Liquidity Amount**”).

11.19 “Know your customer” checks

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of any Borrower, any Collateral Owner, the Corporate Guarantor, any Shareholder or any Approved Manager after the date of this Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (c), any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrowers shall promptly upon the request of the Agent or the Lender concerned supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or the Lender concerned (for itself or, in the case of the event described in paragraph (c), on behalf of any prospective new Lender) in order for the Agent, the Lender concerned or, in the case of the event described in paragraph (c), any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents, including without limitation obtaining, verifying and recording certain information and documentation that will allow the Agent and each of the Lenders to identify each of the Borrowers, the Collateral Owners, the Shareholders, the Corporate Guarantor and the Approved Managers (as the case may be) in accordance with the requirements of the PATRIOT Act.

11.20 Sanctions and compliance with laws

- (a) Compliance with laws

Each Borrower shall, and shall procure that the Corporate Guarantor and each other member of the Group and each Affiliate of any of them shall, comply with all applicable Sanctions.

- (b) Sanctions

- (i) No Borrower shall, and shall procure that neither the Corporate Guarantor nor any other member of the Group nor any Affiliate of any of them shall, become a Restricted Party or act on behalf of, or as an agent of, a Restricted Party, to the extent this would lead to non-compliance by it or any other Party with any applicable Sanctions.
- (ii) No Borrower shall, and shall procure that neither the Corporate Guarantor nor any other member of the Group nor any Affiliate of any of them shall, use any revenue or benefit derived from any activity or dealing with a Restricted Party in discharging any obligation due or owing to the Creditor Parties to the extent such use would lead to non-compliance by it or any other Party with any applicable Sanctions.
- (iii) Each Borrower shall, and shall procure that the Corporate Guarantor and each other member of the Group and each Affiliate of any of them shall, procure that no proceeds from any activity or dealing with a Restricted Party are credited to any bank account held with any Creditor Party or any Affiliate of a Creditor Party, to the extent crediting such bank account would lead to non-compliance by it, any Creditor Party or any Affiliate of a Creditor Party with any applicable Sanctions.

- (iv) Each Borrower shall, and shall procure that the Corporate Guarantor and each other member of the Group and each Affiliate of any of them shall, to the extent permitted by law and promptly upon becoming aware of them, supply to the Agent details of any claim, action, suit, proceedings or investigation against it with respect to any applicable Sanctions by any Sanctions Authority.
- (c) Use of proceeds
No Borrower shall, and shall procure that neither the Corporate Guarantor nor any other member of the Group nor any Affiliate of any of them shall, use, lend, contribute or otherwise make available the proceeds of the Loan or any other transaction contemplated by this Agreement directly or indirectly for the purpose of financing any trade, business or other activities with any Restricted Party, to the extent, in each case, such use, lending, contributing or otherwise making available the proceeds would lead to non-compliance by it or any other Party with any applicable Sanctions.

11.21 Subordination and assignment of Permitted Loans

Each Borrower shall cause (i) all Permitted Loans to be fully subordinated to the Secured Liabilities and (ii) any creditor's rights under any such Permitted Loans to any Borrower(s) to be assigned in favour of the Creditor Parties.

11.22 Ownership

Each Borrower shall procure that there is no change in the legal ownership of its limited liability company interests throughout the Security Period.

11.23 Employees and ERISA Compliance

None of the Borrowers shall employ any individuals (other than the master and crew members of the Ship), or sponsor, maintain or become obligated to contribute to any Plan. Each Borrower shall provide prompt written notice to the Agent in the event that that Borrower becomes aware that it has incurred or is reasonably likely to incur any liability with respect to any Plan, that, individually or in the aggregate with any other such liability, would be reasonably expected to have a Material Adverse Effect.

11.24 Further assurance

- (a) Each Borrower shall, and shall procure that each Security Party will, promptly, and in any event within the time period specified by the Security Trustee do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Trustee may specify (and in such form as the Security Trustee may require in favour of the Security Trustee or its nominee(s)):
 - (i) to create, perfect, vest in favour of the Security Trustee or protect the priority of the Security Interest or any right of any kind created or intended to be created under or evidenced by the Finance Documents to which such Security Party is a party (which may include the execution of a mortgage, charge, assignment or other Security Interest over all or any of the assets which are, or are intended to be, the subject of the Finance Documents) or for the exercise of any rights, powers and remedies of the Security Trustee, any receiver or the Creditor Parties provided by or pursuant to the Finance Documents or by law;

- (ii) to confer on the Security Trustee or confer on the Creditor Parties Security Interests over any property and assets of that Borrower or Security Party (as the case may be) located in any jurisdiction equivalent or similar to the Security Interest intended to be conferred by or pursuant to the Finance Documents;
 - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Finance Documents or to exercise any power specified in any Finance Document in respect of which the Security Interest has become enforceable; and/or
 - (iv) to enable or assist the Security Trustee to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Borrower shall, and shall procure that each other Security Party shall, take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security Interest conferred or intended to be conferred on the Security Trustee or the Creditor Parties by or pursuant to the Finance Documents to which such Borrower or Security Party is a party.
- (c) At the same time as a Borrower delivers to the Security Trustee any document executed by itself or another Security Party pursuant to this Clause, that Borrower shall deliver, or shall procure that such other Security Party will deliver, to the Security Trustee a certificate signed by two of that Borrower's or Security Party's directors or officers which shall:
- (i) set out the text of a resolution of that Borrower's or Security Party's directors specifically authorising the execution of the document specified by the Security Trustee; and
 - (ii) 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 or officers and is valid under that Borrower's or Security Party's articles of association or other constitutional documents.

11.25 Sale of Ship A

At any time after the Security Cover Ratio has become less than the Applicable Percentage, each Borrower undertakes the following (on the instructions of all the Lenders after consultation with the Borrowers):

- (a) to take all necessary actions in order to market Ship A for sale immediately upon receipt of the Lenders' instructions including, without limitation, closely monitoring the market and liaising with brokers;
- (b) on a best efforts basis, to ensure that Ship A is sold for cash on normal commercial arm's length terms to a buyer and for a purchase price, each reasonably acceptable to the Agent in its consideration of the market standards prevailing at that time (acting on the instructions of the Lenders);
- (c) to keep the Agent regularly updated (quarterly and at any other time upon the Agent's request) regarding the sale process of Ship A and to advise the Agent promptly of any offers received (including, without limitation, the price offered, the identity of the buyer, the main terms of any offers and the process of the negotiations), such updates to be satisfactory to the Lenders;
- (d) in the event of the sale of Ship A being agreed, on a best efforts basis, to ensure that (i) the memorandum of agreement is signed between Borrower A and the buyer for the sale of Ship A and (ii) that the sale of Ship A is successfully completed and Ship A is irrevocably and unconditionally delivered to the relevant buyer within a time frame reasonably set out by the Agent at that time; and

- (e) on a best efforts basis, to send to the Agent a certified copy of the memorandum of agreement (and any addenda or supplemental agreements applicable thereto) made between Borrower A and the buyer in respect of the sale of Ship A, promptly after the execution of such document.

Any partial prepayment made pursuant to this Clause shall be applied in such order as set out in Clause 8.10**(b)(a)**.

11.26 Most favoured nation clause

Each Borrower undertakes to procure that, (i) during the Waiver Period in respect of items listed in sub-paragraphs (b), (d) and (f) and (ii) throughout the duration of the Security Period in respect of items listed in sub-paragraphs (a), (c) and (e), the Creditor Parties shall receive no less favourable treatment under this Agreement than that provided or to be provided under any Group Facility Agreement ~~or under the Senior Facility Agreement~~ (by way of amendment or supplement to, or refinancing of, that Group facility Agreement ~~or, as the case may be, the Senior Facility Agreement~~) in relation to:

- (a) any amendment to a maturity date under any such Group ~~Facility Agreement or under the Senior~~ Facility Agreement as a result of which the maturity date will fall before 31 December 2020;
- (b) the existence of any amortization principal payment profile/schedule until 31 December 2019 (inclusive);
- (c) the provisions relevant to the calculation of the Excess Cash Flow and generally the cash sweep mechanism;
- (d) the waiver of the security cover ratio at the Borrowers' level;
- (e) the financial covenants relevant to the Value Adjusted Leverage Ratio, Book Leverage Ratio and minimum Net Worth of the Corporate Guarantor; and
- (f) any increase to the aggregate of any amounts to be paid in respect of interest solely related to margin (howsoever defined) for the duration of the Waiver Period (calculated as at the date of that Group Facility Agreement ~~or, as the context may require, the Senior Facility Agreement~~).

Accordingly, should any member of the Group or the Corporate Guarantor provide to any other creditor more favourable treatment in relation to (a) to (f) above (and, in relation to subparagraphs (b), (d) and (f) for the duration of the Waiver Period) than those which the Creditor Parties have been provided with under this Agreement or any other Finance Document, each Borrower shall promptly advise the Agent of those arrangements and covenants and shall, upon the Agent's request, enter into such documentation supplemental to the Finance Documents as the Lenders may require in order to achieve parity with the creditors under such relevant Group Facility Agreement ~~or, as the context may require, the Senior Facility Agreement~~.

11.27 Senior Deferred Amount under the Senior Facility Agreement

The Borrowers shall, and shall procure that the Collateral Owners, notify the Agent immediately once the Senior Deferred Amount has been prepaid or repaid in full pursuant to the terms and conditions of the Senior Facility Agreement.

11.28 Senior Debt Service

The Borrowers shall procure that the Collateral Owners (i) agree under the Senior Facility Agreement that, pursuant to the terms and conditions thereunder, the repayment of principal shall not exceed \$110,000 per quarter in respect of each advance related to each Tasman Ship and (ii) procure that the parties under the Senior Facility Agreement shall not enter into any amendment or supplement to the Senior Facility Agreement or otherwise agree to any increase of such amount (unless otherwise permitted pursuant to the terms of the Inter-Creditor Deed).

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 in writing (such permission not to be unreasonably withheld or delayed).

12.2 Maintenance of status

Each Borrower will maintain its separate corporate existence and remain in good standing under the laws of The Marshall Islands.

12.3 Negative undertakings

Neither Borrower will:

- (a) change the nature of its business; or
- (b) pay any dividend or make any other form of distribution or effect any form of redemption, purchase or return of its limited liability company interests at any time; **Provided that** any Borrower may pay dividends and make distributions after the Cash Sweep End Date if the following conditions are satisfied at the time at which such dividend is paid or distribution is made:
 - (i) the aggregate of the Market Value of the Borrower Ships (determined in accordance with Clause 15.3) is greater than 125 per cent. of the aggregate amount of:
 - (A) the Loan; and
 - (B) the Swap Exposure;
 - (ii) the Borrowers are in compliance with the provisions of Clause 11.18 (Minimum Liquidity) of this Agreement;
 - (iii) the Borrowers provide documentation evidencing to the satisfaction of the Facility Agent (acting with the authorisation of the Majority Lenders, acting reasonably) that they will be able to comply with their obligations under the Finance Documents including, without limitation, the payment obligations in respect of Debt Service and any other amounts that may become due and payable under the Finance Documents in the 12 month period following the end of the Waiver Period; and
 - (iv) no Potential Event of Default or Event of Default has occurred or is continuing and no Event of Default would occur as a result of such payment or distribution;
- (c) provide any form of credit or financial assistance to:
 - (i) a person who is directly or indirectly interested in that Borrower's limited liability company interests 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 that Borrower than those which it could obtain in a bargain made at arms' length;

- (d) open or maintain any account with any bank or financial institution except accounts with the Agent for the purposes of the Finance Documents;
- (e) issue, allot or grant any person any limited liability company interests other than the relevant Shareholder;
- (f) 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 other than the Designated Transactions;
- (g) enter into any form of amalgamation, merger or de-merger or any form of reconstruction or reorganisation or any form of acquisition, including any joint venture (~~save for an IPO~~ other than the Merger);
- (h) change its constitutional documents; or
- (i) acquire any vessel other than the Ship owned by it.

13 INSURANCE

13.1 General

Each Borrower also undertakes with each Creditor Party to comply (while that Ship owned by it is subject to a Mortgage) with the following provisions of this Clause 13 from the Drawdown Date and at all times during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit.

13.2 Maintenance of obligatory insurances

Each Borrower shall keep the Ship owned by it insured at the expense of that Borrower against:

- (a) fire and usual marine risks (including increased value, hull and machinery and excess risks);
- (b) war risks;
- (c) protection and indemnity risks (including excess war risk P&I cover); and
- (d) any other risks (other than loss of hire) 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 that Borrower to insure and which are specified by the Security Trustee by notice to that 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 such amount as shall from time to time be approved by the Security Trustee but in any event in an amount not less than the greater of (i) an amount which when aggregated with the insured aggregate value of the other Borrower Ships, 120 per cent. of the Loan and (ii) the aggregate Market Value of the Borrower Ships;
- (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 under basic protection and indemnity club entry;

- (d) in relation to protection and indemnity risks in respect of the full tonnage of the Ship owned by it;
- (e) on such terms as shall from time to time be approved in writing by the Security Trustee (including, without limitation, a blocking and trapping clause);
- (f) on approved terms; and
- (g) through approved brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations.

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 effected by it shall:

- (a) subject always to paragraph (b), name that Borrower as the sole named assured and the Approved Manager so co-assured unless the interest of every other named assured is limited:
 - (i) in respect of any obligatory insurances for hull and machinery and war risks;
 - (ii) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
 - (iii) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
 - (iv) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

and every other named assured has undertaken in writing to the Security Trustee (in such form as it requires) that any deductible shall be apportioned between that Borrower and every other named assured in proportion to the gross claims made or paid by each of them and that it 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;

- (b) whenever the Security Trustee requires, name (or be amended to name) the Security Trustee as additional named assured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Trustee, 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;
- (c) name the Security Trustee as loss payee with such directions for payment as the Security Trustee may specify;
- (d) 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;
- (e) provide that the obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Trustee or any other Creditor Party; and
- (f) provide that the Security Trustee may make proof of loss if that Borrower fails to do so.

13.5 Renewal of obligatory insurances

Each Borrower shall:

- (a) at least 14 days (or such other shorter period as the Agent may approve) before the expiry of any obligatory insurance effected by it;
- (b) notify the Security Trustee of the brokers (or other insurers) and any protection and indemnity or war risks association through or with whom that Borrower proposes to renew that obligatory insurance and of the proposed terms of renewal; and
- (c) obtain the Security Trustee's approval to the matters referred to in paragraph (i);
- (d) at least 5 Business Days (or such other shorter period as the Agent may approve) before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Security Trustee's approval pursuant to paragraph (a); and
- (e) procure that the approved brokers and/or the war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Security Trustee in writing of the terms and conditions of the renewal.

13.6 Copies of policies; letters of undertaking

Each Borrower shall ensure that all approved brokers provide the Security Trustee with pro forma copies of all policies relating to the obligatory insurances which they are to effect or renew and of a letter or letters of undertaking in a form required by the Security Trustee and including undertakings by the approved brokers that:

- (a) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 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 14 days before the expiry of the obligatory insurances, in the event of their not having received notice of renewal instructions from that 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 that Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of that Ship forthwith upon being so requested by the Security Trustee.

13.7 Copies of certificates of entry

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provides the Security Trustee with:

- (a) a certified copy of the certificate of entry for that Ship;
- (b) a letter or letters of undertaking in such form as may be required by the Security Trustee;
- (c) where required to be issued under the terms of insurance/indemnity provided by a 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 that Borrower in accordance with the requirements of such protections and indemnity association; and

- (d) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to that Ship.

13.8 Deposit of original policies

Each Borrower shall ensure that all policies relating to obligatory insurances effected by it are deposited with the approved brokers through which the insurances are effected or renewed.

13.9 Payment of premiums

Each Borrower shall punctually (or shall procure that the Approved Managers of its Ship) pay all premiums or other sums payable in respect of the obligatory insurances effected by it and produce all relevant receipts when so required by the Security Trustee.

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 Compliance with terms of insurances

None of the Borrowers 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 13.6(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) none of the Borrowers shall make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
- (c) each Borrower shall make (and promptly supply copies to the Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
- (d) none of the Borrowers 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.

13.12 Alteration to terms of insurances

None of the Borrowers shall either make or agree to any alteration to the terms of any obligatory insurance nor waive any right relating to any obligatory insurance.

13.13 Settlement of claims

None of the Borrowers 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.

13.14 Provision of copies of communications

Each Borrower shall provide the Security Trustee, promptly following the request of the Agent, copies of all written communications between that Borrower and:

- (a) the approved brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters, which relate directly or indirectly to:
- (d) that Borrower's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls;
- (e) 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; and
- (f) a claim under any obligatory insurances of the Ship.

13.15 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 13.17 or dealing with or considering any matters relating to any such insurances,

and the Borrowers 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).

13.16 Mortgagee's interest marine insurance and additional perils insurance

The Security Trustee shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance and mortgagee's interest additional perils insurance in an amount not less than 120 per cent. of the Loan on such terms, through such insurers and generally in such manner as the Security Trustee may from time to time consider appropriate and each Borrower shall upon demand fully indemnify the Creditor Parties 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.

13.17 Review of insurance requirements

Upon the occurrence of an Event of Default, 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 opinion of the Security Trustee, significant and capable of affecting the Borrowers, the Borrower Ships and their Insurances (including, without limitation, changes in the availability or the cost of insurance coverage or the risks to which each Borrower may be subject), and may appoint insurance consultants in relation to this review at the cost of the relevant Borrower.

13.18 Modification of insurance requirements

The Security Trustee shall notify the Borrowers of any proposed modification under Clause 13.17 to the requirements of this Clause 13 which the Security Trustee reasonably consider appropriate in the circumstances, and such modification shall take effect on and from the date it is notified in writing to the relevant Borrower as an amendment to this Clause 13 and shall bind that Borrower accordingly.

13.19 Compliance with mortgagee's instructions

The Security Trustee shall be entitled (without prejudice to or limitation of any other rights which it may have or acquire under any Finance Document) to require a Borrower Ship to remain at any safe port or to proceed to and remain at any safe port designated by the Security Trustee until the Borrower owning that Ship implements any amendments to the terms of the obligatory insurances and any operational changes required as a result of a notice served under Clause 13.18.

14 SHIP COVENANTS

14.1 General

Each Borrower also undertakes with each Creditor Party to comply with the following provisions of this Clause 14 from the Drawdown Date and at all times during the Security Period (except as the Agent, with the authorisation of the Majority Lenders, may otherwise permit in writing (and in case of Clauses 14.2, 14.3(b), 14.5 and 14.12(e), such permission not to be unreasonably withheld or delayed).

14.2 Ship's name and registration

Each Borrower shall keep the Ship owned by it registered in its name under an Approved Flag; shall not do, omit to do or allow to be done anything as a result of which such registration might be cancelled or imperilled; and shall not change the name or port of registry of the Ship owned by it.

14.3 Repair and classification

Each Borrower shall keep the Ship owned by it in a good and safe condition and state of repair:

- (a) consistent with first-class ship ownership and management practice;
- (b) so as to maintain the highest class free of overdue recommendations and conditions with a first-class classification society which is a member of IACS acceptable to the Agent (such acceptance not to be unreasonably withheld);
- (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 and the ISPS Code.

14.4 Modification

None of the Borrowers shall make any modification or repairs to, or replacement of, any Borrower Ship or equipment installed on it which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.

14.5 Removal of parts

None of the Borrowers shall remove any material part of any Borrower Ship, or any item of equipment installed on, any Borrower 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 relevant Borrower Ship the property of the relevant Borrower and subject to the security constituted by the relevant Mortgage **Provided that** a Borrower may install and, subject to the Agent's consent, remove (such consent not to be unreasonably withheld or delayed, if such removal will not, in the opinion of the Agent, affect the value of the Borrower Ship) equipment owned by a third party if the equipment can be removed without any risk of damage to the Ship owned by it.

14.6 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 the Security Trustee provide the Security Trustee, with copies of all survey reports prepared by surveyors appointed by the Borrowers and, if required by the Security Trustee, by a surveyor appointed by the Security Trustee at the Borrowers' cost.

14.7 Inspection

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 interfering with the Ship's trading schedule at the cost of the Borrowers for inspections not more than once in any calendar year to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections **Provided that** if an Event of Default occurs which is continuing the Security Trustee may, by surveyors or other persons appointed by it, board the Ship and carry out such inspection at all times as it deems fit at the Borrowers' cost.

14.8 Prevention of and release from arrest

Each Borrower shall promptly discharge (or, in the case of paragraph (a) below, shall provide evidence satisfactory to the Agent that such liabilities are being contested by that Borrower in good faith by appropriate steps and in respect of which appropriate reserves have been made):

- (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 owned by it, 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, within 25 days (or such longer period as may be requested by the Borrowers and approved by the Agent acting with the authorisation of the Majority Lenders) from receiving notice of the arrest of the Ship owned by it, or of its detention in exercise or purported exercise of any such lien or claim, that Borrower shall procure its release by providing bail or otherwise as the circumstances may require.

14.9 Compliance with laws etc.

Each Borrower shall:

- (a) comply, or procure compliance with the ISM Code, the ISPS Code, all Environmental Laws and all other laws or regulations applicable to the Ship owned by it, its ownership, operation and management or to the business of that Borrower;
- (b) not employ the Ship owned by it nor allow its employment in any manner contrary to any applicable law or regulation in any relevant jurisdiction including but not limited to the ISM Code and the ISPS Code;
- (c) in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit the Ship owned by it to enter or trade to any zone which is declared a war zone by any government or by the Ship's war risks insurers unless the prior written consent of the war risk insurers has been given and that Borrower has (at its expense) effected any special, additional or modified insurance cover which the war risk insurers may require; and

- (d) comply with the PATRIOT Act and the United States Foreign Corrupt Practices Act.

14.10 Provision of information

Each Borrower shall promptly provide the Security Trustee with any information which it requests regarding:

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

14.11 Notification of certain events

Each Borrower shall (and shall procure in respect of paragraph (a) of this Clause 14.11 that each Collateral Owner shall) immediately notify (and (i) in respect of sub-paragraphs 14.12(a) and 14.12(b), such notice shall be as soon as practicable after the entry into such time or consecutive voyage charter and (ii) in respect of sub-paragraph (g), such notice shall be reasonably in advance of the relevant event or circumstance set out therein) the Security Trustee by fax and email, of:

- (a) in respect of any Tasman Ship and Ship B, any time or consecutive voyage charter in respect of that Tasman Ship or, as the case may be, Ship B;
- (b) in respect of Ship A or Ship B, any time or consecutive voyage charter in respect of the Ship owned by it permitted without the prior written consent of the Agent (acting with the authorisation of the Majority Lenders) pursuant to Clause 14.12(a);
- (c) any casualty which is a Major Casualty;
- (d) any occurrence as a result of which the Ship owned by it has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (e) any requirement or recommendation made by any insurer or classification society or by any competent authority which is not immediately complied with;
- (f) any arrest or detention of the Ship owned by it, any exercise or purported exercise of any lien on that Ship or its Earnings or any requisition of that Ship for hire;
- (g) any intended dry docking of the Ship owned by it;
- (h) any Environmental Claim made against that Borrower or in connection with the Ship owned by it, or any Environmental Incident;

- (i) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, an Approved Manager or otherwise in connection with the Ship owned by it; or
- (j) 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 that Borrower shall keep the Security Trustee advised in writing on a regular basis and in such detail as the Security Trustee shall require of that Borrower's, the Approved Managers or any other person's response to any of those events or matters.

14.12 Restrictions on chartering, appointment of managers etc.

None of the Borrowers shall, in relation to the Ship owned by it (and shall procure that no Collateral Owner shall, in relation to the Tasman Ship owned by it):

- (a) in respect of Ship A, enter into any time or consecutive voyage charter in respect of Ship A for a term which exceeds, or which by virtue of any optional extensions may exceed 12 months (+/- 45 days) unless Borrower A uses commercially reasonable efforts to ensure that such charter contains a "sales clause" entitling Borrower A to sell Ship A subject to the consent of the charterer, such consent not to be unreasonably withheld,
- (b) let that Ship on demise charter for any period;
- (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 that Ship is fixed;
- (e) appoint a manager of that Ship other than the Approved Managers or agree to any alteration to the terms of the Approved Managers' appointment (save for any alteration required in connection with the Merger);
- (f) de-activate or lay up that Ship; or
- (g) put that Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed \$500,000 (or the equivalent in any other currency) unless that person has first given to the Security Trustee and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or its Earnings for the cost of such work or for any other reason.

14.13 Notice of Mortgage

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

14.14 Sharing of Earnings

None of the Borrowers shall:

- (a) enter into any agreement or arrangement for the sharing of any Earnings;
- (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 a Borrower to any Earnings.

14.15 ISPS Code

Each Borrower shall comply with the ISPS Code and in particular, without limitation, shall:

- (a) procure that the Ship owned by that Borrower and the company responsible for that Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain for that Ship an ISSC; and
- (c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

14.16 Charterparty Assignment

If a Borrower enters into any Charter, that Borrower shall at the request of the Agent, execute in favour of the Security Trustee a Charterparty Assignment and shall procure to use its best endeavors:

- (i) serve notice of the Charterparty Assignment on the charterer and use its best endeavours to procure that the charterer acknowledges such notice in such form as the Agent may approve or require; and
- (ii) deliver to the Agent such other documents equivalent to those referred to at paragraphs 3, 4 and 5 of Schedule 3, Part A as the Agent may require.

14.17 Green Award

If and for so long as the Initial Lender is a Green Award Incentive Provider and a Creditor Party under this Agreement, in the event that any of the Borrowers or either of the Approved Managers complies with the requisite application, auditing and surveying process of Green Award and receives the Green Award certification and the Ship owned by that Borrower or managed by that Approved Manager becomes Green Award certified, the Initial Lender shall reimburse the Borrowers up to an amount equal to 25 per cent of the auditing and annual membership fees required in respect of that Ship (for the avoidance of doubt, such reimbursement shall not be applicable to any application fees).

14.18 Responsible Ship Recycling

If a Ship is sold for scrapping, the Borrower owning that Ship shall use its best endeavours to ensure that that Ship shall be dismantled in a safe, sustainable and socially and environmentally responsible way (the requirements for that Ship to be dismantled in a safe, sustainable, socially and environmentally responsible way shall be determined by the Agent in consultation with the relevant Borrower at the relevant time) and shall include, without limitation, the requirement that such Ship is recycled at a recycling yard which conducts its recycling business in a safely, socially and environmentally responsible manner and, to the extent applicable, in accordance with the provisions of The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 and the EU Ship Recycling regulation.

For the purposes of this clause "EU Ship Recycling Regulation" means Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (Text with EEA relevance).

15 SECURITY COVER

15.1 Minimum required security cover

Clause 15.2 applies if, at any time following the end of the Waiver Period, the Agent notifies the Borrowers that the Security Cover Ratio is below:

- (a) commencing from 1 January 2020 through 30 June 2020, 100 per cent.; or
- (b) commencing from 1 July 2020 and at any time thereafter, 110 per cent.,
of the aggregate amount of (i) the Loan and (ii) the Swap Exposure.

15.2 Provision of additional security; prepayment

If the Agent (acting on the instructions of the Majority Lenders) serves a notice on the Borrowers under Clause 15.1, the Borrowers shall prepay such part at least of the Loan as will eliminate the shortfall on or before the date falling 30 days after the date on which the Agent's notice is served under Clause 15.1 (the "**Prepayment Date**") unless at least 1 Business Day before the Prepayment Date the Borrowers have provided, or ensured that a third party has provided, additional security which, in the opinion of the Majority 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 the Majority Lenders, reasonably approve or require.

15.3 Valuation of Ships

The Market Value of a Borrower Ship (or, when applicable, a Tasman Ship) at any date is that shown by taking the arithmetic means of two valuations addressed to the Agent, each valuation to be prepared:

- (a) as at a date not more than 30 days previously;
- (b) by an Approved Broker nominated by the Borrowers or, as the context may require, the relevant Collateral Owner, and approved by the Agent;
- (c) with or without physical inspection of the Ship (as the Agent may require); and
- (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, free of any existing charter or other contract of employment.

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 valuations under Clause 15.2, 15.3 or 15.4 and any valuations provided under Clause 11.6(d) (including any additional valuations provided pursuant to Clause 15.8 at the option of the Borrowers) shall be binding and conclusive as regards the Borrowers, as shall be any valuation which the Majority 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 Approved Broker 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 Majority Lenders (or the expert appointed by them) consider prudent.

15.7 Frequency of valuations

Each Borrower acknowledges and agrees that the Agent may commission valuation(s) of each Ship at least semi-annually and at such other times as the Agent shall deem necessary (subject to Clause 15.8 of this Agreement).

15.8 Payment of valuation expenses

Without prejudice to the generality of the Borrowers' obligations under Clauses 20.2 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 **Provided that** so long as (i) no Event of Default has occurred which is continuing and (ii) no mandatory prepayment is required to be made pursuant to Clauses 8.8(a) or 8.8(b), the Borrowers shall not be obliged to pay any such fees or expenses in respect of more than two sets of valuations of each Ship in any calendar year (and, in respect of the Tasman Ships, any sets of valuations obtained under the terms, and for the purposes, of the Senior Facility Agreement shall be acceptable to satisfy the required two sets of valuations under this Agreement). At the cost and option of the Borrowers, the Borrowers shall be entitled to provide, in addition to the valuations under Clause 11.6(d) (for the other two quarters on which semi-annual valuations have not been provided together with the PIK Compliance Certificate), an additional set of valuations to determine the Market Values of the Borrower Ships to be utilised for the calculation of the PIK Amount.

15.9 Application of prepayment

Clause 8.10 shall apply in relation to any prepayment pursuant to Clause 15.2.

16 PAYMENTS AND CALCULATIONS

16.1 Currency and method of payments

All payments to be made by the Lenders or by any Borrower under a Finance Document shall be made to the Agent or to the Security Trustee, in the case of an amount payable to it:

- (a) by not later than 11.00 a.m. (New York City time) on the due date;
- (b) in same day Dollar funds settled through the New York Clearing House Interbank Payments System (or in such other Dollar funds and/or settled in such other manner as the Agent shall specify as being customary at the time for the settlement of international transactions of the type contemplated by this Agreement);
- (c) in the case of an amount payable by a Lender to the Agent or by any Borrower to the Agent or any Lender, to the account of the Agent with correspondent bank Bank of America Intl. New York (correspondent bank SWIFT: BOFAUS3N (SWIFT: ABNANL2A, beneficiary: ABN AMRO Bank N.V. Amsterdam and account number: NL60ABNA0626269504) with reference "\$64,253,892.38 facility re m.v.'s ORCA I, KATHERINE, TASMAN, DIMITRIS Y AND IAN H", 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 any 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 commitment fee 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, the Swap Bank or the Security Trustee shall be made available by the Agent to that Lender, the Swap Bank or, as the case may be, the Security Trustee by payment, with funds having the same value as the funds received, to such account as the Lender, the Swap Bank 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 and/or the Swap Bank generally shall be distributed by the Agent to each Lender and the Swap Bank 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 or the Swap Bank, deduct and withhold from that amount any sum which is then due and payable to the Agent from that Lender or the Swap Bank under any Finance Document or any sum which the Agent is then entitled under any Finance Document to require that Lender or the Swap Bank 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 any Borrower or any Lender or the Swap Bank any sum which the Agent is expecting to receive for remittance or distribution to that Borrower or that Lender or the Swap Bank 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 or the Swap Bank, without first having received that sum, that Borrower or (as the case may be) the Lender or the Swap Bank 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 the Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers 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 Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers 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 any Borrower under Clauses 20, 21 and 22 of this Agreement or by any Borrower or any Security Party under any corresponding or similar provision in any other Finance Document);
 - (ii) secondly, in or towards satisfaction pro rata of any and all amounts of interest or default interest payable to the Creditor Parties under the Finance Documents (and, for this purpose, the expression “**interest**” shall include any net amount which any Borrower shall have become liable to pay or deliver under section 2(e) (Obligations) of the Master Agreement but shall have failed to pay or deliver to the Swap Bank at the time of application or distribution under this Clause 17); and
 - (iii) thirdly, in or towards satisfaction pro rata of the Loan and the Swap Exposure (in the case of the latter, calculated as at the actual Early Termination Date applying to each particular Designated Transaction, or if no such Early Termination Date shall have occurred, calculated as if an Early Termination Date occurred on the date of application or distribution hereunder);
- (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 either 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 provisions of Clause 17.1(a); 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 the Majority Lenders and the Swap Bank, by notice to the Borrowers, the 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 any Borrower or any Security Party.

18 APPLICATION OF EARNINGS; SWAP PAYMENTS

18.1 Payment of Earnings and Swap Payments

Each Borrower undertakes with each Creditor Party to ensure that, throughout the Security Period (and subject only to the provisions of the General Assignments):

- (a) all Earnings of the Ship owned by it are paid to the Earnings Account for that Ship; and
- (b) all payments by the Swap Bank to any Borrower under each Designated Transaction are paid to the Earnings Account of that Borrower.

18.2 Application of Earnings

Each Borrower undertakes with the Lenders that any funds from time to time credited to, or standing to the credit of, its Earnings Account shall, unless and until an Event of Default shall have occurred and is continuing (whereupon the provisions of Clause 17.1 shall apply), be available for application in the following manner:

- (a) in or towards making payments of all amounts due and payable by the Borrowers under this Agreement and the Master Agreement (other than payments of principal and interest pursuant to Clauses 5.1, 7.2 and/or 8.1);
- (b) in or towards making the transfers to the Retention Account required pursuant to Clause 18.3; and
- (c) any surplus shall be applied in accordance with Clause 8.14 and once Clause 8.14 is no longer applicable, any surplus shall be released to the Borrowers **Provided that** no Event of Default has occurred and is continuing or will occur following such release to the Borrowers.

18.3 Monthly retentions

Each Borrower undertakes with each Creditor Party to ensure that, as of 1 January 2020 in each calendar month of the Security Period, on such dates as the Agent may from time to time specify, there is transferred to the Retention Account out of the Earnings received in its Earnings Account (or any of them) during the preceding calendar month:

- (a) one-third of the amount of the repayment instalment falling due under Clause 8.1 on the next Repayment Date;
- (b) the relevant fraction of the aggregate amount of interest on the Tranche which is payable on the next due date for payment of interest under this Agreement; and

- (c) the relevant fraction of the net amount which is payable by the Borrowers to the Swap Bank in respect of any Designated Transaction on the next due date for payment of such amount under the relevant Confirmation.

The “**relevant fraction**” is:

- (i) in relation to paragraph (b) a fraction of which the numerator is 1 and the denominator the number of months comprised in the then current Interest Period applicable to the Tranche (or, if the current Interest Period ends after the next due date for payment of interest under this Agreement for the Tranche, the number of months from the later of the commencement of the current Interest Period for the Tranche or the last due date for payment of interest for the Tranche to the next due date for payment of interest for the Tranche under this Agreement); and
- (ii) in relation to paragraph (c), a fraction of which the numerator is one and the denominator is the number of months between fixed rate payments specified in the relevant Confirmation.

18.4 Shortfall in Earnings

If the aggregate Earnings of the Ships received in the Earnings Accounts are insufficient in any month for the required amount to be transferred to the Retention Account under Clause 18.3, the Borrowers shall make up the amount of the insufficiency on demand from the Agent; but, without thereby prejudicing the Agent’s right to make such demand at any time, the Agent may, if so authorised by the Majority Lenders, permit the Borrowers to make up all or part of the insufficiency by increasing the amount of any transfer under Clause 18.3 from the Earnings of the Ships received in the next or subsequent months.

18.5 Application of retentions

Until an Event of Default occurs which is continuing, the Agent shall on each Repayment Date and on each due date for the payment of interest under this Agreement distribute to the Lenders in accordance with Clause 16.4 so much of the then balance on the Retention Account as equals:

- (a) the repayment instalment due on that Repayment Date; or
- (b) the amount of interest payable on that interest payment date,
- (c) in discharge of the Borrowers’ liability for that repayment instalment or that interest.

18.6 Interest accrued on Accounts

Any credit balance on the Accounts shall bear interest at the rate from time to time offered by the Agent to its customers for Dollar deposits of similar amounts and for periods similar to those for which such balances appear to the Agent likely to remain on the Accounts.

18.7 No release of accrued interest

Interest arising under Clause 18.6 shall be credited to the Retention Account but shall not be released to the Borrowers or, as the case may be, the Collateral Owners, until the end of the Security Period.

18.8 Location of accounts

Each Borrower shall (and shall procure that each Collateral Owner shall) promptly:

- (a) comply with any requirement of the Agent as to the location or re-location of the relevant Accounts (or any of them); and

- (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 Accounts.

18.9 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.

18.10 Borrowers' obligations unaffected

The provisions of this Clause 18 (as distinct from a distribution effected under Clause 18.5) do not affect:

- (a) the liability of the Borrowers to make payments of principal and interest on the due dates; or
- (b) any other liability or obligation of the Borrowers or any Security Party or K&T Marine under any Finance Document.

19 EVENTS OF DEFAULT

19.1 Events of Default

An Event of Default occurs if:

- (a) any 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 unless payment is made within 3 Business Days of its due date due to an administrative or technical error or a disruption event in the payment and/or communication system which, in each case, is beyond the control of the Creditor Parties; or
- (b) any breach occurs of Clause 8.16, 9.2, 10.18, 10.19, 11.2, 11.3, 11.18, 11.20, 11.21, 12.2, 12.3, 13.2, 13.4, 14.2, 14.8, 18.1 or 18.3 (and, in the case of Clause 18.3, such breach is not remedied as provided in Clause 18.4) or clause 11.19 of the Corporate Guarantee (unless (i) in respect of any breach under Clause 11.18, the Borrowers remedy any shortfall of the Minimum Liquidity Amount within 5 Business Days of the earlier of (A) the date on which the Agent becomes aware of such breach or (B) the date on which the Borrowers become aware of such breach or (ii) in respect of any breach under Clause 14.8, the arrest of the relevant Ship is discharged within 25 days (or such longer period as may be requested by the Borrowers and approved by the Agent acting with the authorisation of the Majority Lenders)); or
- (c) any breach by any Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a) or (b)) which, in the opinion of the Majority Lenders, is capable of remedy, and such default continues unremedied 10 days after the earlier of (i) the written notice from the Agent requesting action to remedy the same and (ii) the Borrower or the relevant Security Party becoming aware of the breach; or
- (d) (subject to any applicable grace period specified in any Finance Document) any breach by any Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach falling within 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 or K&T Marine in a Finance Document or in a Drawdown Notice or any other notice or document relating to a Finance Document is untrue or misleading when it is made or repeated; or

- (f) at any time other than during the Refinancing Period, any of the following occurs in relation to any Financial Indebtedness of a Relevant Person (any Financial Indebtedness, exceeding in aggregate, in the case of the Corporate Guarantor \$3,000,000 (or the equivalent in any other currency or currencies) and, in the case of a Borrower or a Collateral Owner, \$1,000,000 (or the equivalent in any other currency or currencies)):
- (i) any Financial Indebtedness of a Relevant Person is not paid when due; 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 (howsoever described in the relevant agreement or instrument) and irrespective of whether that event of default is or may be remedied or waived by the creditor(s) of that Relevant Person **Provided that:**
 - (A) in the case of an event of default that is remedied or waived by the creditor(s) of that Relevant Person, an Event of Default shall cease to exist under this Agreement once the Borrowers have provided written notice to the Agent of such remedy or waiver; and
 - (B) in the case of any Financial Indebtedness created under:
 - (1) any guarantee and indemnity of the Corporate Guarantor, a demand is made by the relevant creditor(s) under such guarantee and indemnity; or
 - (2) any guarantee and indemnity of the Corporate Guarantor securing the obligations of any Subsidiary, the Financial Indebtedness of that Subsidiary is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of that Subsidiary's payment default or that Subsidiary's declaration of bankruptcy or insolvency and, in the opinion of the Agent in its discretion, that payment default or, as the case may be, that default due to that declaration of bankruptcy or insolvency, may adversely affect the ability of the Corporate Guarantor to comply with its obligations under the Corporate Guarantee unless, in the case of any payment default, the Corporate Guarantor is able to provide evidence to the Agent that such payment default has been remedied within 10 days of the date on which the overdue payment(s) became due and payable,
- and for the avoidance of doubt, the above proviso shall not apply in respect of any event of default under the Senior Facility Agreement (howsoever described therein) as any such event of default shall trigger an automatic Event of Default under this Agreement; or
- (iii) a lease or hire purchase agreement (other than a time charter in connection with a Ship) creating any Financial Indebtedness of a Relevant Person is terminated by the lessor or owner or becomes capable of being terminated as a consequence of any termination event; or
 - (iv) any overdraft, loan, note issuance, acceptance credit, letter of credit, guarantee, foreign exchange or other facility, or any swap or other derivative contract or transaction, relating to any Financial Indebtedness of a Relevant Person ceases to be available or becomes capable of being terminated as a result of any event of default, or cash cover is required, or becomes capable of being required, in respect of such a facility as a result of any event of default; or
 - (v) any Security Interest securing any Financial Indebtedness of a Relevant Person becomes enforceable; or

- (g) any of the following occurs in relation to a Relevant Person:
- (i) at any time other than during the Refinancing Period, a Relevant Person becomes, in the opinion of the Majority Lenders, unable to pay its debts as they fall due (in respect of a sum of, or sums aggregating, \$1,000,000 (in the case of a Borrower or a Collateral Owner)) or \$3,000,000 (in the case of the Corporate Guarantor) or more or the equivalent in another currency or currencies, **Provided that** no Event of Default will occur under this paragraph if that debt is paid by that Relevant Person within 3 Business Days); or
 - (ii) any assets of a Relevant Person are subject to any form of execution, attachment, arrest, sequestration or distress or any form of freezing order (in respect of a sum of, or sums aggregating, \$500,000 (in the case of a member of the Group (other than the Corporate Guarantor)) or \$2,000,000 (in the case of the Corporate Guarantor) or more or the equivalent in another currency or currencies, **Provided that** no Event of Default will occur under this paragraph if that execution, attachment, arrest, sequestration or distress or any form of freezing order is discharged or released within 25 days (or such longer period as may be requested by the Borrowers and approved by the Agent acting with the authorisation of the Majority Lenders) of its commencement; or
 - (iii) any administrative or other receiver is appointed over any asset of a Relevant Person; or
 - (iv) an administrator is appointed (whether by the court or otherwise) in respect of a Relevant Person; or
 - (v) any formal declaration of bankruptcy or any formal statement to the effect that a Relevant Person is insolvent or likely to become insolvent is made by a Relevant Person or by the directors of a Relevant Person or, in any proceedings, by a lawyer acting for a Relevant Person; or
 - (vi) a provisional liquidator is appointed in respect of a Relevant Person, a winding up order is made in relation to a Relevant Person or a winding up resolution is passed by a Relevant Person; or
 - (vii) a resolution is passed, an administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by (aa) a Relevant Person, (bb) the members or directors of a Relevant Person, (cc) a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person, or (dd) a government minister or public or regulatory authority of a Pertinent Jurisdiction for or with a view to the winding up of that or another Relevant Person or the appointment of a provisional liquidator or administrator in respect of that or another Relevant Person, or that or another Relevant Person ceasing or suspending business operations or payments to creditors, save that this paragraph does not apply to a fully solvent winding up of a Relevant Person (other than a Borrower, a Collateral Owner or the Corporate Guarantor) which is, or is to be, effected for the purposes of an amalgamation or reconstruction previously approved by the Majority Lenders; 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,

No Event of Default shall occur under paragraphs (ix) and (x) above if any Subsidiary of the Corporate Guarantor or the Corporate Guarantor (together, the **“Negotiating Parties”** and each a **“Negotiating Party”**) take or resolve to take any steps or actions (the **“Steps and Actions”**) with a view to obtaining 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 in respect of any Financial Indebtedness (the **“Subsidiary Indebtedness”**) of any Negotiating Party **Provided that:**

 - (A) if that Negotiating Party has granted a Security Interest, guarantee or other form of assurance or security in favour of any creditor, that creditor has neither demanded any payment from that Negotiating Party nor exercised any of its enforcement rights in respect of that Subsidiary Indebtedness;
 - (B) the Agent is immediately notified by that Negotiating Party (or, in the case of a Subsidiary of the Corporate Guarantor, by the Corporate Guarantor) that it takes or resolves to take the Steps and Actions (together with any details, as may be reasonably requested by the Agent and to the extent that the same may be disclosed under any relevant non-disclosure arrangements entered into with the relevant creditor(s) in good faith, in connection with the Steps and Actions); and
 - (C) any Steps and Actions taken by that Negotiating Party do not have a material adverse effect (in the reasonable opinion of the Agent) on the financial condition, state of affairs or operations of that Negotiating Party and/or result in the non-compliance of any of the provisions of Clause 11.26 (*Most favoured nation clause*); or
- (xi) in a country other than England, any event occurs, any proceedings are opened or commenced or any step is taken which, in the opinion of the Majority Lenders is similar to any of the foregoing; or
- (h) any Borrower or any Collateral Owner 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
- (i) it becomes unlawful in any Pertinent Jurisdiction or impossible:
 - (i) for any Borrower, the Corporate Guarantor or any Security Party to discharge any liability under a Finance Document or to comply with any other obligation which the Majority Lenders consider material under a Finance Document; or
 - (ii) for the Agent, the Security Trustee, the Lenders or the Swap Bank to exercise or enforce any right under, or to enforce any Security Interest created by, a Finance Document; or

- (j) any official consent necessary to enable any Borrower or any Collateral Owner to own, operate or charter the Ship owned by it or to enable any Borrower or any Security Party or K&T Marine to comply with any provision which the Majority 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
- (k) ~~without the prior written consent of the Agent (to be given with the authorisation of the Majority Lenders (such consent not to be unreasonably withheld)) the Corporate Guarantor is listed on any stock exchange;~~
- (k) the New Holding Company guarantees the obligations of any obligor under any Group Facility Agreement (the “Initial Guarantee(s)”) and the Corporate Guarantor fails to:
- (1) notify the Agent of its intention to enter into such Initial Guarantee(s) and of its/their terms within seven (7) days prior to the date of such Initial Guarantee(s); or
- (2) if required by the Agent, execute in favour of the Security Trustee a guarantee as security for the obligations of the Borrowers under this Agreement on similar terms as the Initial Guarantee(s), within thirty (30) days (or such later date as may be reasonably required for the negotiation and preparation of the relevant guarantee documentation) from the Agent’s request;
- (l) any provision which the Majority Lenders consider material of a Finance Document proves to have been or becomes invalid or unenforceable, or a Security Interest created by a Finance Document proves to have been or becomes invalid or unenforceable or such a Security Interest proves to have ranked after, or loses its priority to, another Security Interest or any other third party claim or interest except the Permitted Security Interests; or
- (m) the security constituted by a Finance Document is in any way imperilled or in jeopardy or the state of the Approved Flag of a Ship is or becomes involved in hostilities or civil war or there is a seizure of power in such state by unconstitutional means, or any other event occurs in relation to that Ship, the Mortgage or the Approved Flag in respect of that Ship and in the reasonable opinion of the Agent such event is likely to have a Material Adverse Effect unless the Borrower or, as the case may be, the Collateral Owner owning that Ship, within 14 days of the occurrence of such event (or such longer period as may be agreed by the Agent acting with the authorisation of the Lenders) re-registers that Ship on an alternative Approved Flag and subject to:
- (i) the Ship remaining subject to a Security Interest created by a first (or, as the case may be, in the case of a Tasman Ship, second) priority or preferred ship mortgage on the Ship and, if appropriate, a first (or, as the case may be, in the case of a Tasman Ship, second) priority deed of covenant collateral to that mortgage (or equivalent first or, as the case may be in the case of a Tasman Ship, second, priority security) on substantially the same terms as the Mortgage in respect of the Ship in Agreed Form; and
- (ii) the execution of such other documentation amending and supplementing the Finance Documents, as the Agent, acting with the authorisation of the Lenders, shall reasonably approve or require; or
- (n) an Event of Default (as defined in section 14 of the Master Agreement) occurs; or
- (o) the Master Agreement or any other Finance Document is terminated, cancelled, suspended, rescinded or revoked or otherwise ceases to remain in full force and effect for any reason except with the consent of the Agent, acting with the authorisation of the Majority Lenders; or
- (p) any breach occurs of Clause 15.2, and such default continues un-remedied 14 days after written notice from the Agent requesting action to remedy the same; or

- (q) the authority or ability of a Borrower, a Collateral Owner or the Corporate Guarantor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to such Borrower, such Collateral Owner or the Corporate Guarantor (as the case may be) or any of its assets (unless, in the case of any Borrower or any Collateral Owner, any such occurrence would otherwise be considered a Total Loss as a result of which a mandatory prepayment would be required pursuant to Clause 8.8(b) (*Mandatory prepayment*), and the Borrowers prepay the required amount in accordance with Clause 8.8(b) (*Mandatory prepayment*)); or
- (r) a Borrower or a Security Party (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document; or
- (s) any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to any of the Finance Documents or the transactions contemplated in any of the Finance Documents or against a Borrower, a Collateral Owner or the Corporate Guarantor or its respective assets which has or could reasonably be expected to have a Material Adverse Effect; or
- (t) 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, any Collateral Owner or the Corporate Guarantor; or
 - (ii) any accident or any Environmental Incident or other event involving any Ship or another vessel owned, chartered or operated by a Relevant Person,
 which constitutes a Material Adverse Change.

19.2 Actions following an Event of Default

On, or at any time after, the occurrence of an Event of Default:

- (a) the Agent may, and if so instructed by the Majority Lenders, the Agent shall:
 - (i) serve on the Borrowers a notice stating that all or part of the Commitments and all other obligations of each Lender to the Borrowers under this Agreement are cancelled; and/or
 - (ii) serve on the Borrowers a notice stating that all or part of the Loan together with 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
 - (iv) the Security Trustee may, and if so instructed by the Agent, acting with the authorisation of the Majority Lenders, the Security Trustee shall take any action which, as a result of the Event of Default or any notice served under paragraph (a)(i) or (a)(ii), the Security Trustee, the Agent and/or the Lenders and/or the Swap Bank are entitled to take under any Finance Document or any applicable law.

19.3 Termination of Commitments

On the service of a notice under Clause 19.2(a)(i), the Commitments and all other obligations of each Lender to the Borrowers under this Agreement shall be cancelled.

19.4 Acceleration of Loan

On the service of a notice under Clause 19.2(a)(ii), all or, as the case may be, part of the Loan, specified in the notice together with 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) or 19.2(a)(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 Swap Bank, 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 any Borrower or any Security Party with any form of claim or defence.

19.7 Creditor Party's rights unimpaired

Nothing in this Clause shall be taken to impair or restrict the exercise of any right given to individual Lenders or the Swap Bank 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 Corporate Guarantor, a Borrower, any other Security Party (other than (i) an Approved Manager, (ii) K&T Marine and, for the avoidance of doubt, (iii) the Poseidon Shareholders).

19.10 Interpretation

In Clause 19.1(g) 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.

19.11 Position of Swap Bank

Neither the Agent nor the Security Trustee shall be obliged, in connection with any action taken or proposed to be taken under or pursuant to the foregoing provisions of this Clause 19, to have any regard to the requirements of the Swap Bank except to the extent that the Swap Bank is also a Lender.

20 FEES AND EXPENSES

20.1 Costs of negotiation, preparation etc.

The Borrowers shall pay to the Agent on its demand the amount of all expenses (including legal and insurance consultant fees) reasonably and properly incurred by the Agent or the Security Trustee in connection with the negotiation, preparation, printing, execution, syndication, perfection or registration of any Finance Document or any related document or with any transaction contemplated by a Finance Document or a related document (including, but not limited to, any costs incurred by the Agent in connection with the insurance opinion to be provided to it in accordance with paragraph 7 of Part B, Schedule 3).

20.2 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 reasonably and properly 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, the Swap Bank, the Majority 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 (save as otherwise provided in Clause 15.8) or any other matter relating to such security; or
- (d) where the Security Trustee, 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 that Ship pursuant to Clause 13.17; and
- (e) any step taken by the Creditor Party 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.

20.3 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 Borrowers to pay such a tax.

20.4 Agent's management time

Any indemnity amount payable to the Agent under the Agency and Trust Agreement or this Agreement shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrowers (and always subject to the Borrowers' prior consent, such consent not to be unreasonably withheld) and the other Creditor Parties, and is in addition to any fee paid or payable to the Agent under Clause 20.

20.5 Security Trustee's management time

Any indemnity amount payable to the Security Trustee under the Agency and Trust Agreement or this Agreement shall include the cost of utilising the Security Trustee's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Trustee may notify to the Borrowers (and always subject to the Borrowers' prior consent, such consent not to be unreasonably withheld) and the other Creditor Parties, and is in addition to any fee paid or payable to the Security Trustee under Clause 20.

20.6 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 20 and is accompanied by a breakdown which indicates the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

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 Tranche 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 payment in respect 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 the Borrowers 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); and
- (d) the occurrence and/or continuance of an Event of Default or a Potential 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 or any FATCA deduction) 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, 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 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 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; or
- (b) any other Pertinent Matter,

other than claims, expenses, liabilities and losses which are shown to have been directly and mainly caused by the dishonesty or wilful misconduct of the officers or employees of the Creditor Party concerned.

Without prejudice to its generality, this Clause 21.3 covers any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code, the ISPS Code or any Environmental Law.

21.4 Environmental Indemnity

Without prejudice to its generality, Clause 21.3 covers any claims, demands, proceedings, liabilities, taxes, losses or expenses of every kind which arise, or are asserted, under or in connection with any law relating to safety at sea, pollution or the protection of the environment, the ISM Code or the ISPS Code.

21.5 Currency indemnity

If any sum due from any 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 (Rotterdam 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 their other liabilities under the Finance Documents and which shall not be merged in any judgment or order relating to those other liabilities.

21.6 Application to Master Agreement

For the avoidance of doubt, Clause 21.5 does not apply in respect of sums due from a Borrower to the Swap Bank under or in connection with the Master Agreement as to which sums the provisions of section 8 (Contractual Currency) of the Master Agreement shall apply.

21.7 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 is accompanied by a breakdown which indicates the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

21.8 Sums deemed due to a Lender

For the purposes of this Clause 21, a sum payable by the Borrowers to the Agent or the Security Trustee for distribution to a Lender shall be treated as a sum due to that Lender.

21.9 Mandatory cost

The Borrowers shall, on demand by the Agent, pay to the Agent for the account of the relevant Lender, such amount which any Lender certifies in a notice to the Agent to be its good faith determination of the amount necessary to compensate it for complying with:

- (a) in the case of a Lender lending from a lending office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank or any other authority or agency which replaces all or any of its functions) in respect of loans made from that facility office; and
- (b) in the case of any Lender lending from a lending office in the United Kingdom, any reserve asset, special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England (or any other governmental authority or agency) and/or paying any fees to the Financial Conduct Authority and/or the Prudential Regulation Authority (or any other governmental authority or agency which replaces all or any of their functions), which, in each case, is referable to that Lender's participation in the Loan.

21.10 Notice of prepayment

If the Borrowers are not willing to continue to indemnify the Creditor Parties for any tax for which the Creditor Parties liable under Clause 21.1, the Borrowers may give the Agent not less than 14 days' notice of their intention to prepay the Loan at the end of an Interest Period.

21.11 Prepayment

A notice under Clause 21.10 shall be irrevocable; and on the date specified in the Borrowers' notice of intended prepayment, the Commitments shall terminate and the Borrowers shall prepay the Loan, (without premium or penalty) together with accrued interest thereon at the applicable rate plus the applicable Margin and the Mandatory Cost (if any).

22 NO SET-OFF OR TAX DEDUCTION

22.1 No deductions

All amounts due from the Borrowers 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) that Borrower shall notify the Agent as soon as it becomes aware of the requirement;
- (b) that 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 Borrower concerned 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, excluding any FATCA Deduction, except tax on a Creditor Party’s overall net income.

22.5 Application to Master Agreement

For the avoidance of doubt, Clause 22 does not apply in respect of sums due from a Borrower to the Swap Bank under or in connection with the Master Agreement as to which sums the provisions of section 2(d) (Deduction or Withholding for Tax) of the Master Agreement shall apply.

22.6 Notice of prepayment

If the Borrowers are not willing to continue to make a tax deduction under Clause 22.2, the Borrower may give the Lender not less than 14 days’ notice of its intention to prepay the Loan at the end of an Interest Period.

22.7 Prepayment

A notice under Clause 22.6 shall be irrevocable; and on the date specified in the Borrowers’ notice of intended prepayment, the Commitments shall terminate and the Borrowers shall prepay (without premium or penalty) the Loan, together with accrued interest thereon at the applicable rate plus the applicable Margin and the Mandatory Cost (if any).

22.8 FATCA

(a) FATCA Information

- (i) Subject to paragraph (iii) below, each party to a Finance Document shall, within 10 Business Days of a reasonable request by another party to the Finance Documents:
 - (A) confirm to that other party whether it is a FATCA Exempt Party or is not a FATCA Exempt Party; and
 - (B) supply to the requesting party such forms, documentation and other information relating to its status under FATCA (including its applicable “passthru percentage” or other information required under the US Treasury regulations or other official guidance including intergovernmental agreements) as the requesting party reasonably requests for the purposes of such requesting party’s compliance with FATCA.

- (ii) If a party to any Finance Document confirms to another party pursuant to Clause 22.8(a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that party shall notify that other party reasonably promptly;
 - (iii) Sub-clause (i) above shall not oblige any Creditor Party to do anything which would or might in its reasonable opinion constitute a breach of any law or regulation, any policy of that party, any fiduciary duty or any duty of confidentiality, or to disclose any confidential information (including, without limitation, its tax returns and calculations); provided, however, that information required (or equivalent to the information so required) by United States Internal Revenue Service Forms W-8 or W-9 (or any successor forms) shall not be treated as confidential information of such party for purposes of this sub-clause (iii);
 - (iv) If a party to any Finance Document fails to confirm its status or to supply forms, documentation or other information requested in accordance with sub-clause (i) above (including, for the avoidance of doubt, where sub-clause (iii) above applies), then:
 - (A) if that party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
 - (B) if that party failed to confirm its applicable passthru percentage then such party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable passthru percentage is 100 per cent.,until (in each case) such time as the party in question provides the requested confirmation, forms, documentation or other information.
- (b) **FATCA Withholding**
- (i) Each party to any Finance Document may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
 - (ii) Each party to any Finance Document shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the party to whom it is making the payment and, in addition, shall notify the Borrower, the Agent and the other Creditor Parties.

23 ILLEGALITY, ETC.

23.1 Illegality

This Clause 23 applies if a Lender (for the purposes of this Clause 23, a **“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 and applicable law, an amendment to an existing and applicable law or a change in the manner in which an existing and applicable law is or will be interpreted or applied; or
- (b) contrary to, or inconsistent with, any applicable 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 any 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 23.2, the relevant 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.

23.4 Mitigation

If circumstances arise which would result in a notification under Clause 23.1 then, without in any way limiting the rights of the Lenders under Clause 23.3, the Notifying Lender shall use reasonable endeavours to transfer its obligations, liabilities and rights under this Agreement and the Finance Documents to another office or financial institution not affected by the circumstances but the Notifying Lender shall not be under any obligation to take any such action if, in its opinion, to do would or might:

- (a) have an adverse effect on its business, operations or financial condition; or
- (b) involve it in any activity which is unlawful or prohibited or any activity that is contrary to, or inconsistent with, any regulation; or
- (c) involve it in any expense (unless indemnified to its satisfaction) or tax disadvantage.

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 an alteration after the date of this Agreement in the manner in which a law is interpreted or applied (disregarding any effect which relates to the application to payments under this Agreement of a tax on the Lender's overall net income); or
- (b) complying with any regulation (including any which relates to capital adequacy or liquidity controls or which affects the manner in which the Notifying Lender allocates capital resources to its obligations under this Agreement) which is introduced, or altered, or the interpretation or application of which is altered, after the date of this Agreement; or
- (c) the introduction, implementation, application, administration or compliance with:
 - (i) the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004, in the form existing on the date of this Agreement ("Basel II") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Creditor Party or any of its Affiliates); or
 - (ii) Basel III, CRD IV or CRR or any law or regulation which implements or applies Basel III, CRD IV or CRR (regardless of the date on which it is enacted, adopted or issued and regardless of whether any such implementation, application or compliance is by a government, regulator, a Creditor Party or any of its Affiliates) after the date of this Agreement,

the Notifying Lender (or its Holding Company) has incurred or will incur an **“increased cost”**, (in each case when compared to the cost of complying with such regulations as determined by the Notifying Lender (or Holding Company or Affiliate of it) on the date of this Agreement (whether such implementation, application or compliance is by a government, regulator, supervisory authority, the Notifying Lender or its Holding Company),

24.2 Meaning of “increased cost”

In this Clause 24, “increased cost” means, in relation to a Notifying Lender:

- (a) an additional or increased cost incurred as a result of, or in connection with, the Notifying Lender having entered into, or being a party to, this Agreement or a Transfer Certificate, of funding or maintaining its Commitment or Contribution or performing its obligations under this Agreement, or of having outstanding all or any part of its Contribution or other unpaid sums;
- (b) a reduction in the amount of any payment to the Notifying Lender under this Agreement or in the effective return which such a payment represents to the Notifying Lender or on its capital;
- (c) an additional or increased cost of funding all or maintaining all or any of the advances comprised in a class of advances formed by or including the Notifying Lender’s Contribution or (as the case may require) the proportion of that cost attributable to the Contribution; or
- (d) a liability to make a payment, or a return foregone, which is calculated by reference to any amounts received or receivable by the Notifying Lender under this Agreement,

but not an item attributable to (i) a change in the rate of tax on the overall net income of the Notifying Lender (or a Holding Company of it), (ii) a FATCA Deduction required to be made by a party to a Finance Document or (iii) an item covered by the indemnity for tax in Clause 21.1 or by Clause 22.

For the purposes of this Clause 24.2 the Notifying Lender may in good faith allocate or spread costs and/or losses among its assets and liabilities (or any class of its assets and liabilities) on such basis as it considers appropriate.

24.3 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.

24.4 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.

24.5 Notice of prepayment

If the Borrowers are not willing to continue to compensate the Notifying Lender for the increased cost under Clause 24.4, the Borrowers may give the Agent not less than 14 days’ notice of their intention to prepay the Notifying Lender’s Contribution at the end of an Interest Period.

24.6 Prepayment; termination of Commitment

A notice under Clause 24.5 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 applicable Margin and the Mandatory Cost (if any).

24.7 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 a Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from that Borrower to that Creditor Party under any of the Finance Documents; and
- (b) for that purpose:
- (c) break, or alter the maturity of, all or any part of a deposit of that Borrower;
- (d) convert or translate all or any part of a deposit or other credit balance into Dollars; and
- (e) 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 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 the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of any Borrower.

26 TRANSFERS AND CHANGES IN LENDING OFFICES

26.1 Transfer by Borrowers

None of the Borrowers may, without the prior written consent of the Agent, given on the instructions of all the Creditor Parties, transfer any of its rights, liabilities or obligations under any Finance Document and the Master Agreement.

26.2 Transfer by a Lender

Subject to Clause 26.4, a Lender (the "**Transferor Lender**") may at any time, with consultation with the Borrowers but without the consent of the Borrowers or any Security Party, 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, another bank or financial institution or a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (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. The Transferee Lender shall be selected by the Transferor Lender with prior consultation with the Borrowers.

No Borrower, Security Party or any other member of the Group or shareholder of any such party shall be entitled to become a Transferee Lender.

However any rights and obligations of the Transferor Lender in its capacity as Agent or Security Trustee will have to be dealt with separately in accordance with the Agency and Trust Agreement

26.3 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 and the Swap Bank;
- (b) on behalf of the Transferee Lender, send to each Borrower 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,

but the Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Transferor Lender and the Transferee Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to that Transferee Lender.

26.4 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.

26.5 No transfer without Transfer Certificate

Except as provided in Clause 26.17, 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, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

26.6 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.

26.7 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 (other than the Master 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 any 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 (other than the Master Agreement) which are applicable to the Lenders generally, including those about prorata 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 any 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 (other than the Master Agreement) which are applicable to the Lenders generally, including but not limited to those relating to the Majority Lenders and 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 any 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.

26.8 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 the Borrowers during normal banking hours, subject to receiving at least 3 Business Days' prior notice.

26.9 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.

26.10 Authorisation of Agent to sign Transfer Certificates

Each Borrower, the Security Trustee and each Lender and the Swap Bank irrevocably authorise the Agent to sign Transfer Certificates on its behalf.

26.11 Registration fee

In respect of any Transfer Certificate, the Agent shall be entitled to recover a registration fee of \$2,500 from the Transferor Lender or (at the Agent's option) the Transferee Lender.

26.12 Sub-participation; securitisation; subrogation assignment

- (a) A Lender may sub-participate or include in a securitisation or similar transaction all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, any Borrower, any Security Party, the Agent or the Security Trustee or any other Creditor Party; and the Lenders may assign, in any manner and terms agreed by the Majority Lenders, the Agent and the Security Trustee, all or any part of those rights to an insurer or surety who has become subrogated to them.
- (b) The Borrowers shall, and shall procure that each Security Party shall, do everything desirable or necessary to assist a Lender to achieve a successful (in the opinion of that Lender) securitisation (or similar transaction).

26.13 Disclosure of information

- (a) In relation to any information which a Lender has received (other than Confidential Information) in relation to any Borrower, any Security Party or their affairs under or in connection with any Finance Document, that Lender may disclose (save as otherwise provided in Clause 31) any such information without the prior irrevocable authorisation of or notice to that Borrower and the Corporate Guarantor to:
 - (b) a potential transferee lender, sub-participant, Affiliate, any other assignee or transferee or any other person who may propose entering into a contractual relation with that Lender in relation to this Agreement; and/or
 - (c) any direct or indirect Subsidiary, any direct or indirect Holding Company, any Affiliate or any other company in its group; and/or
 - (d) any authorities (including, without limitation, any private, public or internationally recognised authorities) or any party to any Finance Document or any professional adviser to that Lender; and/or
 - (e) a rating agency or their professional advisors; and/or
 - (f) any other person regarding the funding, refinancing, transfer, assignment, sale, sub-participation, insurance arrangement, operational arrangement or other transaction in relation thereto including without limitation any enforcement, preservation, assignment, transfer, sale or sub-participation of that Lender's rights and obligations,
 - (g) and including, without limitation, (x) for purposes in connection with (1) any enforcement or (2) assignment or transfer of that Lender's rights or obligations under any Finance Document or (y) to the extent desirable or necessary in connection with or in contemplation of a securitisation (or similar transaction).

26.14 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.

26.15 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.

26.16 Replacement of Reference Bank

If any Reference Bank ceases to be a Lender or is unable on a continuing basis to supply quotations for the purposes of Clause 5 then, unless the Borrowers, the Agent and the Majority Lenders otherwise agree, the Agent, acting on the instructions of the Majority Lenders, and after consulting the Borrowers, shall appoint another bank (whether or not a Lender) to be a replacement Reference Bank; and, when that appointment comes into effect, the first-mentioned Reference Bank's appointment shall cease to be effective.

26.17 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 26, each Lender may without consulting with or obtaining consent from any Borrower or any Security Party, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and
 - (b) in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities;
- except that no such charge, assignment or Security Interest shall:
- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for that Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by any Borrower or any Security Party or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

27 VARIATIONS AND WAIVERS

27.1 Variations, waivers etc. by Majority Lenders

Subject to Clause 27.2, 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 or K&T Marine is a party, by that Security Party or K&T Marine.

27.2 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 27.1 applies as if the words “by the Agent on behalf of the Majority Lenders” were replaced by the words “by or on behalf of every Lender and the Swap Bank”:

- (a) a reduction in the Margin;
- (b) a postponement to the date for, or a reduction in the amount of, any payment of principal, interest, fees or other sum payable under this Agreement;
- (c) an increase in any Lender’s Commitment;
- (d) a change to the definition of “**Majority Lenders**”;
- (e) a change to any of the definitions of “**Restricted Party**”, “**Sanctions**”, “**Sanctions Authority**”, or “**Sanctions List**” or a change to Clause 11.20;
- (f) a change to Clause 3 or this Clause 27;
- (g) any release of, or material variation to, a Security Interest, guarantee, indemnity or subordination arrangement set out in a Finance Document (except to the extent expressly provided for in any Finance Document); and
- (h) any other change or matter as regards which this Agreement or another Finance Document expressly provides that each Lender’s consent is required.

27.3 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 27.1 and 27.2, 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 a Security Party of an obligation under a Finance Document or the general law; or
- (d) any right or remedy conferred by any Finance Document or by the general law,

and there shall not be implied into any Finance Document any term or condition requiring any such provision to be enforced, or such right or remedy to be exercised, within a certain or reasonable time.

28 NOTICES

28.1 General

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

28.2 Addresses for communications

A notice by letter or fax shall be sent:

- (a) to the Borrowers: c/o the Technical Manager
3-5 Menandrou Street
145 61 Kifissia
Greece
Facsimile No: +30 210 80 84 224
- (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, Arranger and
Security Trustee: ABN AMRO Bank N.V.
93 Coolensingel,
3012 AE Rotterdam
The Netherlands
Fax No: +31 10401 5323
- (d) to the Swap Bank: ABN AMRO Bank N.V.
c/o Markets Documentation Unit
Gustav Mahlerlaan 10
NL-1082PP Amsterdam
The Netherlands
mdu@nl.abnamro.com
Fax No: +31 10 459 0538

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.

28.3 Effective date of notices

Subject to Clauses 28.4 and 28.5:

- (a) a notice which is delivered personally or posted shall be deemed to be served, and shall take effect, at the time when it is delivered; and
- (b) a notice which is sent by fax shall be deemed to be served, and shall take effect, 2 hours after its transmission is completed.

28.4 Service outside business hours

However, if under Clause 28.3 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 28.5) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

28.5 Illegible notices

Clauses 28.3 and 28.4 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.

28.6 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.

28.7 Electronic communication

Any communication to be made between the Agent and a Lender or Swap Bank or the Agent and the Borrowers under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent and the relevant Creditor Party and the Borrower:

- (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 or the Swap Bank or the Borrowers will be effective only when actually received in readable form and, in the case of any electronic communication made by a Creditor Party or the Borrowers to the Agent, only if it is addressed in such a manner as the Agent shall specify for this purpose.

28.8 English language

Any notice under or in connection with a Finance Document shall be in English.

28.9 Meaning of “notice”

In this Clause 28, “**notice**” includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

29 JOINT AND SEVERAL LIABILITY

29.1 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 29.2, joint.

29.2 No impairment of Borrower's 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 any other Borrower;
- (b) any Lender, the Swap Bank or the Security Trustee entering into any rescheduling, refinancing or other arrangement of any kind with any other Borrower;
- (c) any Lender, the Swap Bank or the Security Trustee releasing any other Borrower or any Security Interest created by a Finance Document; or
- (d) any combination of the foregoing.

29.3 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 none of the Borrowers shall in any circumstances be construed to be a surety for the obligations of the other Borrower under this Agreement.

29.4 Subordination

Subject to Clause 29.5, during the Security Period, none of the Borrowers shall:

- (a) claim any amount which may be due to it from any 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 any 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 any other Borrower; or
- (c) set off such an amount against any sum due from it to any other Borrower; or
- (d) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving any other Borrower or other Security Party; or
- (e) exercise or assert any combination of the foregoing.

29.5 Borrower's 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 29.4, in relation to any other Borrower, that Borrower shall take that action as soon as practicable after receiving the Agent's notice.

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.

30.5 PATRIOT Act Notice

Each of the Agent and the Lenders hereby notifies the Borrowers that pursuant to the requirements of the PATRIOT Act and the policies and practices of the Agent and each Lender, the Agent and each of the Lenders is required to obtain, verify and record certain information and documentation that identifies each Borrower and any Security Party, which information includes the name and address of each Security Party and such other information that will allow the Agent and each of the Lenders to identify each Security Party in accordance with the PATRIOT Act.

31 CONFIDENTIALITY

31.1 Confidential Information

The Creditor Parties agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 31.2, and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

31.2 Disclosure of Confidential Information

The Creditor Parties may disclose:

- (a) to any of its Affiliates and any of their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as the Creditor Parties shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person (if that person to whom the Confidential Information is to be given is informed in writing of its confidential nature and undertakes in writing not to disclose such Confidential Information to any third party and/or make use of it in case the dealings contemplated below are not concluded):
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and/or any Security Party and to any of that person's Affiliates, Representatives and professional advisers;

- (iii) appointed by the Creditor Parties or by a person to whom paragraphs (i) or (ii) applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraphs (i) or (ii);
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom or for whose benefit a Creditor Parties charges, assigns or otherwise creates security (or may do so) pursuant to Clause 26.17;
- (vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (viii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (ix) to whom information is required to be disclosed in connection with, and for the purposes of, any insurance to be effected by a Creditor Party in relation to or in connection with any Finance Document;
- (x) who is a party to this Agreement; or
- (xi) with the consent of the Borrowers,

in each case, such Confidential Information as the Creditor Parties shall consider appropriate;

- (c) to any person appointed by a Creditor Party by a person to whom paragraphs (b)(i) or (b)(ii) of Clause 31.2 applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) provided always that such person will undertake in writing not to disclose such Confidential Information to any third party;
- (d) to any rating agency (including its profession advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents, the Borrower and/or the Security Parties provided always that such rating agency will undertake in writing not to disclose such Confidential Information to any third party.

31.3 Entire agreement

This Clause 31 constitutes the entire agreement between the parties to this Agreement in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

31.4 Inside Information

The Creditor Parties acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Creditor Parties undertake not to use any Confidential Information for any unlawful purpose.

31.5 Notification of disclosure

The Creditor Parties agree (to the extent permitted by law and regulation) to inform the Borrowers and the Security Parties:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 31.2 except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 31.

31.6 Continuing obligations

The obligations of this Clause 31 are continuing and, in particular, shall survive and remain binding on the Creditor Parties for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Borrower and the Security Parties under or in connection with the Finance Documents have been paid in full and all obligations of the Creditor Parties have been cancelled or otherwise cease to be available; and
- (b) the date on which a Creditor Party otherwise ceases to be a party to this Agreement.

32 BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each Party acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

33 LAW AND JURISDICTION

33.1 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.

33.2 Exclusive English jurisdiction

Subject to Clause 33.3, the courts of England shall have exclusive jurisdiction to settle any Dispute.

33.3 Choice of forum for the exclusive benefit of the Creditor Parties

Clause 33.2 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.

None of the Borrowers shall commence any proceedings in any country other than England in relation to a Dispute.

33.4 Process agent

Each Borrower irrevocably appoints Saville & Co. at its registered office for the time being presently at One Carey Lane, London, EC2V 8AE, England to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with a Dispute.

33.5 Creditor Party rights unaffected

Nothing in this Clause 33 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.

33.6 Meaning of “proceedings” and “Dispute”

In this Clause 33, “**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 and amended and restated on the dates stated at the beginning of this Agreement.

SCHEDULE 1

LENDERS AND COMMITMENTS

Lender	Lending Office	Commitment (US Dollars)
ABN AMRO BANK N.V.	c/o Loans Administration Transportation Clients 93 Coolingsingel 3012 AE Rotterdam The Netherlands	64,253,892.38

SCHEDULE 2

DRAWDOWN NOTICE

To: ABN AMRO BANK N.V.
93 Coolsingel
3012 AE Rotterdam
The Netherlands

Attention: Loans Administration

[•]

DRAWDOWN NOTICE

- 1 We refer to the loan agreement (the “Loan Agreement”) dated [•] 2017 and made between ourselves, as Borrowers, the Lenders referred to therein, and yourselves as Agent, Arranger, Security Trustee and Swap Bank in connection with a facility of ~~US\$~~ US\$64,253,892.38. Terms defined in the Loan Agreement have their defined meanings when used in this Drawdown Notice.
- 2 We request to borrow the Tranche as follows:
 - (a) Amount of Tranche: US\$[•];
 - (b) Drawdown Date: [•];
 - (c) Duration of the first Interest Period shall be [•] months; and
 - (d) Payment instructions: account in our name and numbered [•] with [•] of [•].
- 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; and
 - (b) no Event of Default or Potential Event of Default has occurred or will result (save as otherwise provided in clause 9.1(c) of the Loan Agreement) from the borrowing of the Tranche.
- 4 This notice cannot be revoked without the prior consent of the Majority Lenders.

[Name of Signatory]

for and on behalf of
ZEUS ONE MARINE LLC
IKAROS MARINE LLC

SCHEDULE 3

CONDITION PRECEDENT DOCUMENTS

PART A

The following are the documents referred to in clause 9.1(a) required before service of the first Drawdown Notice.

- 1 A duly executed original of:
 - (a) this Agreement;
 - (b) the Master Agreement;
 - (c) the Master Agreement Assignment;
 - (d) the Corporate Guarantee;
 - (e) the Agency and Trust Agreement;
 - (f) the Accounts Pledge;
 - (g) the Shares Security Deeds; and
 - (h) any Subordination Agreement,each document required to be delivered under each Finance Document referred to in paragraphs (a) to (i) inclusive above and any other Finance Document that the Agent may require, in the Agreed Form.
- 2 Copies of the certificate of formation and constitutional documents (and a certificate of goodstanding) of each Borrower, the Corporate Guarantor and any other Security Party.
- 3 Copies of appropriate evidence of authorisation by the members (or, as the case may be, the directors) of each Borrower and each Security Party authorising the execution of each of the Finance Documents to which that Borrower or that Security Party is a party and, in the case of a Borrower, authorising named officers to give the Drawdown Notices and other notices under this Agreement.
- 4 The original of any power of attorney under which any Finance Document and the Master Agreement is executed on behalf of a Borrower, the Corporate Guarantor and any other Security Party.
- 5 An original certificate of a duly authorised officer of the Borrower and each Security Party:
 - (a) certifying that each copy document relating to it specified in paragraphs 2, 3 and 4 of this Part A of Schedule 3 is correct, complete and in full force and effect;
 - (b) setting out the names of the directors, officers and members of that Borrower and Security Party and the proportion of shares held by each member; and
 - (c) setting out a specimen of the signature of each person authorised by the resolutions referred to in paragraph 3 of this Part A of Schedule 3.
- 6 Copies of all consents which any Borrower, the Corporate Guarantor or any Security Party requires to enter into, or make any payment under, any Finance Document.

- 7 The originals of any mandates or other documents required in connection with the opening or operation of the Earnings Accounts and the Retention Account.
- 8 Such documents and other evidence in such form as is requested by the Agent in order for the Lenders to comply with all necessary “know your customer” or “client acceptance” or other similar identification procedures (including, but not limited to, specimen signatures of all the members or directors, as the case may be, and other officers of the Borrowers and each Security Party) in relation to the transactions contemplated in the Finance Documents.
- 9 Evidence of the ultimate beneficial ownership in respect of each Borrower, each Collateral Owner, the Corporate Guarantor, each Shareholder and each Approved Manager.
- 10 Favourable legal opinions from lawyers appointed by the Agent on such matters concerning the laws of the Marshall Islands, the Netherlands and such other relevant jurisdictions as the Agent may require and any documents required to be delivered for the purposes of such opinion.
- 11 If available and applicable, a certified true copy of any Charter (and any addenda thereto) in respect of a Ship together with, if required by the Agent, evidence of due execution of such Charter by the parties thereto.
- 12 Documentary evidence that the agent for service of process named in Clause 33 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) required before or, as the context may require, the Drawdown Date (but prior to the making of any advance).

In this Part B of Schedule 3, the following definitions have the following meanings:

- 1 In respect of each Ship, a duly executed original of the Mortgage, the General Assignment and, as the case may be, the Charterparty Assignment (and of each document to be delivered by each of them).
- 2 Documentary evidence that:
 - (a) each Ship is definitively and permanently registered in the name of the relevant Borrower or, as the case may be, relevant Collateral Owner, under an Approved Flag;
 - (b) each Ship is in the absolute and unencumbered ownership of the relevant Borrower or, as the case may be, the relevant Collateral Owner, save as contemplated by the Finance Documents or, in the case of the Tasman Ships, the Senior Finance Documents;
 - (c) each Ship maintains the class with a first class classification society which is a member of IACS (as the Agent may approve) free of all overdue recommendations and conditions of such classification society affecting class;
 - (d) the Mortgage relating to each Ship has been duly registered or recorded against that Ship as a valid first (or, in the case of a Tasman Ship, second) preferred or, as the case may be, priority ship mortgage in accordance with the laws of the applicable Approved Flag State; and
 - (e) each Ship is insured in accordance with the provisions of this Agreement and all requirements therein in respect of insurances have been complied with.
- 3 Documents establishing that each will, as from the Drawdown Date relating thereto, be managed by the Approved Managers on terms acceptable to the Lenders, together with:
 - (a) the Approved Managers' Undertakings relative thereto; and
 - (b) copies of the Technical Manager's Document of Compliance and of that Ship's Safety Management Certificate (together with any other details of the applicable safety management system which the Agent requires), the ISSC and the IAPPC.
- 4 A valuation of each Mortgaged Ship addressed to the Agent by Kontiki Shipbrokers with date 17 June 2017.
- 5 An original of the a deed of release in Agreed Form and each document to be delivered under or pursuant to it, together with evidence satisfactory to the Agent of its due execution by the parties to it and evidence that all Security Interests under the Existing Facility Agreement have been released, reassigned or, as the case may be, discharged.
- 6 Favourable legal opinions from lawyers appointed by the Agent on such matters concerning the law of the Marshall Islands, the Approved Flag State on which each relevant Ship is registered and such other relevant jurisdictions as the Agent may require.
- 7 A favourable opinion from an independent insurance consultant acceptable to the Agent on such matters relating to the insurances for each Ship as the Agent may require.
- 8 Documentary evidence that the Agent for service of process named in Clause 33 has accepted its appointment.

- 9 Evidence satisfactory to the Agent that the Minimum Liquidity Amount is standing to the credit of each Earnings Account in respect of each Borrower Ship pursuant to Clause 11.18.
- 10 Copies of any further consents which any Borrower or any Security Party requires to enter into, or make any payment under, any Finance Document.
- 11 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.

Each of the documents specified in paragraphs 2, 3 and 6 of Part A and every other 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 a Borrower.

SCHEDULE 4

DESIGNATION NOTICE

To: ABN AMRO BANK N.V.
93 Coolsingel
3012 AE Rotterdam
The Netherlands
as Agent

Attn: [Ship Finance Portfolio Management]

[date]

Dear Sirs

Loan Agreement dated [•] 2017 (the “Loan Agreement”) and made between (i) Zeus One Marine LLC and Ikaros Marine LLC as joint and several Borrowers, (ii) the Lenders, (iii) the Swap Bank, (iv) and yourselves as Agent, Arranger and Security Trustee

We refer to:

- 1 the Loan Agreement;
- 2 the Master Agreement dated as of [•] made between ourselves and the Swap Bank; and
- 3 a Confirmation delivered pursuant to the said Master Agreement dated [•] and addressed by the Swap Bank to us.

In accordance with the terms of the Loan Agreement, we hereby give you notice of the said Confirmation and hereby confirm that the Transaction evidenced by it will be designated as a “Designated Transaction” for the purposes of the Loan Agreement and the Finance Documents.

Yours faithfully

for and on behalf of
ZEUS ONE MARINE LLC
IKAROS MARINE LLC

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: ABN AMRO Bank N.V. for itself and for and on behalf of each Borrower, each Security Party, the Security Trustee, each Lender and the Swap Bank, as defined in the Loan Agreement referred to below.

[•]

- 1 This Certificate relates to a Loan Agreement (the “**Loan Agreement**”) dated [•] 2017 and made between (1) [•], [•], [•], [•] and [•] as joint and several Borrowers, (2) the banks and financial institutions named therein as Lenders, (3) ABN AMRO Bank N.V. as Swap Bank, (4) ABN AMRO Bank N.V. as Agent, (5) ABN AMRO Bank N.V. as Arranger and (6) ABN AMRO Bank N.V. as Security Trustee for a loan facility of ~~US\$~~ US\$64,253,892.38.
- 2 In this Certificate, terms defined in the Loan Agreement shall, unless the contrary intention appears, have the same meanings and:
“**Relevant Parties**” means the Agent, each Borrower, each Security Party, the Security Trustee, each Lender and the Swap Bank;
“**Transferor**” means [full name] of [lending office]; and
“**Transferee**” means [full name] of [lending office].
- 3 The effective date of this Certificate is [•] **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 (other than the Master Agreement) in relation to [•] per cent, of its Contribution, which percentage represents \$[•].
- 5 By virtue of this Certificate and clause 26 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 (other than the Master Agreement) which clause 26 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 26 of the Loan Agreement.
- 8 The Transferor:
 - (a) warrants to the Transferee and each Relevant Party that:
 - (i) 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) 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; and
 - (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 of the other Finance Documents;
 - (b) agrees that it will have no rights of recourse on any ground against either the Transferor, the Agent, the Security Trustee, any Lender or the Swap Bank in the event that:
 - (i) any of 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 any of 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 Borrowers 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, any Lender or the Swap Bank in the event that this Certificate proves to be invalid or ineffective;
 - (d) warrants to the Transferor and each Relevant Party that:
 - (i) it has full capacity to enter into this transaction and has taken all corporate action and obtained all consents which it needs to take or obtain in connection with this transaction; and
 - (ii) 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 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 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:

By:

Date:

Date:

Agent

Signed for itself and for and on behalf of itself
as Agent and for every other Relevant Party
ABN AMRO Bank N.V.

By:

Date:

Administrative Details of Transferee

Name of Transferee:

Lending Office:

Contact Person
(Loan Administration Department):

Telephone:

Fax:

Contact Person
(Credit Administration Department):

Telephone:

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

PIK COMPLIANCE CERTIFICATE

To: ABN AMRO BANK N.V.
93 Coolsingel
3012 AE Rotterdam
The Netherlands

Attn: [Loans Administration]

[date]

Dear Sirs

Loan Agreement dated [•] 2017 and made between (i) Zeus One Marine LLC and another (as borrowers), (ii) the banks and financial institutions therein listed (as lenders), (iii) ABN AMRO Bank N.V. as agent, arranger, swap bank and security trustee in connection with a facility of ~~US\$~~ US\$64,253,892.38 (the "Loan Agreement")

Terms defined in the Loan Agreement have their defined meanings when used in this PIK Compliance Certificate.

We refer to the undertaking set out in clause 11.6(d) of the Loan Agreement and confirm that, as at the [3-month period ending [•]]:

(a)	aggregate Market Value of the Borrower Ships	_____
	Minimum Liquidity Amount + the net realisable value of any additional	_____
(b)	security provided under clause 15.1 of the Loan Agreement	_____
(c) = (b) + (a) VMC		_____
	Outstanding Loan plus	
	Outstanding Swap Exposure	_____
(d)	Required Security Cover Ratio (130%)	_____
(e) = (d) - (c)	Delta between required Security Cover Ratio and VMC*	_____
	PIK Amount of 200bps over Delta	_____
	aggregate PIK Amount allocated on Balloon Instalment	_____

* if delta positive

[•]

for and on behalf of
ZEUS ONE MARINE LLC
IKAROS MARINE LLC

BORROWERS

SIGNED by)
)
for and on behalf of)
ZEUS ONE MARINE LLC)
in the presence of:)

SIGNED by)
)
for and on behalf of)
IKAROS MARINE LLC)
in the presence of:)

LENDERS

SIGNED by)
)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

SWAP BANK

SIGNED by)
)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

AGENT

SIGNED by)
)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

ARRANGER

SIGNED by)
)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

SECURITY TRUSTEE

SIGNED by)
)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

SCHEDULE 6

**FORM OF AMENDED AND RESTATED CORPORATE GUARANTEE MARKED TO INDICATE
AMENDMENTS**

Amendments are indicated as follows:

- (a) Additions are indicated by underlined text; and
- (b) Deletions are shown by the relevant text being struck out.

Dated 30 August 2017

POSEIDON CONTAINERS HOLDINGS LLC
as Guarantor

ABN AMRO BANK N.V.
as Security Trustee

GUARANTEE

relating to a Loan Agreement dated 30 August 2017
(as amended and restated by an Amending and Restating ~~Agreement Deed~~ dated 9 October 2018
and as further amended and restated by a Second Amending and Restating Deed dated 25 October
2018)
in respect of a loan facility of up to US\$64,253,892.38

WATSON FARLEY
&
WILLIAMS

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THIS GUARANTEE is made on 30 August 2017 as amended and restated by the Amending and Restating Agreement dated 9 October 2018 and as further amended and restated by the Amending and Restating Deed dated 9 October 2018 and as further amended and restated by the Amending and Restating Deed dated 25 October 2018

PARTIES

- (1) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, The Marshall Islands MH 96960 (the **"Guarantor"**); and
- (2) **ABN AMRO BANK N.V.**, acting through its office at 93 Coolingsingel, 3012 AE, Rotterdam, The Netherlands (the **"Security Trustee"**, which expression includes its successors and assigns).

BACKGROUND

- (A) **By a loan agreement dated 30 August 2017 (as amended and restated by an Amending and Restating Agreement dated 9 October 2018 and as further amended and restated by a Second Amending and Restating Deed dated 25 October 2018)** and made originally between (i) **Tasman Marine LLC, Hudson Marine LLC, Drake Marine LLC, Zeus One Marine LLC** and **Ikaros Marine LLC** as joint and several borrowers (together, the **"Original Borrowers"**), (ii) certain banks and financial institutions as lenders (together, in such capacity, the **"Lenders"**), (iii) ABN AMRO Bank N.V. as swap bank (in such capacity, the **"Swap Bank"**), (iv) ABN AMRO Bank N.V. as arranger, (v) ABN AMRO Bank N.V. as agent (in such capacity, the **"Agent"**) and (vi) the Security Trustee as security trustee, it was agreed that the Lenders would make available to the Original Borrowers a secured term loan facility (originally) of \$82,459,678.29.
- (B) By a master agreement (on the 2002 ISDA Master Agreement form including the Schedule thereto) dated 30 August 2017 and made between (i) the Original Borrowers and (ii) the Swap Bank, the Original Borrowers may enter into Designated Transactions pursuant to separate Confirmations providing for amongst other things the payment of certain amounts by the Original Borrowers to the Swap Bank.
- (C) The execution and delivery to the Security Trustee of this Guarantee and of the other Finance Documents to which the Guarantor is a party are conditions precedent to the availability of the facility under the said Loan Agreement and to the Swap Bank entering into Designated Transactions under the Master Agreement.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Defined expressions

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

1.2 Construction of certain terms

In this Guarantee:

"Bail-In Action" means the exercise of any Write-down and Conversion Powers;

“Bail-In Legislation” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation;

“bankruptcy” includes a liquidation, receivership or administration and any form of suspension of payments, arrangement with creditors or reorganisation under any corporate or insolvency law of any country;

“Book Leverage Ratio” means the ratio of Total Interest Bearing Debt to Total Assets, as shown in the applicable financial statements of the Guarantor for any accounting period determined in accordance with IFRS;

“Compliance Certificate” means a certificate in the form set out in Schedule 1 (in respect of the time frame from the date of this Agreement until the end of the Waiver Period) and Schedule 2 (in respect of the time from after the end of the Waiver Period and throughout the remainder of the Security Period) or in any other form agreed between the Guarantor and the Security Trustee acting on the instructions of the Lenders;

“EEA Member Country” means any member state of the European Union, Iceland, Liechtenstein and Norway;

“EU Bail-In Legislation Schedule” means the document described as such and published by the Loan Market Association (or any successor person) from time to time;

“Existing Fleet Vessel” means any vessel (including the Ships) wholly owned by the Guarantor (directly or indirectly) at any point during the Refinancing Period;

“Fleet Vessel” means each vessel owned by a member of the Group;

“Latest Accounts” means, at any date, the then most recent semi-annual unaudited or (as the case may be) annual consolidated financial statements of the Guarantor delivered to the Security Trustee pursuant to Clause 11.3 (*Provision of financial statements*);

“Loan Agreement” means the loan agreement referred to in Recital (A) and includes any existing or future amendments, restatements and/or supplements, whether made with the Guarantor’s consent or otherwise;

“Net Worth” means equity payments already advanced in respect of the Fleet Vessels less accumulated dividends plus retained earnings of the Fleet Vessels, as each such term is defined in the applicable financial statements in respect of the Guarantor determined in accordance with IFRS;

“Original Financial Statements” means annual audited consolidated financial statements of the Guarantor for the year ending 31 December 2016;

“Party” means a party to this Guarantee;

“Resolution Authority” means anybody which has authority to exercise any Write-down and Conversion Powers;

“Shareholders’ Equity” means the equity contribution referred to in the Equity Undertaking in the amount of \$13,000,000 injected by the Guarantor and paid in to the Group utilising funds advanced to the Guarantor pursuant to the K&T Loan Agreement as of the effective date of the Amending and Restating Deed;

“Third Parties Act” has the meaning given to Clause 14.10 (*Third party rights*);

“Total Assets” means, in respect of the Guarantor, the amount of total assets of the Guarantor at any time on a consolidated basis which would be included in the Latest Accounts of the Guarantor determined in accordance with IFRS;

“Total Interest Bearing Debt” means, in respect of the Guarantor, the amount of total liabilities of the Guarantor (as such term is defined in the Latest Accounts of the Guarantor) at any time on a consolidated basis which would be included in the Latest Accounts of the Guarantor as total interest bearing debt in accordance with IFRS including the current portion of interest bearing debt (as such term is defined in the Latest Accounts of the Guarantor) but excluding any cash which is credited as collateral in favour of a Lender and is intended for the purposes of repaying such debt;

“Value Adjusted Leverage Ratio” means, at any date, the ratio (expressed as a percentage) of:

- (a) the Total Interest Bearing Debt divided by
- (b) the Value Adjusted Total Assets;

“Value Adjusted Total Assets” means the Total Assets of the Guarantor adjusted (upwards or downwards) in each case for the difference of the book value of all Fleet Vessels (as evidenced in the Latest Accounts) and the aggregate Market Value of all Fleet Vessels based on recent valuations; and

“Write-down and Conversion Powers” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

1.3 Application of construction and interpretation provisions of Loan Agreement and construction of “continuing” in this Guarantee

- (a) Clauses 1.2 to 1.6 of the Loan Agreement apply, with any necessary modifications, to this Guarantee.

- (b) In this Guarantee, an Event of Default is “**continuing**” if it has not been expressly waived before acceleration of the Loan and/or before the relevant enforcement actions are taken.

1.4 References to Majority Lenders

References in this Deed to an approval, consent or requirement of the Majority Lenders include references to an approval, consent or requirement of:

- (a) the Agent or the Security Trustee acting with the authority of the Majority Lenders; or
(b) the Security Trustee acting with the authority of the Agent acting, in turn, with the authority of the Majority Lenders.

2 GUARANTEE

2.1 Guarantee and indemnity

The Guarantor unconditionally and irrevocably:

- (a) guarantees the due payment of all amounts payable by each Borrower under or in connection with the Loan Agreement and every other Finance Document;
- (b) guarantees to each Creditor Party punctual performance by the Borrowers of all of their obligations under the Finance Documents;
- (c) undertakes to pay to the Security Trustee, on the Security Trustee’s demand, any such amount which is not paid by any Borrower when payable; and
- (d) fully indemnifies the Security Trustee and each other Creditor Party on the Security Trustee’s demand in respect of all claims, expenses, liabilities and losses which are made or brought against or incurred by the Security Trustee or the other Creditor Party concerned as a result of or in connection with any obligation or liability guaranteed by the Guarantor being or becoming unenforceable, invalid, void or illegal; and the amount recoverable under this indemnity shall be equal to the amount which the Security Trustee or the other Creditor Party concerned would otherwise have been entitled to recover.

2.2 No limit on number of demands

The Security Trustee may serve more than one demand under Clause 2.1 (*Guarantee and indemnity*).

2.3 Continuing Guarantee

This Guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Security Party under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

3 LIABILITY AS PRINCIPAL AND INDEPENDENT DEBTOR

3.1 Principal and independent debtor

The Guarantor shall be liable under this Guarantee as a principal and independent debtor and accordingly it shall not have, as regards this Guarantee, any of the rights or defences of a surety.

3.2 Waiver of rights and defences

Without limiting the generality of Clause 3.1 (*Principal and independent debtor*), the Guarantor shall neither be discharged by, nor have any claim against any Creditor Party in respect of:

- (a) any amendment or supplement being made to the Finance Documents (or any of them);
- (b) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, the Finance Documents (or any of them);
- (c) any release or loss (even if negligent) of any right or Security Interest created by the Finance Documents (or any of them);
- (d) any failure (even if negligent) promptly or properly to exercise or enforce any such right or Security Interest, including a failure to realise for its full market value an asset covered by such a Security Interest;
- (e) any other Finance Document or any Security Interest now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it; or
- (f) any insolvency or similar proceedings.

4 EXPENSES

4.1 Costs of preservation of rights, enforcement etc.

The Guarantor shall pay to the Security Trustee on its demand the amount of all expenses incurred by the Security Trustee or any other Creditor Party in connection with any matter arising out of this Guarantee, or any Security Interest connected with this Guarantee, including any advice, claim or proceedings relating to this Guarantee or any Security Interest connected with this Guarantee.

4.2 Fees and expenses payable under Loan Agreement

Clause 4.1 (*Costs of preservation of rights, enforcement etc.*) is without prejudice to the Guarantor's liabilities in respect of the Borrowers' obligations under clause 20 of the Loan Agreement and under similar provisions of other Finance Documents.

5 ADJUSTMENT OF TRANSACTIONS

5.1 Reinstatement of obligation to pay

The Guarantor shall pay to the Security Trustee on its demand any amount which any Creditor Party is required, or agrees, to pay pursuant to any claim by, or settlement with, a trustee in bankruptcy of any Borrower or of another Security Party (or similar person) on the ground that the Loan Agreement or any other Finance Document, or a payment by any Borrower or of another Security Party, was invalid or on any similar ground.

6 PAYMENTS

6.1 Method of payments

Any amount due under this Guarantee shall be paid:

- (a) in immediately available funds;

- (b) to such account as the Security Trustee may from time to time notify to the Guarantor;
- (c) without any form of set-off, cross-claim or condition; and
- (d) free and clear of any tax deduction except a tax deduction which the Guarantor is required by law to make.

6.2 Grossing-up for taxes

If the Guarantor is required by law to make a tax deduction, the amount due to the Security Trustee shall be increased by the amount necessary to ensure that the Security Trustee and (if the payment is not due to the Security Trustee for its own account) the Creditor Party beneficially interested in the payment receives and retains a net amount which, after the tax deduction, is equal to the full amount that it would otherwise have received.

7 INTEREST

7.1 Accrual of interest

Any amount due under this Guarantee shall carry interest after the date on which the Security Trustee demands payment of it until it is actually paid, unless interest on that same amount also accrues under the Loan Agreement.

7.2 Calculation of interest

Interest under this Guarantee shall be calculated and accrue in the same way as interest under clause 7 of the Loan Agreement.

7.3 Guarantee extends to interest payable under Loan Agreement

For the avoidance of doubt, it is confirmed that this Guarantee covers all interest payable under the Loan Agreement, including that payable under clause 7 of the Loan Agreement.

8 SUBORDINATION

8.1 Subordination of rights of Guarantor

All rights which the Guarantor at any time has (whether in respect of this Guarantee or any other transaction) against any Borrower, any Security Party or their respective assets shall be fully subordinated to the rights of the Creditor Parties under the Finance Documents and until the end of the Security Period and unless the Security Trustee otherwise directs, the Guarantor will not exercise any rights which it may have (whether in respect of any Finance Document to which it is a party or any other transaction) by reason of performance by it of its obligations under the Finance Documents or by reason of any amount having been paid, or liability having arisen, under this Guarantee:

- (a) to be indemnified by a Borrower or any other Security Party;
- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Borrower or any Security Party's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Creditor Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Creditor Party;

- (d) to bring legal or other proceedings for an order requiring any Borrower or any Security Party to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under this Guarantee;
- (e) to exercise any right of set-off against any Borrower or any Security Party; and/or
- (f) to claim or prove as a creditor of any Borrower or any Security Party in competition with any Creditor Party.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Creditor Parties by the Borrowers or the Security Parties under or in connection with the Finance Documents to be repaid in full on trust for the Creditor Parties and shall promptly pay or transfer the same to the Security Trustee for onward payment to the Agent or, as the Security Trustee acting on the instructions of the Agent may direct, for application in accordance with clause 17.1 (*application of receipts*) of the Loan Agreement.

9 ENFORCEMENT

9.1 No requirement to commence proceedings against Borrowers

The Guarantor waives any right it may have of first requiring any Creditor Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person (including without limitation to commence any proceedings under any Finance Document or to enforce any Security Interest under the Finance Documents) before claiming or commencing proceedings under this Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

9.2 Conclusive evidence of certain matters

However, as against the Guarantor:

- (a) any judgment or order of a court in England in connection with the Loan Agreement; and
- (b) any statement or admission of any Borrower in connection with the Loan Agreement, shall be binding and conclusive as to all matters of fact and law to which it relates.

9.3 Appropriations

Until all amounts which may be or become payable by the Borrower or any Security Party under or in connection with the Finance Documents have been irrevocably paid in full, each Creditor Party (or any trustee or agent on its behalf) may:

- (i) refrain from applying or enforcing any other moneys, security or rights held or received by that Creditor Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (ii) hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Guarantee.

10 REPRESENTATIONS AND WARRANTIES

10.1 General

The Guarantor represents and warrants to the Security Trustee as follows.

10.2 Status

The Guarantor is duly formed and validly existing and in good standing as a limited liability company under the laws of the Republic of the Marshall Islands.

10.3 Corporate power

The Guarantor has the limited liability capacity, and has taken all limited liability company action and obtained all consents necessary for it:

- (a) to execute this Guarantee and the other Finance Documents to which the Guarantor is a party; and
- (b) to make all the payments contemplated by, and to comply with, this Guarantee and the other Finance Documents to which the Guarantor is a party.

10.4 Consents in force

All the consents referred to in Clause 10.3 (*Corporate power*) remain in force and nothing has occurred which makes any of them liable to revocation.

10.5 Legal validity and effective Security Interests

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

- (a) are in full force and effect;
- (b) constitute the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with their respective terms; and
- (c) 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 the Legal Reservations.

10.6 No third party Security Interests

Without limiting the generality of Clause 10.5 (*Legal validity and effective Security Interests*), at the time of the execution and delivery of this Guarantee and each of the other Finance Documents to which the Guarantor is a party:

- (a) the Guarantor 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.

10.7 No conflicts

The execution by the Guarantor of this Guarantee and the other Finance Documents to which it is a party and its compliance with this Guarantee and the other Finance Documents to which it is a party will not involve or lead to a contravention of:

- (a) any existing applicable law or regulation to which the Guarantor is subject;
- (b) the constitutional documents of the Guarantor; or
- (c) any contractual or other obligation or restriction which is binding on the Guarantor or any of its assets, which in either case has or could reasonably be expected to have a material adverse change on the financial position or state of affairs of the Guarantor.

10.8 No withholding taxes

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

10.9 No default

To the knowledge of the Guarantor, no Event of Default (excluding, for the duration of the Refinancing Period up until the Refinancing Date, any Events of Default having occurred and being continuing in connection with and under the Existing Facility Agreement) has occurred and is continuing.

10.10 Information

All information which has been provided in writing by or on behalf of the Guarantor to the Security Trustee or any other Creditor Party in connection with any Finance Document satisfied the requirements of Clause 11.2 (*Information provided to be accurate*); all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.4 (*Form of financial statements*); and there has been no Material Adverse Change in the financial position or state of affairs of the Guarantor from that disclosed in the Latest Accounts.

10.11 No litigation

No legal or administrative action involving the Guarantor has been commenced or taken or, to the Guarantor's knowledge, is likely to be commenced or taken which legal or administrative action has or is likely to have a Material Adverse Effect.

10.12 Immunity

The Guarantor is not, nor are any of its assets, entitled to immunity on the grounds of sovereignty or otherwise from any legal action or other proceedings (which shall include, without limitation, suit, attachment prior to the judgement, execution or other enforcement).

10.13 No money laundering

- (a) In relation to the borrowing by each Borrower, the performance and discharge of their obligations and liabilities under the Finance Documents, and the transactions and other arrangements affected or contemplated by the Finance Documents to which each Borrower is a party, the Guarantor undertakes to procure that each Borrower (i) is acting for its own account; (ii) it will use the proceeds of the Loan for its own benefit, under its full responsibility

and exclusively for the purposes specified in the Loan Agreement; and (iii) that the foregoing will not involve or lead to a contravention of any law, official requirement or other regulatory measure or procedure implemented to combat “money laundering” (as defined in Article 1 of Directive (2005/60/EC) of the European Parliament and of the Council).

- (b) The Guarantor will promptly inform the Agent by written notice, if the Borrowers are not or cease to be the beneficiaries and will provide in writing the name and address of the beneficiary.
- (c) The Agent shall promptly notify the Lenders of any written notice it receives under this Clause 10.13 (*No money laundering*).

10.14 Pari passu ranking

The obligations of the Guarantor under the Finance Documents to which it is a party rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

10.15 Taxes paid

The Guarantor has paid once due for payment all taxes applicable to, or imposed on or in relation to the Guarantor or its business or, if applicable, is contesting same in good faith by taking all appropriate steps.

10.16 Patriot Act and anti-terrorism laws

The Guarantor shall procure that to the extent applicable each Borrower is in compliance with (i) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, (ii) the PATRIOT Act and Executive Order No. 13224 on Terrorist Financing, effective 24 September 2001. The Guarantor shall procure that no part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

10.17 Repetition

The representations and warranties in this Clause 10 (*Representations and Warranties*) shall be deemed to be repeated by the Guarantor:

- (a) on the date of service of each Drawdown Notice;
 - (b) on each Drawdown Date; and
 - (c) with the exception of Clauses 10.8 (*No withholding taxes*), 10.9 (*No default*), 10.10 (*Information*) and 10.11 (*No litigation*), on the first day of each Interest Period and on the date of any Compliance Certificate,
- as if made with reference to the facts and circumstances existing on each such day.

11 UNDERTAKINGS

11.1 General

The Guarantor undertakes with the Security Trustee to comply with the following provisions of this Clause 11 (*Undertakings*) at all times during the Security Period, except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit (and in the case of Clauses 11.12 (*Principal place of business*) and 11.14 (*No disposal of assets, change of business*) such permission not to be unreasonably withheld or delayed, and always subject to paragraph (a) of clause 8.8 of the Loan Agreement).

11.2 Information provided to be accurate

All financial and other information which is provided in writing by or on behalf of the Guarantor under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration.

11.3 Provision of financial statements

The Guarantor will send to the Agent:

- (a) as soon as available, but in no event later than ~~180~~ 120 days after the end of each Financial Year of the ~~Guarantor~~ New Holding Company, the annual audited consolidated financial statements of the ~~Guarantor~~ New Holding Company for that Financial Year (commencing with the financial statements for the year ending 31 December ~~2016~~ 2018);
- (b) as soon as available, but in no event later than 120 days after the end of each Financial Year of the Guarantor, the unaudited consolidated financial statements of the Guarantor for that Financial Year (such annual consolidated financial statements to be supplemented to include updated details of all off-balance sheet and employment commitment) together with a certification from the Chief Financial Officer of the Guarantor confirming that the figures are in the same form as those figures used in the audited financial statements provided in respect of the New Holding Company;
- (c) ~~(b)~~ as soon as available, but in no event later than 90 days after the end of the 6-month period ending on 30 June in each Financial Year of the Guarantor, the unaudited consolidated financial statements of the Guarantor in respect of the preceding 6-month period (commencing with the 6-month period ending 30 June 2017 which are certified as to their correctness by an authorised officer of the Guarantor;
- (d) ~~(c)~~ as soon as available, but in no event later than 60 days after the end of the 3-month period ending on 30 September and 31 March in each Financial Year of the Guarantor, the unaudited consolidated financial statements of the Guarantor in respect of the preceding 3-month period (commencing with the 3-month period ending 30 June 2017) which are certified as to their correctness by an authorised officer of the Guarantor;
- (e) ~~(d)~~ on or prior to the 10th Business Day of each quarter in each Financial Year of the Guarantor (commencing with the quarter starting on 1 July 2017), a cash flow forecast in an Agreed Form evidencing all anticipated income and expenses in respect of the Fleet Vessels and the aggregate cash balances held or to be held by members of the Group in restricted and unrestricted accounts on a consolidated and projected basis for the 12-week period commencing as from the date on which the cash flow forecast is determined; and
- (f) ~~(e)~~ promptly after each request by the Agent, such further information regarding its financial condition, business and operation as the Agent may reasonably require, and

the Guarantor shall ensure that all cash flow forecasts of the Guarantor received pursuant to paragraph ~~(d)~~ of this Clause for the duration of the Waiver Period shall evidence a positive balance in respect of the Group for that Financial Year that is satisfactory to the Agent.

11.4 Form of financial statements

All financial statements (~~audited and~~ unaudited) delivered under Clause 11.3 (*Provision of financial statements*) in respect of the Guarantor will:

- (i) be prepared in accordance with all applicable laws and IFRS consistently applied and financial reference periods consistent with those applied in preparation of the Original Financial Statements of the Guarantor unless, in relation to any set of financial statements, it notifies the Security Trustee that there has been a change in IFRS, the accounting practices or reference periods and its auditors deliver to the Security Trustee:
 - (A) a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which the Guarantor's Original Financial Statements were prepared; and
 - (B) sufficient information, upon request by the Security Trustee, in form and substance as may be reasonably required by the Security Trustee, to enable the Lenders to determine whether Clause 11.19 (*Financial covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Guarantor's Original Financial Statements.
- Any reference in this Guarantee to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.
- (ii) give a true and fair view of the state of affairs of the Guarantor at the date of those financial statements and of its profit for the period to which those financial statements relate; and
 - (iii) fully disclose or provide for all significant liabilities of the Guarantor.

11.5 Shareholder and creditor notices

Upon the occurrence of an Event of Default, the Guarantor will send to the Agent, at the same time as they are despatched, copies of all communications which are despatched to the Guarantor's shareholders or creditors or any class of them.

11.6 Provision of further information

The Guarantor will, as soon as practicable after receiving the request, provide the Security Trustee with any additional financial or other information relating to:

- (a) the Guarantor; or
 - (b) any other matter relevant to, or to any provision of, this Guarantee or any other Finance Document (and for those Finance Documents to which the Guarantor is not a party, to the extent the Guarantor may be able to provide such information),
- which may be requested by the Security Trustee at any time.

11.7 Consents

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

- (a) for the Guarantor to perform its obligations under this Guarantee and any Finance Document to which it is a party; and
 - (b) for the validity or enforceability of this Guarantee and any other Finance Document to which it is a party,
- and the Guarantor will comply with the terms of all such consents.

11.8 Maintenance of Security Interests

The Guarantor will:

- (a) at its own cost, do all that it reasonably can to ensure that any Finance Document to which it is a party validly creates the obligations and the Security Interests which it purports to create; and
- (b) without limiting the generality of paragraph (a) above, at its own cost, promptly register, file, record or enrol any Finance Document to which it is a party 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 to which it is a party, give any notice or take any other step which, in the reasonable opinion of the Majority Lenders, is or has become necessary for any Finance Document to which the Guarantor is a party to be valid, enforceable or admissible in evidence or to ensure or protect the priority of any Security Interest which that Finance Document creates.

11.9 Notification of litigation

The Guarantor will provide the Agent with details of any legal or administrative action involving the Guarantor or any other member of the Group as soon as such action is instituted or it becomes apparent to the Guarantor that it is likely to be instituted, unless it is clear that the legal or administrative action cannot be considered material in the context of this Guarantee or any other Finance Document and the Guarantor shall procure that reasonable measures are taken to defend any such legal or administrative action.

11.10 Notification of default

The Guarantor will notify the Security Trustee as soon as the Guarantor becomes aware of the occurrence of an Event of Default or Potential Event of Default and will, for so long as it remains to be continuing unremedied or unwaived, thereafter keep the Security Trustee fully up-to-date with all developments.

11.11 Maintenance of status

The Guarantor will maintain its separate limited liability company existence and remain in good standing under the laws of the Republic of the Marshall Islands.

11.12 Principal place of business

The Guarantor will not establish nor do anything as a result of which it would be deemed to have a place of business other than Greece or the United States of America, unless the Guarantor has provided the Agent with prior written notice of any such new place of business.

11.13 Negative pledge and pari passu ranking

- (a) The Guarantor shall not, and shall procure that no Borrower will, create or permit to arise any Security Interest over any of its assets (present or future) except for (i) Security Interests created by the Finance Documents, (ii) Permitted Security Interests and (iii) in the case of the Guarantor any Security Interest arising in the normal course of its business of acquiring and financing vessels to be owned by the Guarantor or any of its Subsidiaries (present or future).
- (b) The Guarantor will ensure that its liabilities under this Guarantee and the other Finance Documents to which it is a party will rank at least pari passu with all its other present and future unsecured and/or unsubordinated liabilities, except for liabilities which are mandatorily preferred by law.

11.14 No disposal of assets, change of business

The Guarantor shall not, and shall procure that no Borrower will:

- (a) save in the ordinary course of that party's business pursuant to a transaction on commercial arms' length terms for full consideration, transfer, lease or otherwise dispose of:
 - (i) all or a substantial part of that party's assets, whether by one transaction or a number of transactions, whether related or not (except as otherwise provided in the Finance Documents); or
 - (ii) any debt payable to that party or any other right (present, future or contingent right) to receive a payment, including any right to damages or compensation; or
- (b) make any substantial change to the nature of that party's business from that existing at the date of this Guarantee.

11.15 Restrictions on other liabilities or obligations to be incurred

- (a) The Guarantor shall not incur any liability or obligation except:
 - (i) any liabilities or obligations incurred under any Permitted Loan;
 - (ii) any liabilities or obligations reasonably incurred in the normal course of its business (including, without limitation, (A) issuing guaranties to secure the obligations of any of its present or future Subsidiaries, (B) receiving credit under unsecured loans in its normal course of business and (C) any other guarantees previously disclosed by the Guarantor to the Security Trustee on or prior to the date of this Guarantee).
- (b) The Guarantor shall procure that no Borrower shall incur any liability or obligation including, without limitation, giving or allowing to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person, except:
 - (i) liabilities and obligations under the Existing Facility Agreement (up until the relevant Drawdown Date) and the Finance Documents to which each is a party;
 - (ii) liabilities or obligations reasonably incurred in the normal course of its business of trading, operating and chartering the Ship owned by it;
 - (iii) the Designated Transactions; and
 - (iv) liabilities or obligations under any Permitted Loans.

11.16 No payment of dividends

The Guarantor will not pay any dividend or make any other form of distribution or effect any form of redemption, purchase or return of share capital for the duration of the Security Period: **Provided that the Guarantor may pay dividends and make distributions after the Cash Sweep End Date if the following conditions are satisfied at the time at which such dividend is paid or distribution is made:**

- (a) the value Adjusted Leverage Ratio is less than or equal to 65 per cent;
- (b) the Borrowers are in compliance with clause 11.18 of the Loan Agreement;

- (c) the Borrowers provide documentation evidencing to the satisfaction of the Agent (acting with the authorisation of the Majority Lenders, acting reasonably) that they will be able to comply with their obligations under the Finance Documents including without limitation, the payment obligations in respect of the Debt Service and any other amounts that may become due and payable under the Finance Documents in the 12 month period following the end of the Waiver Period; and
- (d) no Potential Event of Default or Event of Default has occurred or is continuing and no Event of Default would occur as a result of such payment or distribution,

11.17 Mo merger etc.

The Guarantor shall not, and shall procure that no Borrower shall, enter into any form of amalgamation, merger or de merger or any form of reconstruction or reorganisation or any form of acquisition, including any joint venture (save for an IPO).

The Guarantor shall not, and shall procure that no Borrower shall, enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction (save for the Merger), without the prior consultation and written consent from the Agent (acting on the instructions of the Majority Lenders) **Provided that** prior consent of the Agent is not required in the case of a merger amalgamation, demerger, consolidation or corporate reconstruction of the New Holding Company where the New Holding Company remains the surviving entity of that merger and so long, as (i) no Event of Default has occurred and is continuing, at any relevant time and (ii) such merger, amalgamation, demerger, consolidation or corporate reconstruction will not have (in the opinion of the Agent, acting on the Instructions of the Majority Lenders, acting reasonably) a material adverse effect on the business assets, operations, property or financial condition of the New Holding Company or on the ability of the Guarantor to perform its obligations under this Guarantee.

11.18 Maintenance of ownership of Borrowers/Guarantor

The Guarantor shall (a) remain the legal holder and direct (and, in the case of Borrower B, indirect) beneficial owner of all limited liability company interests of all the Borrowers (b) remain the legal holder and direct beneficial owner of all the limited liability company interests in Odysseus Marine LLC and THD Maritime, in each case free from any Security Interest, except for: (i) any Security Interest created in favour of the Security Trustee and (ii) for the duration of the Existing Indebtedness Grace Period, any Security Interest created under the Existing Facility Agreement Permitted Security Interests and (c) procure that it remains a direct or indirect wholly owned subsidiary of the New Holding Company.

11.19 Financial covenants

The Guarantor shall ensure that at all times during the Security Period (and in the case of subclauses (i) and (ii) below, other than during the Waiver Period):

- (i) the Value Adjusted Leverage Ratio shall not exceed 75 per cent.;
- (ii) the minimum Net Worth shall not be less than \$50,000,000; and
- (iii) the Book Leverage Ratio shall not exceed (i) 85 per cent, of the Total Assets from the Drawdown Date and until 31 December 2018 and (ii) 75 per cent, from 1 January 2019 and at all times thereafter.

11.20 Compliance Check

Compliance with the undertakings contained in Clause 11.19 (*Financial covenants*) shall be determined in each Financial Year of the Guarantor:

- (a) at the time the Agent receives the annual ~~audited consolidated financial statements and the~~ and semi-annual unaudited consolidated financial statements of the Guarantor in each Financial Year (pursuant to Clause ~~11.13(a) and (b)~~ 11.3), the Guarantor shall deliver to the Agent a Compliance Certificate, signed by the Chief Financial Officer of the Guarantor or an authorised officer of the Guarantor demonstrating its compliance (or not, as the case may be) with the provisions of Clause 11.19 (*Financial covenants*) as at the date to which such accounts are prepared and supported by calculations and evidence referring to those accounts (~~audited or, as the case may be, unaudited~~) and setting out in reasonable detail the materials underlying the statements made in such compliance certificate (including, without limitation, valuations (in a form acceptable to the Agent) showing the Market Value of each Fleet Vessel); and
- (b) at any other time as the Agent may reasonably request by reference to such evidence as the Lenders may require to determine and calculate the financial covenants referred to in Clause 11.19 (*Financial covenants*).

11.21 Other negative undertakings

The Guarantor shall not allow any Borrower to:

- (a) open or maintain, any account with any bank or financial institution except accounts with the Agent for the purposes of the Finance Documents;
- (b) issue, allot or grant any person any limited liability company interests other than the Guarantor or the respective Shareholder; and
- (c) 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 other than the Designated Transactions.

11.22 “Know your customer” checks

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Guarantee;
- (b) any change in the status of the Guarantor after the date of this Guarantee; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under the Loan Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (c), any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Guarantor shall promptly upon the request of the Agent or the Lender concerned supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or the Lender concerned (for itself or, in the case of the event described in paragraph (c), on behalf of any prospective new Lender) in order for the Agent, the Lender concerned or, in the case of the event described in paragraph (c), any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents, including without limitation obtaining, verifying and recording certain information and documentation that will allow the Agent and each of the Lenders to identify the Guarantor in accordance with the requirements of the PATRIOT Act.

11.23 Subordination of Permitted Loans

The Guarantor shall procure that each Borrower shall cause (i) all Permitted Loans to be fully subordinated to the Secured Liabilities and (ii) any creditor’s rights under such Permitted Loans to any Borrower(s) to be assigned in favour of the Creditor Parties, in accordance with the provisions of the relevant Subordination Agreement.

11.24 Employees and ERISA Compliance

The Guarantor shall procure that no Borrower shall employ any individuals (other than the master and crew members of the Ship owned by it), or sponsor, maintain or become obligated to contribute to any Plan and undertakes to provide, and shall procure that the Borrower provides, prompt written notice to the Agent in the event that it or, as the case may be, a Borrower becomes aware that it has incurred or is reasonably likely to incur any liability with respect to any Plan, that, individually or in the aggregate with any other such liability, would be reasonably expected to have a Material Adverse Effect.

11.25 Sanctions and compliance with laws

(a) Compliance with laws

The Guarantor shall, and shall procure that any other member of the Group and each Affiliate or of any of them shall, comply in all respect with all applicable Sanctions.

(b) Sanctions

(i) The Guarantor shall not, and shall procure that none of its Affiliates shall, become a Restricted Party or act on behalf of, or as an agent of, a Restricted Party, to the extent this would lead to non-compliance by it or any other Party with any applicable Sanctions.

(ii) The Guarantor shall not, and shall procure that none of its Affiliates shall, use any revenue or benefit derived from any activity or dealing with a Restricted Party in discharging any obligation due or owing to the Creditor Parties to the extent such use would lead to non-compliance by it or any other Party with any applicable Sanctions.

(iii) The Guarantor shall, and shall procure that each of its Affiliates shall, procure that no proceeds from any activity or dealing with a Restricted Party are credited to any bank account held with any Creditor Party or any Affiliate of a Creditor Party, to the extent crediting such bank account would lead to non-compliance by it, any Creditor Party or any Affiliate of a Creditor Party with any applicable Sanctions.

(iv) The Guarantor shall, and shall procure that each of its Affiliates shall, to the extent permitted by law and promptly upon becoming aware of them, supply to the Agent details of any claim, action, suit, proceedings or investigation against it with respect to any applicable Sanctions by any Sanctions Authority.

(c) Use of proceeds

The Guarantor shall not, and shall procure that none of its Affiliates shall, use, lend, contribute or otherwise make available the proceeds of the Loan or any other transaction contemplated by this Guarantee directly or indirectly for the purpose of financing any trade, business or other activities with any Restricted Party, to the extent, in each case, such use, lending, contributing or otherwise making available the proceeds would lead to non-compliance by it or any other Party with any applicable Sanctions.

11.26 Most favoured nation clause

The Guarantor undertakes to procure that, (i) during the Waiver Period in respect of items listed in sub-paragraphs (b), (d) and (f) and (ii) throughout the duration of the Security Period in respect of items listed in sub-paragraphs (a), (c) and (e), the Creditor Parties shall receive no less favourable treatment under this Agreement than that provided or to be provided under any Group Facility Agreement ~~or under the Senior Facility Agreement~~ (by way of amendment or supplement to, or refinancing of, that Group facility Agreement ~~or, as the case may be, the Senior Facility Agreement~~) in relation to:

- (a) any amendment to a maturity date under any such Group Facility Agreement or, as the case may be, the Senior Facility Agreement as a result of which the maturity date will fall before 31 December 2020;
- (b) the existence of any amortization principal payment profile/schedule until 31 December 2019 (inclusive);
- (c) the provisions relevant to the calculation of the Excess Cash Flow and generally the cash sweep mechanism;
- (d) the waiver of the security cover ratio at the Borrowers' level;
- (e) the financial covenants relevant to the Value Adjusted Leverage Ratio, Book Leverage Ratio and minimum Net Worth of the Guarantor; and
- (f) any increase to the aggregate of any amounts to be paid in respect of interest solely related to margin (howsoever defined) for the duration of the Waiver Period (calculated as at the date of that Group Facility Agreement or, as the case may be, the Senior Facility Agreement).

Accordingly, should any member of the Group or the Guarantor provide to any other creditor more favourable treatment in relation to (a) to (f) above (and, in relation to subparagraphs (b), (d) and (f) for the duration of the Waiver Period) than those which the Creditor Parties have been provided with under this Agreement or any other Finance Document, each Borrower and the Guarantor shall promptly advise the Agent of those arrangements and covenants and shall, upon the Agent's request, enter into such documentation supplemental to the Finance Documents as the Lenders may require in order to achieve parity with the creditors under such relevant Group Facility Agreement or, as the case may be, the Senior Facility Agreement.

11.27 Additional mandatory prepayment event

If the aggregate of the excess Earnings applied in prepayment of the Loan pursuant to clause 8.14 (Prepayment out of Excess Earnings) of the Loan Agreement is less than \$1,300,000 for the duration of the period commencing on 1 January 2019 until the Cash Sweep Period ending on 31 December 2019, the Guarantor shall procure that the Borrowers utilise that part of the Shareholders' Equity to prepay the Shortfall Amount to the Lenders on the next Repayment Date falling due after receipt of the Excess Cash Flow Notice relevant to that Cash Sweep Period. Such Shortfall Amount shall be applied in or towards prepayment of the then outstanding Repayment Instalments and Balloon Instalments in order of maturity.

11.28 Shareholders' Equity

The Guarantor shall procure that such part of the Shareholders' Equity shall be utilised in or towards payment of the Shortfall Amount set out in Clause 11.27 and, as the case may, any cash flow shortfall in connection with the Existing Fleet Vessels, including, but not limited to, any operating expenses or any other cash flow shortfall in connection with their operation, trading and financing under the Loan Agreement or, as the case may be, under any Group Facility Agreement (as necessary).

12 JUDGMENTS AND CURRENCY INDEMNITY

12.1 Judgments relating to Loan Agreement and other Finance Documents

This Guarantee shall cover any amount payable by any Borrower under or in connection with any judgment relating to the Loan Agreement and/or any other Finance Document.

12.2 Currency indemnity

In addition, clause 21.5 (*currency indemnity*) of the Loan Agreement shall apply, with any necessary adaptations, in relation to this Guarantee.

13 SET-OFF

13.1 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 the Guarantor at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Guarantor to that Creditor Party under this Guarantee or any of the other Finance Documents; and
- (b) for that purpose:
 - (i) break, or alter the maturity of, all or any part of a deposit of the Guarantor;
 - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars; and
 - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

13.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 13.1 (*Application of credit balances*); 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).

13.3 Sums deemed due to a Lender

For the purposes of this Clause 13 (*Set-Off*), a sum payable by the Guarantor 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 that Lender.

14 SUPPLEMENTAL

14.1 Continuing guarantee

This Guarantee shall remain in force as a continuing security at all times during the Security Period.

14.2 Rights cumulative, non-exclusive

The Security Trustee's rights under and in connection with this Guarantee are cumulative, may be exercised as often as appears expedient and shall not be taken to exclude or limit any right or remedy conferred by law.

14.3 No impairment of rights under Guarantee

If the Security Trustee omits to exercise, delays in exercising or invalidly exercises any of its rights under this Guarantee, that shall not impair that or any other right of the Security Trustee under this Guarantee.

14.4 Severability of provisions

If any provision of this Guarantee is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity, legality or enforceability of its other provisions.

14.5 Guarantee not affected by other security

This Guarantee shall not impair, nor be impaired by, any other guarantee, any Security Interest or any right of set-off or netting or to combine accounts which the Security Trustee or any other Creditor Party may now or later hold in connection with the Loan Agreement.

14.6 Guarantor bound by Loan Agreement

The Guarantor agrees with the Security Trustee to be bound by all provisions of the Loan Agreement which are applicable to the Security Parties (to the extent that they may apply to the Guarantor as well) in the same way as if those provisions had been set out (with any necessary modifications) in this Guarantee.

14.7 Applicability of provisions of Guarantee to other Security Interests

Any Security Interest which the Guarantor creates (whether at the time at which it signs this Guarantee or at any later time) to secure any liability under this Guarantee shall be a principal and independent security, and Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall, with any necessary modifications, apply to it, notwithstanding that the document creating the Security Interest neither describes it as a principal or independent security nor includes provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*).

14.8 Applicability of provisions of Guarantee to other rights

Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall also apply to any right of set-off or netting or to combine accounts which the Guarantor creates by an agreement entered into at the time of this Guarantee or at any later time (notwithstanding that the agreement does not include provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*)), being an agreement referring to this Guarantee.

14.9 Authority of Security Trustee to sign Transfer Certificates

The Guarantor irrevocably authorises the Security Trustee to sign Transfer Certificates on its behalf.

14.10 Third party rights

A person (other than a Creditor Party) who is not a party to this Guarantee has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Guarantee.

15 ASSIGNMENT

15.1 Assignment by Security Trustee

The Security Trustee may assign its rights under and in connection with this Guarantee to the same extent as it may assign its rights under the Loan Agreement.

16 NOTICES

16.1 Notices to Guarantor

Any notice or demand to the Guarantor under or in connection with this Guarantee shall be given by letter or fax at:

c/o the Technical Manager
3-5 Menandrou Street
145 61 Kifissia
Greece

Fax No: +30 210 80 84 224,

or to such other address which the Guarantor may notify to the Security Trustee.

16.2 Application of certain provisions of Loan Agreement

The following provisions of the Loan Agreement apply to this Guarantee as if they were expressly incorporated in this Guarantee with any necessary modifications:

- (a) Clause 28 (*Notices*);
- (b) Clause 26.13 (*Disclosure of information*); and
- (c) Clause 30.3 (*Counterparts*).

16.3 Validity of demands

A demand under this Guarantee shall be valid notwithstanding that it is served:

- (a) on the date on which the amount to which it relates is payable by any Borrower under the Loan Agreement; and/or
- (b) at the same time as the service of a notice under clause 19.2 (*Actions following an Event of Default*) of the Loan Agreement, and a demand under this Guarantee may refer to all amounts payable under or in connection with the Loan Agreement without specifying a particular sum or aggregate sum.

16.4 Notices to Security Trustee

Any notice to the Security Trustee under or in connection with this Guarantee shall be sent to the same address and in the same manner as notices to the Security Trustee under the Loan Agreement.

17 INVALIDITY OF LOAN AGREEMENT

17.1 Invalidity of Loan Agreement

In the event of:

- (a) the Loan Agreement now being or later becoming, with immediate or retrospective effect, void, illegal, unenforceable or otherwise invalid for any other reason whatsoever, whether of a similar kind or not; or

- (b) without limiting the scope of paragraph (a), a bankruptcy of any Borrower, the introduction of any law or any other matter resulting in any Borrower being discharged from liability under the Loan Agreement, or the Loan Agreement ceasing to operate (for example, by interest ceasing to accrue),

this Guarantee shall cover any amount which would have been or become payable under or in connection with the Loan Agreement if the Loan Agreement had been and remained entirely valid, legal and enforceable, or the relevant Borrower had not suffered bankruptcy, or any combination of such events or circumstances, as the case may be, and both Borrowers had remained fully liable under it for liabilities whether invalidly incurred or validly incurred but subsequently retrospectively invalidated; and references in this Guarantee to amounts payable by any Borrower under or in connection with the Loan Agreement shall include references to any amount which would have so been or become payable as aforesaid.

17.2 Invalidity of Finance Documents

Clause 17.1 (*Invalidity of Loan Agreement*) also applies to each of the other Finance Documents to which any Borrower is a party.

18 BAIL-IN

18.1 Contractual recognition of bail-in

- (a) Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each party to this Guarantee acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:
- (i) any Bail-In Action in relation to any such liability, including (without limitation):
 - (A) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (B) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (C) a cancellation of any such liability; and
 - (ii) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.
- (b) Each Creditor Party may enforce and enjoy the benefit of this Clause 18 (*Bail-In*) subject to the provisions of the Third Parties Act.

19 GOVERNING LAW AND JURISDICTION

19.1 English law

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

19.2 Exclusive English jurisdiction

Subject to Clause 19.3 (*Choice of forum for the exclusive benefit of the Security Trustee*), the courts of England shall have exclusive jurisdiction to settle any Dispute.

19.3 Choice of forum for the exclusive benefit of the Security Trustee

Clause 19.2 (*Exclusive English jurisdiction*) is for the exclusive benefit of the Security Trustee, 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.

The Guarantor shall not commence any proceedings in any country other than England in relation to a Dispute.

19.4 Process agent

The Guarantor irrevocably appoints Saville & Co. at its principal office for the time being, presently at One Carey Lane, London EC2V 8AE, England, to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with a Dispute.

19.5 Creditor Parties' rights unaffected

Nothing in this Clause 19 (*Governing Law and Jurisdiction*) 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.

19.6 Meaning of "proceedings"

In this Clause 19 (*Governing Law and Jurisdiction*), "**proceedings**" means proceedings of any kind, including an application for a provisional or protective measure and "**Dispute**" means any dispute arising out of or in connection with this Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee) or any non-contractual obligation arising out of or in connection with this Guarantee.

This Guarantee has been entered into (and amended and restated) on the dates stated at the beginning of this Guarantee.

SCHEDULE 1

FORM OF COMPLIANCE CERTIFICATE DURING WAIVER PERIOD

To: ABN AMRO BANK N.V.
93 Coolsingel
3012 AE Rotterdam
The Netherlands

Attn: [Loans Administration]

[date]

Dear Sirs

Guarantee dated [•] August 2017 (the “Guarantee”) and made between (i) Poseidon Containers Holdings LLC and (ii) ABN AMRO Bank N.V. in connection with a Term Loan Facility of up to US\$64,253,892.38

Terms defined in the Guarantee have their defined meanings when used in this Compliance Certificate.

We refer to the financial covenants set out in Clause 11.19 (*Financial covenants*) of the Guarantee and confirm that, as at the [6-month period ending 30 June [•]] [Financial Year ending 31 December [•]] to which the accounts referred to below were prepared, the Guarantor is in compliance with the following covenants:

- (i) the Book Leverage Ratio is [•] per cent.

To evidence such compliance, we attach a copy of the latest [annual ~~audited~~][~~semi-annual~~ unaudited][semi-annual unaudited] consolidated financial statements of the Group together with calculations and evidence setting out in reasonable detail the data and calculations resulting therefrom which we have used to support the confirmations made above.

No Event of Default or a Potential Event of Default has occurred and is continuing unremedied or unwaived as at the date of this Compliance Certificate [except for the following matter or event *[set out all material details of matter or event]*].

[Chief Financial Officer][authorised signatory]
for and on behalf of
POSEIDON CONTAINERS HOLDINGS LLC

SCHEDULE 2

FORM OF COMPLIANCE CERTIFICATE AFTER THE WAIVER PERIOD

To: ABN AMRO BANK N.V.
93 Coolsingel
3012 AE Rotterdam
The Netherlands

Attn: [Loans Administration]

[date]

Dear Sirs

Guarantee dated [•] August 2017 (the “Guarantee”) and made between (i) Poseidon Containers Holdings LLC and (ii) ABN AMRO Bank N.V. in connection with a Term Loan Facility of up to US\$64,253,892.38

Terms defined in the Guarantee have their defined meanings when used in this Compliance Certificate.

We refer to the financial covenants set out in Clause 11.19 (*Financial covenants*) of the Guarantee and confirm that, as at the [6-month period ending 30 June [•]] [Financial Year ending 31 December [•]] to which the accounts referred to below were prepared, the Guarantor is in compliance with the following covenants:

- (i) the Value Adjusted Leverage Ratio is [•] per cent.;
- (ii) the minimum Net Worth is \$[•];
- (iii) the Book Leverage Ratio is [•].

To evidence such compliance, we attach a copy of the latest [annual audited]~~[semi-annual unaudited]~~[semi-annual unaudited] consolidated financial statements of the Group together with calculations and evidence setting out in reasonable detail the data and calculations resulting therefrom which we have used to support the confirmations made above (including valuations in a form acceptable to the Agent showing the Market Value of each Fleet Vessel which were used in calculating the Value Adjusted Total Assets of the Group as at [•]).

No Event of Default or a Potential Event of Default has occurred and is continuing unremedied or unwaived as at the date of this Compliance Certificate [except for the following matter or event *[set out all material details of matter or event]*].

[Chief Financial Officer][authorised signatory]
for and on behalf of
POSEIDON CONTAINERS HOLDINGS LLC

GUARANTOR

SIGNED by)
for and on behalf of)
POSEIDON CONTAINERS HOLDINGS LLC)
in the presence of:)

SECURITY TRUSTEE

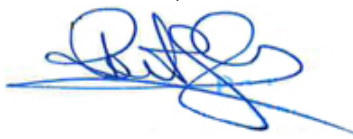
SIGNED by)
for and on behalf of)
ABN AMRO BANK N.V.)
in the presence of:)

EXECUTION PAGE

LENDERS

EXECUTED as a DEED
by ABN AMRO BANK N.V.
acting by its duly authorised
attorney-in-fact
in the presence of:

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)
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PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

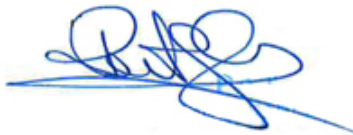


Anthi Kekatou

AGENT

EXECUTED as a DEED
by ABN AMRO BANK N.V.
acting by its duly authorised
attorney-in-fact
in the presence of:

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PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

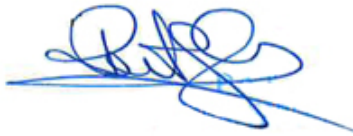


Anthi Kekatou

SECURITY TRUSTEE

EXECUTED as a DEED
by ABN AMRO BANK N.V.
acting by its duly authorised
attorney-in-fact
in the presence of:

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PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



Anthi Kekatou

SWAP BANK

EXECUTED as a DEED
by ABN AMRO BANK N.V.
acting by its duly authorised
attorney-in-fact
in the presence of:

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PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



Anthi Kekatou

ARRANGER

EXECUTED as a DEED
by **ABN AMRO BANK N.V.**
acting by its duly authorised
attorney-in-fact
in the presence of:

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PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



Anthi Kekatou

BORROWERS

EXECUTED as a DEED
by **ZEUS ONE MARINE LLC**
acting by its duly authorised
attorney-in-fact
in the presence of:

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PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



Aikaterini Emmanouil

EXECUTED as a DEED
by **IKAROS MARINE LLC**
acting by its duly authorised
attorney-in-fact
in the presence of:

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PAT SKALA
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176 74 KALLITHEA
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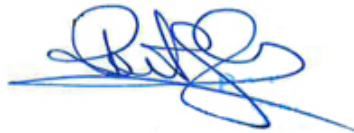


Aikaterini Emmanouil

COLLATERAL OWNERS

EXECUTED as a DEED
by **TASMAN MARINE LLC**
acting by its duly authorised
attorney-in-fact
in the presence of:

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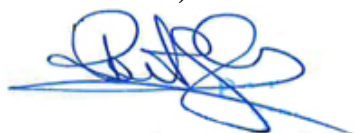
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Aikaterini Emmanouil

EXECUTED as a DEED
by **HUDSON MARINE LLC**
acting by its duly authorised
attorney-in-fact
in the presence of:

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Aikaterini Emmanouil

PAT SKALA
WATSON, FARLEY & WILLIAMS
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176 74 KALLITHEA
ATHENS - GREECE

EXECUTED as a DEED
by **DRAKE MARINE LLC**
acting by its duly authorised
attorney-in-fact
in the presence of:

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)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



Aikaterini Emmanouil

CORPORATE GUARANTOR AND SHAREHOLDER

EXECUTED as a DEED
by **POSEIDON CONTAINERS HOLDINGS LLC**
acting by its duly authorised
attorney-in-fact
in the presence of:

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)
)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



Aikaterini Emmanouil

SHAREHOLDER

EXECUTED as a DEED
by **ODYSSEUS MARINE LLC**
acting by its duly authorised
attorney-in-fact
in the presence of:

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)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



Aikaterini Emmanouil

EXECUTED as a DEED
by **THD MARITIME CO., LIMITED**
acting by its duly authorised
attorney-in-fact
in the presence of:

)
)
)
)
)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



Aikaterini Emmanouil

COUNTERSIGNED this 25th day of October 2018 for and on behalf of the below companies each of which, by its execution hereof, confirms and acknowledges that it has read and understood the terms and conditions of this Amending and Restating Deed, 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 and the other Finance Documents.

APPROVED MANAGERS

/s/ George Youroukos

George Youroukos

President

for and on behalf of

TECHNOMAR SHIPPING INC.

/s/ Dimitrios Tsiaklagkanos

Dimitrios Tsiaklagkanos

President

for and on behalf of

CONCHART COMMERCIAL INC.

COUNTERSIGNED this 25th day of October 2018 for and on behalf of the below company which, by its execution hereof, confirms and acknowledges that it has read and understood the terms and conditions of this Amending and Restating Deed and 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.

SUBORDINATED CREDITOR

/s/ Georgios Giouroukos

Georgios Giouroukos
Chief Executive Officer
for and on behalf of
K&T MARINE LLC

Dated 9 October 2018

THD MARITIME CO. LIMITED

as Borrower

**arranged by
AMSTERDAM TRADE BANK N.V.**

with

**AMSTERDAM TRADE BANK N.V.
as Agent**

**AMSTERDAM TRADE BANK N.V.
as Security Agent**

**guaranteed by
TASMAN MARINE LLC
HUDSON MARINE LLC
DRAKE MARINE LLC**

and

POSEIDON CONTAINERS HOLDINGS LLC

**FACILITY AGREEMENT
for \$17,100,000 Loan Facility**

 **NORTON ROSE FULBRIGHT**

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THIS AGREEMENT is dated 9 October 2018 and made between:

- (1) **THD MARITIME CO. LIMITED** as further set out in Schedule 1 (*The original parties*) as borrower (the **Borrower**);
- (2) **TASMAN MARINE LLC, HUDSON MARINE LLC and DRAKE MARINE LLC** as further set out in Schedule 1 (*The original parties*) as shipowners and joint and several guarantors (the **Owners**);
- (3) **POSEIDON CONTAINERS HOLDINGS LLC** as further set out in Schedule 1 (*The original parties*) as parent and joint and several guarantor with the other guarantors (the **Parent** and together with the Owners, the **Guarantors**);
- (4) **AMSTERDAM TRADE BANK N.V.** as mandated lead arranger (the **Arranger**);
- (5) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 as lenders (the **Original Lenders**);
- (6) **AMSTERDAM TRADE BANK N.V.** as agent of the other Finance Parties (the **Agent**); and
- (7) **AMSTERDAM TRADE BANK N.V.** as security trustee for the Finance Parties (the **Security Agent**).

IT IS AGREED as follows:

Section 1—Interpretation

1 Definitions and interpretation

1.1 Definitions

In this Agreement and (unless otherwise defined in the relevant Finance Document) the other Finance Documents:

ABN Cash Collateral Account means any account held by the Borrower or, as the case may be, the Owners or any of them with the Junior Mortgagee for the purposes of clause 27.3 (*Excess Cash Flow transfer*).

Acceptable Bank means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non-credit-enhanced debt obligations of “A-” or higher by Standard & Poor’s Rating Services or Fitch Ratings Ltd or “Baa1” or higher by Moody’s Investors Service Limited or a comparable rating from an internationally recognised credit rating agency; or
- (b) any other bank or financial institution approved by the Agent and the Borrower.

Account means any bank account, deposit or certificate of deposit opened, made or established in accordance with clause 27 (*Bank accounts*) (other than the ABN Cash Collateral Account).

Account Bank means, in relation to any Account, either the bank or financial institution specified as such in Schedule 1 (*The original parties*) or another bank or financial institution approved by the Majority Lenders at the request of the Borrower.

Account Holder(s) means, in relation to any Account, each Obligor in whose name that Account is held.

Account Security means, in relation to an Account, a deed or other instrument by the relevant Account Holder(s) in favour of the Security Agent in an agreed form conferring a Security Interest over that Account.

Accounting Reference Date means 31 December or such other date as may be approved by the Lenders.

Active Facility means, at any relevant time, such part of the Total Commitments (whether drawn or undrawn) as is then available for borrowing under this Agreement at such time in accordance with clause 4 (*Conditions of Utilisation*) to the extent that such part of the Total Commitments is not cancelled or reduced under this Agreement.

Additional Excess Cash Flow Period means the period (if any) starting on the Excess Cash Flow Prepayment End Date and ending on 31 December 2020.

Advance means each of Advance A, Advance B and Advance C, and:

- (a) in relation to Ship A, Advance A;
- (b) in relation to Ship B, Advance B; or
- (b) in relation to Ship C, Advance C,

and **Advances** means together all or any of them.

Advance A means the borrowing of a proportion of the Advance Commitment for Ship A by the Borrower or (as the context may require) the outstanding principal amount of such borrowing.

Advance B means the borrowing of a proportion of the Advance Commitment for Ship B by the Borrower or (as the context may require) the outstanding principal amount of such borrowing.

Advance C means the borrowing of a proportion of the Advance Commitment for Ship C by the Borrower or (as the context may require) the outstanding principal amount of such borrowing.

Advance Commitment means, in relation to a Ship, the amount specified as such in respect of such Ship in Schedule 2 (*Ship information*), as cancelled or reduced pursuant to any provision of this Agreement.

Affiliate means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

Agent includes any person who may be appointed as such under the Finance Documents.

Approved Exchange means NYSE or NASDAQ or any other reputable stock exchange agreed by the Borrower and the Majority Lenders.

Approved Valuers means any of Howe Robinson Marine Evaluations Ltd, Barry Rogliano Salles (BRS) Group, Maersk Broker K/S, Kontiki Valuations Ltd or any other independent firm of shipbrokers agreed by the Agent, the Borrower and the Junior Mortgagee, as may be withdrawn or reinstated in accordance with clause 26.9 (*Approval of Valuers*).

Auditors means one of PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte & Touche or another firm proposed by the Borrower and approved by the Majority Lenders).

Authorisation means any authorisation, consent, concession, approval, resolution, licence, exemption, filing, notarisation or registration.

Available Commitment means a Lender's Commitment minus the amount of its participation in the Loan.

Available Facility means the aggregate for the time being of all the Lenders' Available Commitments.

Bail-In Action means the exercise of any Write-down and Conversion Powers.

Bail-In Legislation means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

Basel II Accord means the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 as updated prior to, and in the form existing on, the date of this Agreement, excluding any amendment thereto arising out of the Basel III Accord or Reformed Basel III.

Basel II Approach means, in relation to any Finance Party, either the Standardised Approach or the relevant Internal Ratings Based Approach (each as defined in the Basel II Regulations applicable to such Finance Party) adopted by that Finance Party (or any of its Affiliates) for the purposes of implementing or complying with the Basel II Accord.

Basel II Regulation means:

- (a) any law or regulation in force as at the date hereof implementing the Basel II Accord, (including the relevant provisions of CRD IV and CRR) to the extent only that such law or regulation re-enacts and/or implements the requirements of the Basel II Accord but excluding any provision of such law or regulation implementing the Basel III Accord; and
- (b) any Basel II Approach adopted by a Finance Party or any of its Affiliates.

Basel III Accord means, together:

- (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (b) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement—Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III" other than, in each such case, the agreements, rules, guidance and standards set out in Reformed Basel III, as amended, supplemented or restated.

Basel III Increased Cost means an Increased Cost which is attributable to the implementation or application of or compliance with any Basel III Regulation (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).

Basel III Regulation means any law or regulation implementing the Basel III Accord (including the relevant provisions of CRD IV and CRR) save to the extent that such law or regulation re-enacts a Basel II Regulation and excluding any such law or regulation which implements Reformed Basel III.

Borrower Affiliate means the Parent, either Manager, each of their respective Affiliates (including the Borrower), any trust of which the Parent, either Manager or any of their respective Affiliates is a trustee, any partnership of which the Parent, either Manager or any of their respective Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, the Parent, either Manager or any of their respective Affiliates.

Break Costs means the amount (if any) by which:

- (a) the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in the Loan or relevant part of it or Unpaid Sum to the last day of the current Interest Period in respect of the Loan or relevant part of it or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the relevant principal amount or Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of that Interest Period.

Borrower means the company described as such in Schedule 1 (*The original parties*).

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Amsterdam, Athens and New York.

Calculation Period means:

- (a) for the purposes of clause 7.7 (*Excess Cash Flow calculation and prepayment*):
 - (i) the period commencing on the first Utilisation Date and ending on the last day of the financial quarter within which such date falls; and
 - (ii) thereafter, each financial quarter of each financial year of an Owner, namely the relevant three monthly periods ending 31 March, 30 June, 30 September and 31 December of each calendar year, respectively, up to the Excess Cash Flow Prepayment End Date; and
- (b) for the purpose of clause 27.3 (*Excess Cash Flow transfer*):
 - (i) the period commencing on the Excess Cash Flow Prepayment End Date and ending on the last day of the financial quarter within which such Excess Cash Flow Prepayment End Date falls; and
 - (ii) thereafter, each financial quarter of each financial year of an Owner, namely the relevant three monthly periods ending 31 March, 30 June, 30 September and 31 December of each calendar year falling during the Additional Excess Cash Flow Period.

Change of Control occurs if, at any time until the Transaction is completed:

- (a) the Borrower ceases to be a wholly-owned direct Subsidiary of the Parent; or

- (b) an Owner ceases to be:
 - (i) at any time prior to the date of the Share Transfer, a wholly-owned direct Subsidiary of the Parent; and
 - (ii) at any time after the date of the Share Transfer, a wholly-owned direct Subsidiary of the Borrower; or
- (c) the Disclosed Persons cease to control the Parent and/or to own legally and/or beneficially 100% of the total issued voting share capital and of the issued share capital of the Parent; or
- (d) the person disclosed to the Agent by or on behalf of the Parent on or prior to the date of this Agreement to be the chief executive officer of the Parent ceases to hold such position,

in any case without the prior written consent of the Agent (acting on the instructions of the Majority Lenders).

Charged Property means all of the assets of the Obligors or a Manager which from time to time are, or are expressed or intended to be, the subject of the Transaction Security.

Charter means, in relation to each Ship, the time charter commitment between the relevant Owner and the Charterer in relation to that Ship, such time charter commitment having an original fixed term of at least 10 months and a daily gross charter rate of at least \$15,000.

Charterer means Zim Integrated Shipping Services Ltd or any other company acceptable to the Agent.

Classification means, in relation to a Ship, the classification specified in respect of such Ship in Schedule 2 (*Ship information*) with the relevant Classification Society or another classification approved by the Lenders as its classification (such approval not to be unreasonably withheld or delayed), at the request of the relevant Owner.

Classification Society means, in relation to a Ship, the classification society specified in respect of such Ship in Schedule 2 (*Ship information*) or another classification society (being a member of the International Association of Classification Societies (IACS) or, if such association no longer exists, any similar association nominated by the Agent) approved by the Lenders as its Classification Society (such approval not to be unreasonably withheld or delayed), at the request of the relevant Owner.

Code means the US Internal Revenue Code of 1986.

Commitment means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in Schedule 1 (*The original parties*) and the amount of any other Commitment assigned to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment assigned to it under this Agreement,

to the extent not cancelled, reduced or assigned by it under this Agreement.

Compliance Certificate means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*) or otherwise approved.

Confidential Information means all information relating to an Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of clause 46 (*Confidential Information*); or
 - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate or Reference Bank Quotation.

Confidentiality Undertaking means a confidentiality undertaking substantially in a recommended form of the Loan Market Association or in any other form agreed between the Borrower, any other Obligor and the Agent.

Constitutional Documents means, in respect of an Obligor or a Manager, such Obligor's or Manager's memorandum and articles of association or (as the case may be) certificate of formation and limited liability company agreement, bye-laws or other constitutional documents including as referred to in any certificate relating to an Obligor or a Manager delivered pursuant to Schedule 3 (*Conditions precedent*).

Co-ordination Agreement means the co-ordination agreement dated on or around the date of this Agreement and entered into between (inter alios) the Security Agent, the Owners and the Junior Mortgagee.

CRD IV means the directive 2013/36/EU of the European Union on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

CRR means the regulation 575/2013 of the European Union on prudential requirements for credit institutions and investment firms.

Debt Purchase Transaction means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of, any Commitment or amount outstanding under this Agreement.

Default means an Event of Default or any event or circumstance specified in clause 29 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

Defaulting Lender means any Lender (other than a Lender which is a Borrower Affiliate):

- (a) which has failed to make its participation in an Advance available (or has notified the Agent or the Borrower (which has notified the Agent) that it will not make its participation in an Advance available) by the Utilisation Date of that Advance in accordance with clause 5.4 (*Lenders' participation*);
 - (b) which has otherwise rescinded or repudiated a Finance Document; or
 - (c) with respect to which an Insolvency Event has occurred and is continuing,
- unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; and,payment is made within three Business Days of its due date; or
- (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

Delegate means any delegate, agent, attorney, additional trustee or co-trustee appointed by the Security Agent under the terms of the Finance Documents.

Disclosed Persons means each of the persons already disclosed by or on behalf of the Obligors to the Agent in the negotiation of this Agreement to be the legal and beneficial owners of 100% per cent the shares in the Parent and to control the Parent as at the date of this Agreement.

Disposal Repayment Date means in relation to:

- (a) a Total Loss of a Mortgaged Ship, the applicable Total Loss Repayment Date; and
- (b) a sale of a Mortgaged Ship by the relevant Owner, the date upon which such sale is completed by the transfer of title to the purchaser in exchange for payment of all or part of the relevant purchase price.

Disruption Event means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
- (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,
- and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

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

- (a) all freight, hire and passage moneys, compensation payable to that Owner, or the Security Agent in the event of requisition for hire of that Ship, 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 that Ship;
- (b) all moneys which are at any time payable under any Insurances in respect of loss of hire (if applicable under the Insurances); and
- (c) if and whenever that Ship is employed on terms whereby any moneys falling within paragraphs (a) or (b) 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 the Ship.

EEA Member Country means any member state of the European Union, Iceland, Liechtenstein and Norway.

Eligible Institution means any Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower and which, in each case, is not a Borrower Affiliate or a Group Member.

Environmental Claims means:

- (a) enforcement, clean-up, removal or other governmental or regulatory action or orders or claims instituted or made pursuant to any Environmental Laws or resulting from a Spill; or
- (b) any claim made by any other person relating to a Spill.

Environmental Incident means any Spill from any vessel in circumstances where:

- (a) any Fleet Vessel or its owner, operator or manager may be liable for Environmental Claims arising from the Spill (other than Environmental Claims arising and fully satisfied before the date of this Agreement); and/or
- (b) any Fleet Vessel may be arrested or attached in connection with any such Environmental Claim.

Environmental Laws means all laws, regulations and conventions concerning pollution or protection of human health or the environment.

EU Bail-In Legislation Schedule means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

Event of Default means any event or circumstance specified as such in clause 29 (*Events of Default*).

Excess Cash Flow means, in relation to each Calculation Period, the amount in dollars (calculated by the Owners or, as the case may be, the Agent (acting on the instructions of the Majority Lenders) pursuant to clause 7.7 (*Excess Cash Flow calculation and prepayment*)) which is equal to:

- (a) the aggregate of the Earnings of all Ships during such Calculation Period minus any commission and brokerage fees not otherwise included in the Ships' Operating Expenses under paragraph (b) below, minus
- (b) the aggregate of the Operating Expenses of all Ships in respect of such Calculation Period, minus
- (c) the total amounts of principal, interest and costs paid to the Finance Parties under the Finance Documents during such Calculation Period, excluding any fees paid to the Finance Parties under clause 12 (*Fees*),

to the extent that, in the case of items under paragraphs (b) and (c) above, they are accompanied by such evidence or information as the Agent may require in its sole discretion).

Excess Cash Flow Certificate shall have the meaning given to it in clause 20.4 (*Provisions and contents of Compliance Certificate and Excess Cash Flow Certificate*).

Excess Cash Flow Notice means each notification the Agent gives the Borrower of an Excess Cash Flow pursuant to clause 7.7 (*Excess Cash Flow calculation and prepayment*).

Excess Cash Flow Prepayment End Date means the earlier of:

- (a) 31 December 2020; and
- (b) the date when the aggregate amount of all prepayments under the Loan made pursuant to clause 7.7 (*Excess Cash Flow calculation and prepayment*) or clause 7.3 (*Voluntary prepayment*) equals \$4,500,000.

Existing Indebtedness means the indebtedness of, inter alios, the Owners under (a) the Existing Loan Agreement in respect of each Ship and (b) the Existing Master Agreement.

Existing Loan Agreement means the loan agreement dated 30 August 2017 (as amended, supplemented and/or restated from time to time) made (inter alios) between the Owners initially as joint and several borrowers, the Junior Mortgagee as agent, security agent, arranger and lender, in respect of a loan of (originally) up to \$82,459,678.29.

Existing Master Agreement means the 2002 ISDA agreement with its schedule thereto, each dated 30 August 2017 (as amended, supplemented and/or restated from time to time) and made (*inter alios*) between the Owners and the Junior Mortgagee as hedging provider.

Facility means the term loan facility made available under this Agreement as described in clause 2 (*The Facility*).

Facility Office means:

- (a) in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

Facility Period means the period from and including the date of this Agreement to and including the date on which the Total Commitments have reduced to zero and all indebtedness of the Obligors under the Finance Documents has been fully paid and discharged.

FATCA means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

FATCA Application Date means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

FATCA Deduction means a deduction or withholding from a payment under a Finance Document required by FATCA.

FATCA Exempt Party means a Party that is entitled to receive payments free from any FATCA Deduction.

Fee Letter means any letter or letters dated on or about the date of this Agreement between the Arranger, the Borrower and the Guarantors (or the Agent, the Borrower and the Guarantors) setting out any of the fees referred to in clause 12 (*Fees*) and includes any agreement setting out any fees payable to a Finance Party under any other Finance Document.

Final Repayment Date means, in relation to each Advance and subject to clause 39.8 (*Business Days*), the earlier of:

- (a) 31 December 2020; and
- (b) the date falling 30 Months after the relevant Utilisation Date.

Finance Documents means this Agreement, any Fee Letter, the Co-ordination Agreement and any deed of accession supplemental to it, the Security Documents, and any other document designated as such by the Agent and the Borrower.

Finance Party means the Agent, the Security Agent, the Arranger or a Lender.

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under GAAP);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Final Repayment Date or are otherwise classified as borrowings under GAAP);
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 180 days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing or otherwise classified as borrowings under GAAP; and
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

Financial Year means the annual accounting period of the Group ending on or about the Accounting Reference Date in each year.

First Repayment Date means, in relation to an Advance and subject to clause 39.8 (*Business Days*), 31 March 2020.

Flag State means, in relation to a Ship, the country specified in respect of such Ship in Schedule 2 (*Ship information*), or such other state or territory as may be approved by the Lenders, at the request of the relevant Owner, as being the “**Flag State**” of such Ship for the purposes of the Finance Documents.

Fleet Vessel means each Mortgaged Ship and any other vessel owned by any Group Member.

Funding Rate means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of clause 11.4 (*Cost of funds*).

GAAP means (at the Borrower's option):

- (a) generally accepted accounting principles in the US; or
- (b) the International Accounting Standards, International Financial Reporting Standards and related interpretations as amended, supplemented, issued or adopted from time to time by the International Accounting Standards Board to the extent applicable to the relevant financial statements.

General Assignment means, in relation to a Ship, a first assignment of its interest in the Ship's Insurances, Earnings and Requisition Compensation and in its Charter by the relevant Owner in favour of the Security Agent in the agreed form.

Group means the Parent and its Subsidiaries for the time being (including, for the avoidance of doubt, the Owners and the Borrower).

Group Facility Agreements means, together, all of any of the following facility agreements:

- (a) a facility agreement dated 11 August 2017 made between Hector Marine LLC, Hephaestus Marine LLC and Pericles Marine LLC as joint and several borrowers and Credit Agricole Corporate and Investment Bank as lender, as amended, supplemented and/or restated from time to time in respect of a loan of originally up to \$55,650,000;
- (b) a facility agreement dated 18 July 2017 made between Athena Marine LLC, Aris Marine LLC, Aphrodite Marine LLC and Alexander Marine LLC as joint and several borrowers and DVB Bank SE as lender, as amended, supplemented and/or restated from time to time in respect of a loan of originally up to \$52,625,589;
- (c) a facility agreement dated 11 August 2017 made (inter alios) between Leonidas Marine LLC as borrower and Wilmington Trust, National Association as agent and security agent, as amended, supplemented and/or restated from time to time in respect of a loan of up to \$[●]; and
- (d) the Existing Loan Agreement,

and **Group Facility Agreement** means each of them.

Group Member means any Obligor and any other entity which is part of the Group.

Guarantor means each of the Parent and the Owners and **Guarantors** means together all or any of them.

Holding Company means, in relation to a person, any other person in respect of which it is a Subsidiary.

Impaired Agent means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Agent is also a Lender) it is a Defaulting Lender under paragraphs (a) or (b) of the definition of "Defaulting Lender"; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent;

unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayments made within five Business Days of its due date; or
- (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

Increased Costs has the meaning given to that term in paragraph (b) of clause 14.1 (*Increased costs*).

Indemnified Person means:

- (a) each Finance Party, each Receiver, any Delegate and any attorney, agent or other person appointed by them under the Finance Documents;
- (b) each Affiliate of those persons; and
- (c) any officers, directors, employees, advisers, representatives or agents of any of the above persons.

Insolvency Event in relation to an entity means that the entity:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);

- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other enforcement action or legal process levied, enforced, taken or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

Insurance Notice means, in relation to a Ship, a notice of assignment in the form scheduled the Ship's General Assignment or in another approved form.

Insurances means, in relation to a Ship:

- (a) all policies and contracts of insurance; and
- (b) all entries in a protection and indemnity or war risks or other mutual insurance association,

in the name of such Ship's owner or the joint names of its owner and any other person in respect of or in connection with such Ship and/or its owner's Earnings from the Ship and includes all benefits thereof (including the right to receive claims and to return of premiums).

Interbank Market means the London interbank market.

Interest Period means, in relation to the Loan (or any part of the Loan), each period determined in accordance with clause 10 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with clause 9.3 (*Default interest*).

Interpolated Screen Rate means, in relation to LIBOR for an Interest Period with respect to the Loan or any part of it or any Unpaid Sum, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the relevant Interest Period; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the relevant Interest Period,

each as of 11:00 a.m. on the relevant Quotation Day.

Junior Mortgagee means ABN AMRO BANK N.V. of 93 Coolingsingel, 3012 AE Rotterdam, The Netherlands.

Last Availability Date means 26 October 2018 (or such later date as may be approved by the Lenders).

Legal Opinion means any legal opinion delivered to the Agent under clause 4 (*Conditions of Utilisation*).

Legal Reservations means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Act 1980 and the Foreign Limitation Periods Act 1984, the possibility that an undertaking to assume liability for, or indemnify a person against, non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in a Legal Opinion.

Lender means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with clause 30 (*Changes to the Lenders*),

which in each case has not ceased to be a Lender in accordance with the terms of this Agreement.

LIBOR means, in relation to the Loan or any part of it or any Unpaid Sum:

- (a) the applicable Screen Rate as of 11:00 a.m. on the relevant Quotation Day for a period equal in length to the Interest Period of the Loan or relevant part of it or Unpaid Sum; or
- (b) as otherwise determined pursuant to clause 11.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

Loan means the loan made or to be made available under the Facility or the principal amount outstanding for the time being of that loan.

Losses means any costs, expenses, payments, charges, losses, demands, liabilities, claims, actions, proceedings, penalties, fines, damages, judgments, orders or other sanctions.

Loss Payable Clauses means, in relation to a Ship, the provisions concerning payment of claims under the Ship's Insurances in the form scheduled to the Ship's General Assignment in respect of the Ship or in another approved form.

Major Casualty means any casualty to a vessel for which the total insurance claim, inclusive of any deductible, exceeds or is reasonably expected to exceed the Major Casualty Amount.

Major Casualty Amount means, in relation to a Ship, the amount specified as such in Schedule 2 (*Ship information*) against the name of such Ship or the equivalent in any other currency.

Majority Lenders means a Lender or Lenders whose Commitments aggregate more than 66 2/3 per cent of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 2/3 per cent of the Total Commitments immediately prior to that reduction).

Manager means, in respect of each Ship:

- (a) ConChart Commercial Inc. of the Republic of the Marshall Islands appointed in accordance with clause 23.4 (*Manager*) in respect of commercial services; and
- (b) Technomar Shipping Inc. of the Republic of Liberia appointed in accordance with clause 23.4 (*Manager*) in respect of technical services, and in each case includes its successors in title and **Managers** means together both of them.

Management Agreement means, in relation to a Ship, the agreement between the relevant Owner or the Parent and a Manager relating to the appointment of that Manager as manager in respect of that Ship and **Management Agreements** means together all or any of them.

Manager's Undertaking means, in relation to a Ship, an undertaking by any Manager of that Ship to the Security Agent in the agreed form pursuant to clause 23.4 (*Manager*).

Margin means three point nine zero per cent (3.90%) per annum.

Material Adverse Effect means, in the reasonable opinion of the Majority Lenders, a material adverse effect on:

- (a) the business, operations or financial condition of the Obligors taken as a whole; or
- (b) the ability of an Obligor to perform its obligations under the Finance Documents; or
- (c) the legality, validity or enforceability of, or the effectiveness or ranking of any Security Interest granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

Minimum Value means, at any relevant time, the amount in dollars which is at that time equal to 133 per cent of the Loan.

Month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in the calendar month in which that period is to end (if there is one) or on the immediately preceding Business Day (if there is not);
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

Mortgage means, in relation to a Ship, a first mortgage of the Ship in the agreed form by the relevant Owner in favour of the Security Agent.

Mortgage Period means, in relation to a Mortgaged Ship, the period from the date the Mortgage over that Ship is executed and registered until the date such Mortgage is released and discharged or, if earlier, its Total Loss Date.

Mortgaged Ship means, at any relevant time, any Ship which is subject to a Mortgage and/or whose Earnings, Insurances and Requisition Compensation are subject to a Security Interest under the Finance Documents.

New Lender has the meaning given to that term in clause 30 (*Changes to the Lenders*).

Next Rollover Date shall have the meaning given to it in clause 7.7 (*Excess Cash Flow calculation and prepayment*).

Notifiable Debt Purchase Transaction has the meaning given to that term in clause 45.8 (*Disenfranchisement of Borrower Affiliates*).

Obligors means the parties to the Finance Documents (other than the Finance Parties, the Charterer and the Managers) and **Obligor** means any one of them.

Operating Account means any Account designated as an “**Operating Account**” under clause 27 (*Bank accounts*).

Operating Expenses means, in respect of a Ship and a Calculation Period, the aggregate expenditure necessarily incurred by its Owner during that Calculation Period in operating, insuring, maintaining, repairing and generally trading that Ship (including, but not limited to, any expenses in respect of dry-docking, special survey (including any projected costs for dry-docking and special surveys during the next 3 month period) and general and administrative expenses paid in respect of the Ship, any voyage expenses, as well as any other capitalised expenses as same are defined as per GAAP).

Original Financial Statements means the consolidated audited financial statements of the Group for its Financial Year ended 31 December 2017.

Original Jurisdiction means, in relation to an Original Obligor, the jurisdiction under whose laws that Obligor is incorporated or formed (as the case may be) as at the date of this Agreement or, in the case of any other Obligor, as at the date on which that Obligor becomes an Obligor.

Original Obligor means each party to this Agreement and the Original Security Documents (other than a Finance Party and the Charterer).

Original Security Documents means:

- (a) the Mortgage over each of the Ships;
- (b) the General Assignment in relation to each of the Ships;
- (c) the Share Security;
- (d) the Account Security in relation to each Account; and
- (e) any Manager’s Undertaking in relation to a Ship if required under clause 23.4 (*Manager*).

Owner means, in relation to a Ship, the person set out at page 1 as a Party to this Agreement and as further described as such in Schedule 1 (*The original parties*) and specified against the name of that Ship in Schedule 2 (*Ship information*).

Parent means the company set out at page 1 as a Party to this Agreement and as further described as such in Schedule 1 (*The original parties*).

Participating Member State means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

Party means a party to this Agreement.

Permitted Maritime Liens means, in relation to any Mortgaged Ship:

- (a) any ship repairer's or outfitter's possessory lien in respect of the Ship for an amount not exceeding the Major Casualty Amount;
- (b) any lien on the Ship for master's, officer's or crew's wages or master's disbursements in an amount (in respect of master's disbursements only) not exceeding \$80,000 at any given time, in each case, outstanding in the ordinary course of that Ship's trading;
- (c) any lien on the Ship for salvage or general average;
- (d) any lien on the Ship arising by operation of law for not more than two months' prepaid hire under any charter; and
- (e) any other lien on the Ship arising by operation of law for claims incurred in the ordinary course of the operation, repair or maintenance of the Ship and which are outstanding for not longer than thirty (30) days (unless contested in good faith by appropriate steps and for which adequate reserves have been set aside by the relevant Owner or the Parent) and for an aggregate amount not exceeding the Major Casualty Amount.

Permitted Security Interests means, in relation to any Mortgaged Ship, any Security Interest over it which is:

- (a) granted by the Finance Documents; or
- (b) a Permitted Maritime Lien; or
- (c) is approved by the Majority Lenders (whether by the Co-ordination Agreement or otherwise).

Pollutant means and includes crude oil and its products, any other polluting, toxic or hazardous substance and any other substance whose release into the environment is regulated or penalised by Environmental Laws.

Quasi-Security has the meaning given to that term in clause 28.2 (*General negative pledge*).

Quotation Day means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period unless market practice in the Interbank Market differs, in which case the Quotation Day shall be determined by the Agent in accordance with market practice in the Interbank Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

Receiver means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property appointed under any Security Document.

Reference Bank Quotation means any quotation supplied to the Agent by a Reference Bank.

Reference Bank Rate means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks as either:

- (a) if:
 - (i) the Reference Bank is a contributor to the Screen Rate; and

(ii) it consists of a single figure,

the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the Screen Rate are asked to submit to the relevant administrator; or

(b) in any other case, the rate at which the relevant Reference Bank could fund itself in the relevant currency for the relevant period with reference to the unsecured wholesale funding market.

Reference Banks means, in relation to LIBOR, the offices of HSBC Bank Plc, London Branch, Deutsche Bank AG, London Branch, UBS AG, Zurich Branch, Citigroup Global Markets Ltd, London Branch, Credit Suisse International, London Branch, Barclays Bank Plc, London Branch, and JP Morgan Chase Bank NA, London Branch or such other leading banks in the Interbank Market as may be appointed by the Agent in agreement with the Borrower.

Reformed Basel III means the agreements contained in “Basel III: Finalising post-crisis reforms” published by the Basel Committee on Banking Supervision in December 2017, as amended, supplemented or restated.

Reformed Basel III Increased Cost means an Increased Cost which is attributable to the implementation or application of or compliance with any other law or regulation which implements Reformed Basel III (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).

Registry means, in relation to each Ship, such registrar, commissioner or representative of the relevant Flag State who is duly authorised and empowered to register the relevant Ship, the relevant Owner’s title to such Ship and the relevant Mortgage under the laws of its Flag State.

Related Fund in relation to a fund (the **first fund**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

Relevant Jurisdiction means, in relation to an Obligor or a Manager:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any Charged Property owned by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) any jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

Repayment Date means in relation to an Advance:

- (a) the First Repayment Date for such Advance;
- (b) each of the dates falling at intervals of 3 Months thereafter up to but not including the Final Repayment Date for such Advance; and
- (c) the Final Repayment Date for such Advance.

Repeating Representations means each of the representations set out in clauses 19.2 (*Status*) to clause 19.12 (*Centre of main interests and establishments*).

Representative means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

Requisition Compensation means, in relation to a Ship, any compensation paid or payable by a government entity for the requisition for title, confiscation or compulsory acquisition of such Ship.

Resolution Authority means any body which has authority to exercise any Write-down and Conversion Powers.

Restricted Person means a person that:

- (a) is listed on any Sanctions List (whether designated by name or by reason of being included in a class of person) or otherwise a target of Sanctions;
- (b) is domiciled, registered as located or having its main place of business in, or is incorporated under the laws of or, such country or territory which is, or whose government is, subject to Sanctions broadly prohibiting dealings with such government, country or territory;
- (c) is directly or indirectly owned or controlled by a person referred to in paragraphs (a) or (b) above; or
- (d) owns or controls a person referred to in paragraphs (a) or (b) above.

Sanctions means any economic sanctions laws, sanctions regulations, embargoes or restrictive measures administered enacted or enforced by:

- (a) the United States of America government;
- (b) the United Nations Security Council;
- (c) the United Kingdom;
- (d) the European Union or any of its member states;
- (e) any country to which any Obligor, a Manager or any Affiliate of any of them is bound; or
- (f) the respective governmental institutions and agencies of any of the foregoing, including without limitation, the Office of Foreign Assets Control of the US Department of Treasury (**OFAC**), the United States Department of State and Her Majesty's Treasury (**HMT**) (together **Sanctions Authorities**).

Sanctions List means the "Specially Designated Nationals and Blocked Persons" list issued by OFAC, the "Consolidated List of Financial Sanctions Targets and Investment Ban List" issued by HMT, or any similar list issued or maintained or made public by any of the Sanctions Authorities.

Screen Rate means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for dollars and the relevant period displayed (before any correction, recalculation or republication by the administrator) on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrower and the Lenders.

Secured Liabilities means all indebtedness and obligations at any time of any Obligor to any Finance Party (whether for its own account or as agent or trustee for itself and/or other Finance Parties) under, or related to, the Finance Documents.

Secured Obligations means all the Secured Liabilities and all other indebtedness and obligations at any time due, owing or incurred by each Obligor to any Finance Party under the Finance Documents.

Security Agent includes any person as may be appointed as such under the Finance Documents and includes any separate trustee or co-trustee appointed under clause 33.8 (*Additional trustees*)).

Security Documents means:

- (a) the Original Security Documents;
- (b) any other document as may be executed to guarantee and/or secure any amounts owing to the Finance Parties under this Agreement or any other Finance Document.

Security Interest means a mortgage, charge, pledge, lien, assignment, trust, hypothecation or other security interest of any kind securing any obligation of any person or any other agreement or arrangement having a similar effect.

Security Property means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Finance Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by any Obligor to pay amounts in respect of the Secured Liabilities to the Security Agent as trustee for the Finance Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by an Obligor and a Manager in favour of the Security Agent as trustee for the Finance Parties; and
- (c) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Finance Parties.

Security Value means, at any time, the amount in dollars which, at that time, is the aggregate of (a) the aggregate of the values of all of the Mortgaged Ships which have not then become a Total Loss and (b) the value of any additional security then held by the Security Agent or any other Finance Party provided under clause 26 (*Minimum security value*), in each case as most recently determined in accordance with this Agreement.

Selection Notice means a notice substantially in the form set out in Schedule 5 (*Selection Notice*) given in accordance with clause 10 (*Interest Periods*).

Share Security means:

- (a) in relation to each Owner, the document constituting a first Security Interest by the Borrower in favour of the Security Agent in the agreed form in respect of all of the shares in such Owner; and
- (b) in relation to the Borrower, the document constituting a first Security Interest by the Parent in favour of the Security Agent in the agreed form in respect of all of the shares in the Borrower.

Share Transfer means the transfer by the Parent to the Borrower of all the issued shares in each Owner.

Ship Representations means each of the representations and warranties set out in clauses 19.32 (*Ship status*) and 19.33 (*Ship's employment*).

Ship A means the ship described as such in Schedule 2 (*Ship information*).

Ship B means the ship described as such in Schedule 2 (*Ship information*).

Ship C means the ship described as such in Schedule 2 (*Ship information*).

Ships means together Ship A, Ship B and Ship C and **Ship** means any of them.

Spill means any actual or threatened spill, release or discharge of a Pollutant into the environment.

Subsidiary of a person means any other person:

(a) directly or indirectly controlled by such person; or

(b) of whose dividends or distributions on ordinary voting share capital such person is beneficially entitled to receive more than 50 per cent,

and a person is a **“wholly-owned Subsidiary”** of another person if it has no members except that other person and that other person’s wholly-owned Subsidiaries or persons acting on behalf of that other person or its wholly-owned Subsidiaries.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

Total Commitments means the aggregate of the Commitments, being \$17,100,000 at the date of this Agreement.

Total Loss means, in relation to a vessel, its:

(a) actual, constructive, compromised or arranged total loss; or

(b) requisition for title, confiscation or other compulsory acquisition by a government entity; or

(c) hijacking, theft, condemnation, capture, seizure, arrest or detention for more than 90 days or in the case of piracy for more than 180 days.

Total Loss Date means, in relation to the Total Loss of a vessel:

(a) in the case of an actual total loss, the date it happened or, if such date is not known, the date on which the vessel was last reported;

(b) in the case of a constructive, compromised, agreed or arranged total loss, the earliest of:

(i) the date notice of abandonment of the vessel is given to its insurers; or

(ii) if the insurers do not admit such a claim, the date later determined by a competent court of law to have been the date on which the total loss happened; or

(iii) the date upon which a binding agreement as to such compromised or arranged total loss has been entered into by the vessel’s insurers;

(c) in the case of a requisition for title, confiscation or compulsory acquisition, the date it happened; and

- (d) in the case of hijacking, theft, condemnation, capture, seizure, arrest or detention, the date falling 90 days after the date upon which it happened or in the case of piracy, the date falling 180 days after the date it happened.

Total Loss Repayment Date means, where a Mortgaged Ship has become a Total Loss, the earlier of:

- (a) the date 120 days after its Total Loss Date; and
- (b) the date upon which insurance proceeds or Requisition Compensation for such Total Loss are paid by insurers or the relevant government entity.

Transaction means the acquisition (including by way of merger) of the shares in the Parent by one or more legal persons others than the ones existing on the date of this Agreement.

Transaction Change of Control occurs if, at any time after a Transaction has been completed, and in respect of paragraph (c) only, until the date falling six (6) months after the date on which the Transaction is completed, without the prior written consent of the Lenders:

- (a) the Borrower ceases to be a wholly-owned direct Subsidiary of the Parent;
- (b) an Owner ceases to be a wholly-owned direct Subsidiary of the Borrower;
- (c) the Disclosed Persons cease to control, directly or indirectly (through one or more of their Affiliates), and/or to own legally and beneficially, either directly or indirectly (through one or more of their Affiliates), 50% of (i) the issued and outstanding share capital, or (ii) the issued and outstanding voting share capital, of the Parent; or
- (d) the person disclosed by or on behalf of the Parent to the Agent on or prior to the date of this Agreement to be the chief executive officer of the Parent ceases to be the executive chairman of the ultimate Holding Company of the Parent or ceases to hold any other equivalent executive officer position in the ultimate Holding Company of the Parent, in any case other than by reason of death or other incapacity of managing his affairs.

Transaction Security means the Security Interests created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents.

Transfer Certificate means a certificate substantially in the form set out in Schedule 7 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower.

Transfer Date means, in relation to an assignment pursuant to a Transfer Certificate, the later of:

- (a) the proposed Transfer Date specified in the Transfer Certificate; and
- (b) the date on which the Agent executes the Transfer Certificate.

Treasury Transaction means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

Unpaid Sum means any sum due and payable but unpaid by an Obligor under the Finance Documents.

US means the United States of America.

US Tax Obligor means:

- (a) a Borrower which is resident for tax purposes in the US; or

- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

Utilisation means the making of an Advance.

Utilisation Date means the date on which a Utilisation is to be made.

Utilisation Request means a notice substantially in the form set out in Schedule 4 (*Utilisation Request*).

VAT means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

Vessel Performance Report has the meaning given to that term in clause 20.4 (*Provisions and content of Compliance Certificate and Excess Cash Flow Certificate*).

Write-down and Conversion Powers means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
- (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contractor instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
- (ii) any similar or analogous powers under that Bail-In Legislation.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in any of the Finance Documents to:
- (i) Sections, clauses and Schedules are to be construed as references to the Sections and clauses of, and the Schedules to, the relevant Finance Document and references to a Finance Document include its Schedules;
- (ii) a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as it may from time to time be amended, restated, novated or replaced, however fundamentally;
- (iii) words importing the plural shall include the singular and vice versa;
- (iv) a time of day are to London time;
- (v) any person includes its successors in title, permitted assignees or transferees;

- (vi) the knowledge, awareness and/or beliefs (and similar expressions) of any Obligor or a Manager shall be construed so as to mean the knowledge, awareness and beliefs of the director and officers of such Obligor or Manager, having made due and careful enquiry;
- (vii) a document in agreed form means:
 - (A) where a Finance Document has already been executed by all of the relevant parties, such Finance Document in its executed form;
 - (B) prior to the execution of a Finance Document, the form of such Finance Document separately agreed in writing between the Agent and the Borrower as the form in which that Finance Document is to be executed or another form approved at the request of the Borrower or, if not so agreed or approved, is in the form specified by the Agent;
- (viii) **approved by the Majority Lenders** or **approved by the Lenders** means approved in writing by the Agent acting on the instructions of the Majority Lenders or, as the case may be, all of the Lenders (on such conditions as they may respectively impose) and otherwise **approved** means approved in writing by the Agent (on such conditions as the Agent may impose) and **approval** and **approve** shall be construed accordingly;
- (ix) **assets** includes present and future properties, revenues and rights of every description;
- (x) **charter commitment** means, in relation to a vessel, any charter or contract for the use, employment or operation of that vessel or the carriage of people and/or cargo or the provision of services by or from it and includes any agreement for pooling or sharing income derived from any such charter or contract;
- (xi) **control** of an entity means:
 - (A) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (1) cast, or control the casting of, more than 50 per cent of the maximum number of votes that might be cast at a general meeting of that entity; or
 - (2) appoint or remove all, or the majority, of the directors, or other equivalent officers of that entity; or
 - (3) give directions with respect to the operating and financial policies of that entity with which the directors or other equivalent officers of that entity are obliged to comply; and/or
 - (B) the holding beneficially of more than 50 per cent of the issued share capital of that entity (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital) (and, for this purpose, any Security Interest over share capital shall be disregarded in determining the beneficial ownership of such share capital);and **controlled** shall be construed accordingly;
- (xii) the term **disposal** or **dispose** means a sale, transfer or other disposal (including by way of lease or loan but not including by way of loan of money) by a person of all or part of its assets, whether by one transaction or a series of transactions and whether at the same time or over a period of time, but not the creation of a Security Interest;

- (xiii) the **equivalent** of an amount specified in a particular currency (the **specified currency amount**) shall be construed as a reference to the amount of the other relevant currency which can be purchased with the specified currency amount in the London foreign exchange market at or about 11 a.m. on the date the calculation falls to be made for spot delivery, as conclusively determined by the Agent (with the relevant exchange rate of any such purchase being the **Agent's spot rate of exchange**);
- (xiv) a **government entity** means any government, state or agency of a state;
- (xv) a **group of Lenders** or a **group of Finance Parties** includes all the Lenders or (as the case may be) all the Finance Parties;
- (xvi) a **guarantee** means (other than in clause 18 (*Guarantee and indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (xvii) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (xviii) an **obligation** means any duty, obligation or liability of any kind;
- (xix) something being in the **ordinary course of business** of a person means something that is in the ordinary course of that person's current day-to-day operational business (and not merely anything which that person is entitled to do under its Constitutional Documents);
- (xx) **pay** or **repay** in clause 28 (*Business restrictions*) includes by way of set-off, combination of accounts or otherwise;
- (xxi) a **person** includes any individual, firm, company, limited liability company corporation, government entity or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (xxii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, one with which a person is reasonably expected to comply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation and, in relation to any Lender, includes (without limitation) any Basel II Regulation or Basel III Regulation or any law or regulation which implements Reformed Basel III, in each case applicable to that Lender;
- (xxiii) **right** means any right, privilege, power or remedy, any proprietary interest in any asset and any other interest or remedy of any kind, whether actual or contingent, present or future, arising under contract or law, or in equity;
- (xxiv) **trustee, fiduciary** and **fiduciary duty** has in each case the meaning given to such term under applicable law;

(xxv) (i) the **liquidation, winding up, dissolution, or administration** of person or (ii) a **receiver or administrative receiver or administrator** in the context of insolvency proceedings or security enforcement actions in respect of a person shall be construed so as to include any equivalent or analogous proceedings or any equivalent and analogous person or appointee (respectively) under the law of the jurisdiction in which such person is established or incorporated or formed (as the case may be), or any jurisdiction in which such person carries on business including (in respect of proceedings) the seeking or occurrences of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors; and

(xxvi) a provision of law is a reference to that provision as amended or re-enacted.

- (b) The determination of the extent to which a rate is **“for a period equal in length”** to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Where in this Agreement a provision includes a monetary reference level in one currency, unless a contrary indication appears, such reference level is intended to apply equally to its equivalent in other currencies as of the relevant time for the purposes of applying such reference level to any other currencies.
- (d) Section, clause and Schedule headings are for ease of reference only.
- (e) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (f) A Default (other than an Event of Default) is continuing if it has not been remedied or waived and an Event of Default is continuing if it has not been waived.

1.3 Currency symbols and definitions

\$, USD and dollars denote the lawful currency of the United States of America.

1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document for the benefit of a Finance Party or another Indemnified Person, a person who is not a party to a Finance Document has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or enjoy the benefit of any term of the relevant Finance Document.
- (b) Any Finance Document may be rescinded or varied by the parties to it without the consent of any person who is not a party to it (unless otherwise provided by this Agreement).
- (c) An Indemnified Person who is not a party to a Finance Document may only enforce its rights under that Finance Document through a Finance Party and if and to the extent and in such manner as the Finance Party may determine.

1.5 Finance Documents

Where any other Finance Document provides that this clause 1.5 shall apply to that Finance Document, any other provision of this Agreement which, by its terms, purports to apply to all or any of the Finance Documents and/or any Obligor shall apply to that Finance Document as if set out in it but with all necessary changes.

1.6 Conflict of documents

The terms of the Finance Documents (other than as relates to the creation and/or perfection of security) are subject to the terms of this Agreement and, in the event of any conflict between any provision of this Agreement and any provision of any Finance Document (other than in relation to the creation and/or perfection of security) the provisions of this Agreement shall prevail.

2 The Facility

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a term loan facility in an aggregate amount equal to the Total Commitments.

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

3 Purpose

3.1 Purpose

The Borrower shall apply all amounts borrowed under the Facility in accordance with this clause 3.

3.2 Refinancing

Each Advance shall be made available solely for the purpose of assisting the Borrower to (i) refinance the amounts owing by the relevant Obligor under the Existing Indebtedness in respect of the Ship relevant to such Advance (ii) pay any fees arising from documenting the Facility and refinancing the Existing Indebtedness.

3.3 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4 Conditions of Utilisation

4.1 Initial conditions precedent

The Lenders will only be obliged to comply with clause 5.4 (*Lenders' participation*) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent, or its duly authorised representative, has received all of the documents and other evidence listed in Part 1 of Schedule 3 (*Conditions precedent to any Utilisation*) in form and substance satisfactory to the Agent.

4.2 Ship and security conditions precedent

The Total Commitments may only be borrowed under this Agreement if the Agent, or its duly authorised representative, has received all of the documents and evidence listed in Part 2 of Schedule 3 (*Ship and security conditions precedent*) in form and substance satisfactory to the Agent.

4.3 Notice of satisfaction of conditions

The Agent shall notify the Lenders and the Borrower promptly after receipt by it of the documents and evidence referred to in this clause 4 in form and substance satisfactory to it. Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives any such notification, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.4 Further conditions precedent

The Lenders will only be obliged to comply with clause 5.4 (*Lenders' participation*) if:

- (a) on the date of the Utilisation Request and on the proposed Utilisation Date, no Default is continuing or would result from the proposed Utilisation;
- (b) in relation to each Utilisation, on the date of the Utilisation Request and on the proposed Utilisation Date, all of the representations set out in clause 19 (*Representations*) (except the Ship Representations) are true; and
- (c) where the proposed Utilisation Date is to be the first day of the Mortgage Period for a Ship, the Ship Representations for such Ship are true on the proposed Utilisation Date.

4.5 Waiver of conditions precedent

The conditions in this clause 4 are inserted solely for the benefit of the Finance Parties and may be waived on their behalf in whole or in part and with or without conditions by the Agent acting on the instructions of the Majority Lenders.

5 Utilisation

5.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than 11:00 a.m. two Business Days before the proposed Utilisation Date.

5.2 Completion of a Utilisation Request

- (a) A Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date in respect of an Advance is a Business Day falling on or before the Last Availability Date;
 - (ii) the currency and amount of the Utilisation comply with clause 5.3 (*Currency and amount*);
 - (iii) the proposed Interest Period complies with clause 10 (*Interest Periods*); and
 - (iv) it identifies the purpose for the Utilisation and that purpose complies with clause 3 (*Purpose*) and it identifies the relevant Advance to which it relates.
- (b) Only one Utilisation Request may be made.
- (c) The Commitments may only be borrowed in a single Utilisation.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be dollars.
- (b) Subject to the terms of this Agreement, the total amount advanced under each Advance shall not exceed the Advance Commitment relating to such Advance.
- (c) Subject to the terms of this Agreement, the total amount available and advanced under all Advances shall not exceed the Total Commitments.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Advance available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Advance will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Advance.
- (c) The Agent shall promptly notify each Lender of the amount of the Advance and the amount of its participation in the Advance, in each case by 11:00 a.m. on the relevant Quotation Day.
- (d) The Agent shall pay all amounts received by it in respect of each Advance (and its own participation in it, if any) to the Borrower or for its account in accordance with the instructions contained in the relevant Utilisation Request.

6 Repayment**6.1 Repayment**

The Borrower shall on each Repayment Date repay such part of the Loan as is required to be repaid on that Repayment Date by clause 6.2 (*Scheduled repayment of Advances*).

6.2 Scheduled repayment of Advances

- (a) To the extent not previously reduced, each Advance shall be repaid by instalments on each Repayment Date in respect of the relevant Advance by the amount specified below (as revised by clause 6.3 (*Adjustment of scheduled repayments*)):

<u>Repayment Date</u>	<u>Advance A Amount \$</u>	<u>Advance B Amount \$</u>	<u>Advance C Amount \$</u>
First	110,000	110,000	110,000
Second	110,000	110,000	110,000
Third	110,000	110,000	110,000
Fourth	5,370,000	5,370,000	5,370,000
TOTAL	<u>5,700,000</u>	<u>5,700,000</u>	<u>5,700,000</u>

- (b) The fourth instalment referred to above in respect of each Advance is comprised of two parts, a repayment instalment in the amount of \$110,000 and a balloon instalment in the amount of \$5,260,000 (the **Balloon Instalment**).
- (c) On the Final Repayment Date for an Advance (without prejudice to any other provision of this Agreement), that Advance shall be repaid in full.

6.3 Adjustment of scheduled repayments

If an Advance Commitment has been partially reduced under this Agreement and/or any part of the relevant Advance is prepaid (other than under clause 6.2 (*Scheduled repayment of Advances*)) before any Repayment Date in respect of the relevant Advance, then the amount of the instalment (including the Balloon Instalment) by which the relevant Advance shall be repaid under clause 6.2 (*Scheduled repayment of Advances*) on any such Repayment Date (as reduced by any earlier operation of this clause 6.3) shall be reduced pro rata to such reduction in the relevant Advance Commitment and/or prepayment of relevant Advance (and the remaining instalments of such Advance shall be rounded upwards to the nearest thousand), except in the case of a reduction under clause 7.2 (*Voluntary cancellation*) or prepayment under clause 7.3 (*Voluntary prepayment*) or clause 7.7(c) (*Excess Cash Flow calculation and prepayment*) where the reduction shall be treated as reducing the instalments of the relevant Advance in inverse chronological order (including the relevant Balloon Instalment) by its aggregate amount.

7 Illegality, prepayment and cancellation

7.1 Illegality

If, in any applicable jurisdiction, it becomes unlawful for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Loan or any part thereof or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, the Available Commitment of that Lender will be immediately cancelled and the undrawn Advance Commitments shall each be correspondingly reduced rateably; and
- (c) to the extent that the Lender's participation has not been assigned pursuant to clause 7.5 (*Replacement of Lender*), the Borrower shall repay that Lender's participation in the Loan on the last day of the Interest Period occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participation repaid.

7.2 Voluntary cancellation

The Borrower may, if it gives the Agent not less than 15 Business Days' (or such shorter period as the Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of \$500,000 or a multiple of \$500,000) of the Available Facility. Any cancellation under this clause 7.2 shall reduce the Commitments of the Lenders rateably.

7.3 Voluntary prepayment

The Borrower may, if it gives the Agent not less than 15 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of an Advance (but if in part, being an amount that reduces the amount of the relevant Advance by a minimum amount of \$500,000 or a multiple of \$500,000):

- (a) on the last day of an Interest Period in respect of the amount to be prepaid; or
- (b) in the case of a prepayment under this clause 7.3 as a result of a sale of a Ship in accordance with clause 23.3 (*Sale or other disposal of Ship*), on any other date, but subject always to clause 11.6 (*Break Costs*).

7.4 Right of cancellation in relation to a Defaulting Lender

- (a) If any Lender becomes a Defaulting Lender, the Borrower may, at any time whilst the Lender continues to be a Defaulting Lender give the Agent ten Business Days' notice of cancellation of the Available Commitment of that Lender.
- (b) On such notice becoming effective, the Available Commitment of the Defaulting Lender shall immediately be reduced to zero and the Agent shall as soon as practicable after receipt of such notice, notify all the Lenders.

7.5 Replacement of Lender

- (a) If:
 - (i) any Lender has become and continues to be a Defaulting Lender; or
 - (ii) the Borrower becomes obliged to repay any amount in accordance with clause 7.1 (*Illegality*) to any Lender,

the Borrower may, on ten Business Days' prior notice to the Agent and such Lender, replace such Lender by requiring such Lender to assign (and, to the extent permitted by law, such Lender shall assign) pursuant to clause 30 (*Changes to the Lenders*) all (and not part only) of its rights under this Agreement (and any Security Document to which that Lender is a party in its capacity as a Lender) to an Eligible Institution (a **Replacement Lender**) which confirms its willingness to undertake and does undertake all the obligations of the assigning Lender in accordance with clause 30 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the assignment in an amount equal to the aggregate of:

- (A) the outstanding principal amount of such Lender's participation in the Loan;
 - (B) all accrued interest owing to such Lender;
 - (C) the Break Costs which would have been payable to such Lender pursuant to clause 11.6 (*Break Costs*) had the Borrower prepaid in full that Lender's participation in the Loan on the date of the assignment; and
 - (D) all other amounts payable to that Lender under the Finance Documents on the date of the assignment.
- (b) The replacement of a Lender pursuant to this clause 7.5 shall be subject to the following conditions:
- (i) the Borrower shall have no right to replace the Agent or the Security Agent;
 - (ii) neither the Agent nor any Lender shall have any obligation to find a Replacement Lender;
 - (iii) in the event of a replacement of a Defaulting Lender, such replacement must take place no later than ten Business Days after the notice referred to in paragraph (a) above;
 - (iv) in no event shall the Lender replaced under this clause 7.5 be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (v) the Lender shall only be obliged to assign its rights pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that assignment.
- (c) A Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

7.6 Sale or Total Loss

- (a) If a Ship is sold or becomes a Total Loss before its Advance Commitment has become available for borrowing under this Agreement, the Total Commitments shall immediately be reduced by the Advance Commitment for such Ship and such Advance Commitment shall be reduced to zero.
- (b) On a Mortgaged Ship's Disposal Repayment Date, the Borrower shall prepay:
 - (i) the relevant Advance; and
 - (ii) in the event that such Disposal Repayment Date is on a date after 1 January 2020, such part of the Loan as may be necessary to ensure that immediately after such prepayment the Security Value equals or exceeds the Minimum Value.

- (c) Any prepayment in above of the relevant Advance shall be applied pro rata between the remaining Advances.
- (d) Provided that no Default has occurred and is continuing, any remaining proceeds of the sale or Total Loss of a Ship after the prepayment referred to in paragraph (b) above has been made, shall be paid to the Borrower (save as otherwise provided in the Co-ordination Agreement).

7.7 Excess Cash Flow calculation and prepayment

- (a) The Agent shall be entitled (but not obligated), in relation to each Calculation Period (and following an initial calculation made by the Owners as set out in the Excess Cash Flow Certificate delivered to the Agent under clause 20.4 (*Provision and contents of Compliance Certificate and Excess Cash Flow Certificate*)), to calculate in its sole discretion the amount of the Excess Cash Flow for such Calculation Period.
- (b) Following each such calculation the Agent shall notify the Borrower and the Lenders of the amount of such Excess Cash Flow for that Calculation Period, provided however that if the Agent does not notify the Borrower and the Lenders of its calculations within 7 Business Days of receiving the Excess Cash Flow Certificate, the Owners' calculations as set out in the relevant Excess Cash Flow Certificate shall apply in respect of the Excess Cash Flow applicable for that Calculation Period.
- (c) If the amount of Excess Cash Flow in respect of a Calculation Period as determined by the Owners or, if applicable, the Agent in accordance with this clause 7.7, is a positive figure, the Borrower shall prepay to the Agent (for the account of the Lenders) a part of the Loan equal to such Excess Cash Flow.
- (d) Once the Borrower has made prepayments against the Loan, whether under clause 7.7(c) or under clause 7.3 (*Voluntary prepayment*), equal to \$4,500,000, the Borrower's obligation to make any further prepayments under this clause 7.7 shall cease to apply.
- (e) A prepayment under clause 7.7(c) shall be made on the last day (the **Next Rollover Date**) of the first Interest Period falling immediately after the relevant Excess Cash Flow Notice or, if there is no such notice, after the date the relevant Excess Cash Flow Certificate is delivered to the Agent.
- (f) Each prepayment under clause 7.7(c) shall be applied pro rata between the Advances and as regards between the Advances in or towards reduction of the repayment instalments (including the relevant Balloon Instalment) of each Advance in accordance with clause 6.3 (*Adjustment of scheduled repayments*).
- (g) The provisions of clause 8 (*Restrictions*) shall apply to any prepayment made under this clause 7.7(c).

7.8 Automatic cancellation

Any part of an Advance Commitment which has not become available by the Last Availability Date shall be automatically cancelled at close of business in Amsterdam on the Last Availability Date.

8 Restrictions

8.1 Notices of cancellation and prepayment

- (a) Any notice of cancellation or prepayment given by any Party under clause 7 (*Illegality, prepayment and cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

- (b) If any such cancellation or prepayment relates to a particular Advance Commitment and/or Advance, any such notice shall also specify the relevant Advance Commitment and/or Advance.

8.2 Interest and other amounts

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without any other premium or penalty.

8.3 No reborrowing

The Borrower may not re-borrow any part of the Facility which is prepaid or repaid.

8.4 Prepayment in accordance with Agreement

The Borrower shall not repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

8.5 No reinstatement of Commitments

No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

8.6 Agent's receipt of notices

If the Agent receives a notice under clause 7 (*Illegality, prepayment and cancellation*) it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.

8.7 Effect of repayment and prepayment on Commitments

If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment equal to the amount of the participation which is repaid or prepaid will be deemed to be cancelled on the date of repayment or prepayment.

8.8 Application of cancellations

If the Total Commitments are partially reduced and/or the Loan partially prepaid under this Agreement (other than under clause 7.1 (*Illegality*)), the Commitments of the Lenders shall be reduced rateably.

8.9 Application of prepayments

- (a) Any prepayment required as a result of a cancellation in full of an individual Lender's Commitment under clause 7.1 (*Illegality*) shall be applied in prepaying the relevant Lender's participation in each Advance.
- (b) Any other prepayment shall be applied pro rata to each Lender's participation in each Advance being prepaid.

8.10 Removal of Lender from security

Upon cancellation and prepayment in full of an individual Lender's Commitment under clause 7.1 (*Illegality*), that Lender and the other Parties must promptly take (and the Borrower shall ensure that any other relevant Obligor promptly takes) whatever action the Agent may, in its reasonable opinion, deem necessary or desirable for the purpose of removing that Lender as a party to and beneficiary of any Security Documents granted in favour of (among others) the Lenders.

9 Interest

9.1 Calculation of interest

The rate of interest on each Advance (or any relevant part of it for which there is a separate Interest Period) for each Interest Period for the relevant Advance is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin; and
- (b) LIBOR for the relevant Interest Period.

9.2 Payment of interest

The Borrower shall pay accrued interest on each Advance (or any relevant part of it) on the last day of each Interest Period for that Advance (or the relevant part of it) (and, if an Interest Period is longer than three Months, on the dates falling at three Monthly intervals after the first day of that Interest Period).

9.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document to a Finance Party on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (c) below, is two per cent per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted the Loan for successive Interest Periods, each of a duration selected by the Agent (acting reasonably).
- (b) Any interest accruing under this clause 9.3 shall be immediately payable by the Obligor on demand by the Agent.
- (c) If any overdue amount consists of all or part of the Loan (or any relevant part of it) which became due on a day which was not the last day of an Interest Period relating to the Loan or the relevant part of it:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan or the relevant part of it; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two per cent per annum higher than the rate which would have applied if the overdue amount had not become due.
- (d) Default interest payable under this clause 9.3 (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

9.4 Notification of rates of interest

- (a) The Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- (b) The Agent shall promptly notify the Borrower of each Funding Rate relating to each Advance (or any relevant part of it).

10 Interest Periods

10.1 Selection of Interest Periods

- (a) The Borrower may select an Interest Period for an Advance in the Utilisation Request or (if an Advance has already been borrowed) in a Selection Notice relating to that Advance.
- (b) Each Selection Notice is irrevocable and must be delivered to the Agent by the Borrower not later than 11:00 a.m. four Business Days before the last day of the then current Interest Period for the relevant Advance.
- (c) If the Borrower fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to clause 10.2 (*Interest Periods overrunning Repayment Dates*), be three Months.
- (d) Subject to this clause 10, the Borrower may select an Interest Period of three Months or any other period agreed between the Borrower and the Agent (acting on the instructions of all the Lenders).
- (e) No Interest Period for an Advance shall extend beyond the Final Repayment Date for that Advance.
- (f) The first Interest Period for an Advance shall start on the Utilisation Date for that Advance and each subsequent Interest Period for that Advance shall start on the last day of its preceding Interest Period.

10.2 Interest Periods overrunning Repayment Dates

If the Borrower selects an Interest Period for an Advance which would overrun any later Repayment Date for that Advance, that Advance shall be divided into parts corresponding to the amounts by which that Advance is scheduled to be repaid under clause 6.2 (*Scheduled repayment of Advances*) on each of the Repayment Dates for that Advance falling during such Interest Period (each of which shall have a separate Interest Period ending on the relevant Repayment Date) and to the balance of that Advance (which shall have the Interest Period selected by the Borrower).

10.3 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

11 Changes to the calculation of interest

11.1 Unavailability of Screen Rate

- (a) If no Screen Rate is available for LIBOR for an Interest Period, LIBOR shall be the Interpolated Screen Rate for a period equal in length to that Interest Period.
- (b) If no Screen Rate is available for LIBOR for:
 - (i) dollars; or
 - (ii) the relevant Interest Period and it is not possible to calculate the Interpolated Screen Rate,

LIBOR shall be the Reference Bank Rate as of noon on the relevant Quotation Day and for a period equal in length to the relevant Interest Period.

- (c) If paragraph (b) above applies but no Reference Bank Rate is available for dollars or the relevant Interest Period, there shall be no LIBOR for that Interest Period and clause 11.4 (*Cost of funds*) shall apply for that Interest Period.

11.2 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if LIBOR for an Interest Period is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by noon on the relevant Quotation Day, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about noon on the relevant Quotation Day none or (when there is more than one Reference Bank) only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for that Interest Period.

11.3 Market disruption

If before close of business in London on the Quotation Day for an Interest Period the Agent receives notifications from a Lender or Lenders (whose participations in the Loan exceed 51 per cent of the Loan) that the cost to it of funding its participation in the relevant Advance or relevant part of it from whatever source it may reasonably select would be in excess of LIBOR then clause 11.4 (*Cost of funds*) shall apply to the relevant Advance or relevant part of it for the relevant Interest Period.

11.4 Cost of funds

- (a) If this clause 11.4 applies, the rate of interest for the Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin;
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event within ten Business Days of the first day of that Interest Period (or, if earlier, on the date falling ten Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in the relevant Advance or relevant part of it from whatever source it may reasonably select; and
 - (iii) any cost applicable to that Lender pursuant to clause 15.10 (*Mandatory Cost*).
- (b) If this clause 11.4 applies and the Agent or the Borrower so require, the Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If this clause 11.4 applies pursuant to clause 11.3 (*Market disruption*) and:
- (i) a Lender's Funding Rate is less than LIBOR; or
 - (ii) a Lender does not supply a quotation by the time specified in paragraph (a)(ii) above,
- the cost to that Lender of funding its participation in the relevant Advance or relevant part of it for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

11.5 Notification to Borrower

If clause 11.4 (*Cost of funds*) applies, the Agent shall, as soon as is practicable, notify the Borrower.

11.6 Break Costs

- (a) The Borrower shall, within five Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of the Loan or any relevant part of it or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for the Loan or that relevant part of it or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

12 Fees

12.1 Commitment commission

- (a) The Borrower shall pay to the Agent (for the account of each Lender) a fee in dollars computed at the rate of one point nine five per cent per annum on that Lender's Available Commitment calculated from the date of this Agreement (the **start date**).
- (b) The Borrower shall pay the accrued commitment commission on the last day of the period of three Months commencing on the start date, on the last day of each successive period of three Months, on the Last Availability Date and, if cancelled in full, on the cancelled amount of the relevant Lender's Available Commitment at the time the cancellation is effective.
- (c) No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.
- (d) No commitment fee shall be payable to the Agent (for the account of the Lenders) if the Total Commitments have been advanced within seven Business Days after the start date.

12.2 Arrangement fee

The Borrower shall pay to the Agent (for distribution to the Arranger and the Lenders) an arrangement fee in the amount and at the times agreed in a Fee Letter.

12.3 Advisory fee

The Borrower shall pay to the Arranger (for its own account) an advisory fee in the amount and at the times agreed in a Fee Letter.

13 Tax gross-up and indemnities

13.1 Definitions

- (a) In this Agreement:

Protected Party means a Finance Party or, in relation to clause 15.4 (*Indemnity concerning security*) and clause 15.7 (*Interest*) insofar as it relates to interest on any amount demanded by that Indemnified Person under clause 15.4 (*Indemnity concerning security*), any Indemnified Person, which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

Tax Deduction means a deduction or withholding for or on account of Tax from a payment under a Finance Document other than a FATCA Deduction.

- (b) Unless a contrary indication appears, in this clause 13 a reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

13.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it under any Finance Document without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall, promptly upon it becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction), notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor under the relevant Finance Document shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

13.3 Tax indemnity

- (a) The Borrower shall (within five Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under clause 13.2 (*Tax gross-up*); or
 - (B) relates to a FATCA Deduction required to be made by a Party or any Obligor which is not a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower and shall specify the nature and amount of such claim pursuant to any available information.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this clause 13.3, notify the Agent.

13.4 Indemnities on after Tax basis

- (a) If and to the extent that any sum payable to any Protected Party by the Borrower under any Finance Document by way of indemnity or reimbursement proves to be insufficient, by reason of any Tax suffered thereon, for that Protected Party to discharge the corresponding liability to a third party, or to reimburse that Protected Party for the cost incurred by it in discharging the corresponding liability to a third party, the Borrower shall pay that Protected Party such additional sum as (after taking into account any Tax suffered by that Protected Party on such additional sum) shall be required to make up the relevant deficit.
- (b) If and to the extent that any sum (the **Indemnity Sum**) constituting (directly or indirectly) an indemnity to any Protected Party but paid by the Borrower to any person other than that Protected Party, shall be treated as taxable in the hands of the Protected Party, the Borrower shall pay to that Protected Party such sum (the **Compensating Sum**) as (after taking into account any Tax suffered by that Protected Party on the Compensating Sum) shall reimburse that Protected Party for any Tax suffered by it in respect of the Indemnity Sum.
- (c) For the purposes of paragraphs (a) and (b) above, a sum shall be deemed to be taxable in the hands of a Protected Party if it falls to be taken into account in computing the profits or gains of that Protected Party for the purposes of Tax and, if so, that Protected Party shall be deemed to have suffered Tax on the relevant sum at the rate of Tax applicable to that Protected Party's profits or gains for the period in which the payment of the relevant sum falls to be taken into account for the purposes of such Tax.

13.5 Stamp taxes

The Borrower shall pay and, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

13.6 Value added tax

- (a) All amounts expressed in a Finance Document to be payable by any party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any party under a Finance Document, and such Finance Party is required to account to the relevant tax authority for the VAT, that party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any party to a Finance Document other than the Recipient (the **Subject Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
 - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Subject Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Subject Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Subject Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any party to it to reimburse or indemnify a Finance Party for any cost or expense, that party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this clause 13.6 to any party shall, at any time when such party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).
- (e) In relation to any supply made by a Finance Party to any party under a Finance Document, if reasonably requested by such Finance Party, that party must promptly provide such Finance Party with details of that party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

13.7 FATCA information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraphs (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If the Borrower is a US Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
 - (i) where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where the Borrower is a US Tax Obligor on a date on which any other Lender becomes a Party as a Lender, that date; or
 - (iii) where the Borrower is not a US Tax Obligor, the date of a request from the Agent, supply to the Agent:
 - (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or

- (B) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.
- (h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraphs (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

13.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Agent and the Agent shall notify the other Finance Parties.

14 Increased Costs

14.1 Increased costs

- (a) Subject to clause 14.3 (*Exceptions*), the Borrower shall, within five Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Cost incurred by that Finance Party or any of its Affiliates which:
 - (i) arises as a result of (A) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (B) compliance with any law or regulation made after the date of this Agreement; and/or
 - (ii) is a Basel III Increased Cost; and/or
 - (iii) is a Reformed Basel III Increased Cost.
- (b) In this Agreement **Increased Costs** means:
 - (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
 - (ii) an additional or increased cost; or
 - (iii) a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

14.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to clause 14.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

14.3 Exceptions

- (a) Clause 14.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by clause 13.3 (*Tax indemnity*) (or would have been compensated for under clause 13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of clause 13.3 (*Tax indemnity*) applied);
 - (iv) compensated for by clause 15.10 (*Mandatory Cost*); or
 - (v) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In paragraph (a) above, a reference to a Tax Deduction has the same meaning given to the term in clause 13.1 (*Definitions*).

15 Other indemnities

15.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a **Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **First Currency**) in which that Sum is payable into another currency (the **Second Currency**) for the purpose of:
 - (i) making or filing a claim or proof against that Obligor; and/or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,that Obligor shall, as an independent obligation, within five Business Days of demand by a Finance Party, indemnify each Finance Party to whom that Sum is due against any Losses arising out of or as a result of the conversion including any discrepancy between (i) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (ii) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

15.2 Other indemnities

The Borrower shall (or shall procure that another Obligor will), within five Business Days of demand by a Finance Party, indemnify each Finance Party against any and all Losses incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any and all Losses arising as a result of clause 38 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Utilisation requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

15.3 Indemnity to the Agent and the Security Agent

The Borrower shall promptly indemnify the Agent and the Security Agent against:

- (a) any and all Losses (together with any applicable VAT) incurred by the Agent or the Security Agent as a result of:
 - (i) investigating any event which it reasonably believes is a Default;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) instructing lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts as permitted under the Finance Documents; or
 - (iv) any action taken by the Agent or the Security Agent or any of its or their representatives, agents or contractors in connection with any powers conferred by any Security Document to remedy any breach of any Obligor's obligations under the Finance Documents, and
- (b) any and all Losses (including, without limitation, in respect of liability for negligence or any other category of liability whatsoever) (together with any applicable VAT) incurred by the Agent or the Security Agent (otherwise than by reason of the Agent's or the Security Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause 39.11 (*Disruption to payment systems etc.*)) notwithstanding the Agent's or the Security Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent in acting as Agent or the Security Agent under the Finance Documents.

15.4 Indemnity concerning security

- (a) The Borrower shall (or shall procure that another Obligor will) promptly indemnify each Indemnified Person against any and all Losses (together with any applicable VAT) incurred by it as a result of:
- (i) any failure by the Borrower to comply with its obligations under clause 17 (*Costs and expenses*) or any similar provision in any other Finance Document;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise or purported exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and/or any other Finance Party and each Receiver and each Delegate by the Finance Documents or by law (otherwise, in each case, than by reason of the relevant Security Agent's and/or other Finance Party's, Receiver's or Delegate's gross negligence or wilful misconduct);
 - (v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
 - (vi) any claim (whether relating to the environment or otherwise) made or asserted against the Indemnified Person which would not have arisen but for the execution or enforcement of one or more Finance Documents (unless and to the extent it is caused by the gross negligence or wilful misconduct of that Indemnified Person);
 - (vii) instructing lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts as permitted under the Finance Documents; or
 - (viii) (in the case of the Security Agent, and/or any other Finance Party, any Receiver and any Delegate) acting as Security Agent and/or as holder of any of the Transaction Security, Receiver or Delegate under the Finance Documents or which otherwise relates to the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's and/or other Finance Party's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent may, in priority to any payment to the other Finance Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause 15.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

15.5 Continuation of indemnities

The indemnities by the Borrower in favour of any Indemnified Persons contained in this Agreement shall continue in full force and effect notwithstanding any breach by any Finance Party or the Borrower of the terms of this Agreement, the repayment or prepayment of the Loan, the cancellation of the Total Commitments or the repudiation by any Finance Party or the Borrower of this Agreement.

15.6 Third Parties Act

- (a) Each Indemnified Person may rely on the terms of clause 15.4 (*Indemnity concerning security*) and clauses 13 (*Tax gross-up and indemnities*) and 15.7 (*Interest*) insofar as it relates to interest on, or the calculation of, any amount demanded by that Indemnified Person under clause 15.4 (*Indemnity concerning security*), subject to clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (b) Where an Indemnified Person (other than a Finance Party) (the **Relevant Beneficiary**) who is:
- (i) appointed by a Finance Party under the Finance Documents;
 - (ii) an Affiliate of any such person or that Finance Party; or

(iii) an officer, director, employee, adviser, representative or agent of any of the above persons or that Finance Party, is entitled to receive any amount (a **Third Party Claim**) under any of the provisions referred to in paragraph (a) above:

- (A) the Borrower shall at the same time as the relevant Third Party Claim is due to the Relevant Beneficiary pay to that Finance Party a sum in the amount of that Third Party Claim;
- (B) payment of such sum to that Finance Party shall, to the extent of that payment, satisfy the corresponding obligations of the Borrower to pay the Third Party Claim to the Relevant Beneficiary; and
- (C) if the Borrower pays the Third Party Claim direct to the Relevant Beneficiary, such payment shall, to the extent of that payment, satisfy the corresponding obligations of the Borrower to that Finance Party under sub-paragraph (A) above.

15.7 Interest

Moneys becoming due by the Borrower to any Indemnified Person under the indemnities contained in this clause 15 (*Other indemnities*) or elsewhere in this Agreement shall be paid on demand made by such Indemnified Person and shall be paid together with interest on the sum demanded from the date of demand therefor to the date of reimbursement by the Borrower to such Indemnified Person (both before and after judgment) at the rate referred to in clause 9.3 (*Default interest*).

15.8 Exclusion of liability

Without prejudice to any other provision of the Finance Documents excluding or limiting the liability of any Indemnified Person, no Indemnified Person will be in any way liable or responsible to any Obligor (whether as mortgagee in possession or otherwise) who is a Party or is a party to a Finance Document to which this clause applies for any loss or liability arising from any act, default, omission or misconduct of that Indemnified Person, except to the extent caused by its own gross negligence or wilful misconduct. Any Indemnified Person may rely on this clause 15.8 subject to clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

15.9 Sanctions

- (a) Each Obligor shall, within five Business Days of demand by a Finance Party, indemnify such Finance Party against any cost, loss or liability incurred by it as a result of any civil penalty or fine against, and all costs and expenses (including counsel fees and disbursements) incurred in connection with the defence thereof by, the Agent or the relevant Finance Party as a result of conduct of any Group Member or any Manager or any of its partners, directors, officers, employees, agents or advisors, that violates any applicable Sanctions.
- (b) The indemnity in clause 15.9(a) shall cover any Losses incurred by each Finance Party in any jurisdiction arising or asserted under or in connection with any law relating to any applicable Sanctions.

15.10 Mandatory Cost

The Borrower shall, within five Business Days of demand by the Agent, pay to the Agent for the account of the relevant Lender, such amount which any Lender certifies in a notice to the Agent to be its good faith determination of the amount necessary to compensate it for complying with:

- (a) in the case of a Lender lending from a Facility Office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank or any other authority or agency which replaces all or any of its functions) in respect of loans made from that Facility Office; and
- (b) in the case of any Lender lending from a Facility Office in the United Kingdom, any reserve asset, special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England (or any other governmental authority or agency) and/or paying any fees to the Financial Conduct Authority and/or the Prudential Regulation Authority (or any other governmental authority or agency which replaces all or any of their functions),

which, in each case, is referable to that Lender's participation in the Loan.

16 Mitigation by the Lenders

16.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause 7.1 (*Illegality*), clause 13 (*Tax gross-up and indemnities*), clause 14 (*Increased costs*) or clause 15.10 (*Mandatory Cost*) including (but not limited to) assigning its rights under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

16.2 Limitation of liability

- (a) The Borrower shall promptly indemnify each Finance Party for all costs and expenses incurred by that Finance Party as a result of steps taken by it under clause 16.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under clause 16.1 (*Mitigation*) if, in the opinion of that Finance Party, to do so might be prejudicial to it.

17 Costs and expenses

17.1 Transaction expenses

The Borrower shall, promptly on demand, pay the Agent, the Security Agent and the Arranger the amount of all costs and expenses (including fees, costs and expenses of lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts) (together with any applicable VAT) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication, registration and perfection and any release, discharge or reassignment of:

- (a) this Agreement and any other documents referred to in this Agreement and the Security Documents;
- (b) any other Finance Documents executed or proposed to be executed after the date of this Agreement including any executed to provide additional security under clause 26 (*Minimum security value*); or
- (c) any Security Interest expressed or intended to be granted by a Finance Document.

17.2 Amendment costs

If:

- (a) an Obligor or a Manager requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to clause 39.10 (*Change of currency*); or
- (c) an amendment is required pursuant to clause 21.5 (*Most favoured nation*),

the Borrower shall, within five Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including fees, costs and expenses of lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts) (together with any applicable VAT) reasonably incurred by the Agent and the Security Agent (and in the case of the Security Agent by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

17.3 Enforcement, preservation and other costs

The Borrower shall, on demand by a Finance Party, pay to each Finance Party the amount of all costs and expenses (including fees, costs and expenses of lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts) (together with any applicable VAT) incurred by that Finance Party in connection with:

- (a) the enforcement of, or the preservation of any rights under, any Finance Document and the Transaction Security and any proceedings instituted by or against any Indemnified Person as a consequence of taking or holding the Security Documents or enforcing those rights;
- (b) any valuation carried out under clause 26 (*Minimum security value*), clause 28.11 (*Reduction of capital*) or clause 28.13 (*Distributions and other payments*); or
- (c) any inspection carried out under clause 24.9 (*Inspection and notice of dry-docking*) or any survey carried out under clause 24.17 (*Survey report*), but not more than what is provided in such clauses.

18 Guarantee and indemnity

18.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally:

- (a) guarantees to the Security Agent (as trustee for the Finance Parties) and the other Finance Parties punctual performance by each other Obligor of all such Obligor's obligations under the Finance Documents;
- (b) undertakes with the Security Agent (as trustee for the Finance Parties) and the other Finance Parties that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, it shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with the Security Agent (as trustee for the Finance Parties) and the other Finance Parties that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of another Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by such Obligor under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount that Guarantor would have had to pay under this clause 18.1 if the amount claimed had been recoverable on the basis of a guarantee.

18.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

18.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this clause 18 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

18.4 Waiver of defences

The obligations of each Guarantor under this clause 18 will not be affected by an act, omission, matter or thing (whether or not known to it or any Finance Party) which, but for this clause 18, would reduce, release or prejudice any of its obligations under this clause 18 including (without limitation):

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any other Obligor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

18.5 Guarantors intent

Without prejudice to the generality of clause 18.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents.

18.6 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this clause 18. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

18.7 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and neither Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from a Guarantor or on account of a Guarantor's liability under this clause 18.

18.8 Deferral of Guarantor's rights

- (a) Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this clause 18:
 - (i) to be indemnified by another Obligor;
 - (ii) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;

- (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
 - (iv) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which that Guarantor has given a guarantee, undertaking or indemnity under clause 18 (*Guarantee and indemnity*);
 - (v) to exercise any right of set-off against any other Obligor; and/or
 - (vi) to claim or prove as a creditor of any other Obligor in competition with any Finance Party.
- (b) If a Guarantor receives any benefit, payment or distribution in relation to such rights it will promptly pay an equal amount to the Agent for application in accordance with clause 39 (*Payment mechanics*). This only applies until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full.

18.9 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

18.10 Guarantors' rights and obligations

- (a) The obligations of each Guarantor under this guarantee and under this Agreement are joint and several. Failure by a Guarantor to perform its obligations under this guarantee and/or this Agreement shall constitute a failure by all Guarantors.
- (b) Each Guarantor irrevocably and unconditionally jointly and severally with the other Guarantors:
 - (i) agrees that it is responsible for the performance of the obligations of the other Guarantors under this guarantee and this Agreement;
 - (ii) acknowledges and agrees that it is a principal and original debtor in respect of all amounts due from all Guarantors under this guarantee and under this Agreement; and
 - (iii) agrees with the Finance Parties that, if any obligation of any other Guarantor under this guarantee and this Agreement is or becomes unenforceable, invalid or illegal for any reason it will, as an independent and primary obligation, indemnify the Finance Parties or any of them immediately on demand against any and all Losses a Finance Party incurs as a result of any other Guarantor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by that other Guarantor under this guarantee and/or this Agreement. The amount payable under this indemnity shall be equal to the amount which a Finance Party would otherwise have been entitled to recover.

19 Representations

19.1 Each Obligor who is a Party makes and repeats the representations and warranties set out in this clause 19 to each Finance Party at the times specified in clause 19.36 (*Times when representations are made*).

19.2 Status

- (a) Each Obligor and each Manager is a corporation or a limited liability corporation, duly incorporated or formed (as the case may be) and validly existing under the law of its Original Jurisdiction.
- (b) Each Obligor and each Manager has power and authority to own its assets and to carry on its business as it is now being conducted.

19.3 Binding obligations

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by each Obligor and each Manager in each Finance Document to which it is, or is to be, a party are or, when entered into by it, will be legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above) each Security Document to which an Obligor or a Manager is, or will be, a party, creates or will create the Security Interests which that Security Document purports to create and those Security Interests are or will be valid and effective.

19.4 Non-conflict

The entry into and performance by each Obligor and each Manager of, and the transactions contemplated by the Finance Documents and the granting of the Transaction Security do not and will not conflict with:

- (a) any law or regulation applicable to any Obligor or any Manager;
- (b) the Constitutional Documents of any Obligor or any Manager; or
- (c) any agreement or other instrument binding upon any Obligor or any Manager or its assets,

or constitute a default or termination event (however described) under any such agreement or instrument or result in the creation of any Security Interest (save for a Permitted Security Interest) on any Obligor's or any Manager's assets, rights or revenues.

19.5 Power and authority

- (a) Each Obligor and each Manager has the power to enter into, perform and deliver and comply with its obligations under, and has taken all necessary action to authorise its entry into, performance and delivery of, and compliance with, each Finance Document to which it is, or is to be, a party and each of the transactions contemplated by those documents.
- (b) No limitation on any Obligor's or Manager's powers to borrow, create security or give guarantees will be exceeded as a result of any transaction under, or the entry into of, any Finance Document to which such Obligor or Manager is, or is to be, a party.

19.6 Validity and admissibility in evidence

- (a) All Authorisations required:
 - (i) to enable each Obligor and each Manager lawfully to enter into, exercise its rights and comply with its obligations under each Finance Document to which it is a party;
 - (ii) to make each Finance Document to which it is a party admissible in evidence in its Relevant Jurisdictions; and
 - (iii) to ensure that the Transaction Security has the priority and ranking contemplated by the Security Documents, have been obtained or effected or (as the case may be) will be obtained or effected when required and are or (as the case may be) will be when required in full force and effect except any Authorisation or filing referred to in clause 19.15 (*No filing or stamp taxes*), which Authorisation or filing will be promptly obtained or effected within any applicable period.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of each Obligor and each Manager have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations is reasonably likely to have a Material Adverse Effect.

19.7 Governing law and enforcement

- (a) The choice of governing law of any Finance Document will be recognised and enforced in each Obligor's and each Manager's Relevant Jurisdictions.
- (b) Any judgment obtained in relation to any Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

19.8 No misleading information

- (a) Any factual information contained in the Information Package is true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given.
- (b) Any financial projection or forecast contained in the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration.
- (c) The expressions of opinion or intention provided by or on behalf of an Obligor or a Manager for the purposes of the Information Package were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds.
- (d) No event or circumstance has occurred or arisen and no information has been omitted from the Information Package and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Package being untrue or misleading in any material respect.
- (e) All other written information provided by any Group Member (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

- (f) For the purposes of this clause 19.8, **Information Package** means any information provided by any Obligor or a Manager to any of the Finance Parties in connection with the Finance Documents or the transactions referred to in them (including each Compliance Certificate, each Excess Cash Flow Certificate and each Vessel Performance Report).

19.9 Original Financial Statements

- (a) The Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) The Original Financial Statements fairly present the consolidated financial condition as at the end of the relevant Financial Year and its results of operations during the relevant Financial Year of the Group during the relevant Financial Year.
- (c) There has been no material adverse change in the assets, business or financial condition of any Obligor (or the assets, business or consolidated financial condition of the Group, in the case of the Borrower), since the date of the Original Financial Statements.

19.10 Pari passu ranking

Each Obligor's payment obligations under the Finance Documents to which it is, or is to be, a party rank at least pari passu with all its other present and future unsecured and unsubordinated payment obligations, except for obligations mandatorily preferred by law applying to companies generally.

19.11 Ranking and effectiveness of security

Subject to the Legal Reservations and any filing, registration or notice requirements which is referred to in any legal opinion delivered to the Agent under clause 4.1 (*Initial conditions precedent*):

- (a) the Transaction Security has (or will have when the relevant Security Documents have been executed) the priority which it is expressed to have in the Security Documents;
- (b) the Charged Property is not subject to any Security Interest other than Permitted Security Interests; and
- (c) the Transaction Security will constitute perfected security on the assets described in the Security Documents.

19.12 Centre of main interests and establishments

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the **Regulation**), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its Original Jurisdiction and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

19.13 Ownership of Charged Property

Each Obligor and each Manager is the sole legal and beneficial owner of the Charged Property over which it purports to grant a Security Interest under the Security Documents.

19.14 No insolvency

No corporate action, legal proceeding or other procedure or step described in clause 29.10 (*Insolvency proceedings*) or creditors' process described in clause 29.11 (*Creditors' process*) has been taken or, to the knowledge of any Obligor or a Manager, threatened in relation to a Group Member or a Manager and none of the circumstances described in clause 29.9 (*Insolvency*) applies to any Group Member or a Manager.

19.15 No filing or stamp taxes

Under the laws of each Obligor's or Manager's Relevant Jurisdictions it is not necessary that any Finance Document to which it is, or is to be, party be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to any such Finance Document or the transactions contemplated by the Finance Documents except registration of the Mortgage over each Ship with the relevant Registry and any filing, recording or enrolling or any tax or fee payable in relation to any Finance Document which is referred to in any Legal Opinion and which will be made or paid promptly after the date of the relevant Finance Document.

19.16 Deduction of Tax

No Obligor is required to make any Tax Deduction (as defined in clause 13.1 (*Definitions*)) from any payment it may make under any Finance Document to which it is, or is to be, a party.

19.17 Tax compliance

- (a) No Obligor is materially overdue in the filing of any Tax returns or overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against any Obligor with respect to Taxes such that a liability of, or claim against, any Obligor is reasonably likely to arise for an amount for which adequate reserves have not been provided in the Original Financial Statements and which are reasonably expected to have a Material Adverse Effect.
- (c) Each Obligor is resident for Tax purposes only in its Original Jurisdiction.

19.18 Pension exposure

No Obligor is, or may be, liable to contribute funds to any form of pension scheme or similar arrangement (other than a scheme or arrangement where the benefits conferred by it on its members are calculated solely by reference to a payment or payments made by the relevant member or by any other person in respect of that member).

19.19 No Default

- (a) No Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Finance Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on any Obligor or any other Group Member or to which any Obligor's (or any other Group Member's) assets are subject which might have a Material Adverse Effect.

19.20 No proceedings

- (a) No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of any Obligor's knowledge and belief (having made due and careful enquiry)) been started or threatened against any Obligor or any other Group Member.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of any Obligor's knowledge and belief (having made due and careful enquiry)) been made against any Obligor or any other Group Member.

19.21 No breach of laws

- (a) No Obligor, Manager or other Group Member has breached any law or regulation.
- (b) No labour dispute is current or, to the best of any Obligor's knowledge and belief (having made due and careful enquiry), threatened against any Obligor or other Group Member which might have a Material Adverse Effect.

19.22 Environmental matters

- (a) No Environmental Law applicable to any Fleet Vessel and/or any Obligor, Manager or other Group Member has been violated.
- (b) All consents, licences and approvals required under such Environmental Laws have been obtained and are currently in force.
- (c) No Environmental Claim has been made or, to the best of any Obligor's knowledge and belief (having made due and careful enquiry), is threatened or pending against any Group Member or any Fleet Vessel where that claim is reasonably expected to have a Material Adverse Effect and there has been no Environmental Incident which has given, or might reasonably be expected to give, rise to such a claim.

19.23 Anti-corruption law

Each Group Member has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

19.24 Security and Financial Indebtedness

- (a) No Security Interest exists over all or any of the present or future assets of any Obligor or a Manager in breach of this Agreement.
- (b) No Obligor has any Financial Indebtedness outstanding in breach of this Agreement other than, in respect of the Parent only, any Financial Indebtedness disclosed to the Agent prior to the date of this Agreement.

19.25 Shares

- (a) The shares of the Borrower and each Owner are fully paid and not subject to any option to purchase or similar rights.
- (b) The Constitutional Documents of the Borrower and each Owner do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Security Documents.
- (c) There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of the Borrower or an Owner (including any option or right of pre-emption or conversion).

19.26 Ownership of Obligors

- (a) Each Owner is a wholly owned direct Subsidiary of the Parent.
- (b) The Borrower is a wholly owned direct Subsidiary of the Parent.
- (c) The Disclosed Persons control the Parent and no less than 100% of the Parent's issued shares is legally and beneficially owned by the Disclosed Persons.

19.27 No Change of Control

There has not been a Change of Control.

19.28 Accounting Reference Date

The Financial Year-end of each Obligor and other Group Member is the Accounting Reference Date.

19.29 No adverse consequences

- (a) It is not necessary under the laws of the Relevant Jurisdictions of any Obligor:
 - (i) in order to enable any Finance Party to enforce its rights under any Finance Document to which it is, or is to be, a party; or
 - (ii) by reason of the execution of any Finance Document or the performance by any Obligor of its obligations under any Finance Document,that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of such Relevant Jurisdictions.
- (b) No Finance Party is or will be deemed to be resident, domiciled or carrying on business in any Relevant Jurisdiction of any Obligor by reason only of the execution, performance and/or enforcement of any Finance Document.

19.30 Copies of documents

The copies of the Constitutional Documents of the Obligors and the Managers delivered to the Agent under clause 4 (*Conditions of Utilisation*) will be true, complete and accurate copies of such documents and include all amendments and supplements to them as at the time of such delivery.

19.31 No immunity

No Obligor or any of its assets is immune to any legal action or proceeding.

19.32 Ship status

Each Ship will on the first day of the relevant Mortgage Period be:

- (a) registered in the name of the relevant Owner through the relevant Registry as a ship under the laws and flag of the relevant Flag State;
- (b) operationally seaworthy and in every way fit for service;
- (c) classed with the relevant Classification free of all overdue requirements and recommendations of the relevant Classification Society; and
- (d) insured in the manner required by the Finance Documents.

19.33 Ship's employment

Each Ship shall on the first day of the relevant Mortgage Period be free of any charter commitment which, if entered into after that date, would require approval under the Finance Documents.

19.34 No Money Laundering

In relation to the borrowing by the Borrower of the Loan or any part of it, the performance and discharge of the Obligors' or the Managers' obligations and liabilities under the Finance Documents, and the transactions and other arrangements effected or contemplated by this Agreement and the other Finance Documents, the Obligors and the Managers are acting for their own account and the foregoing will not involve or lead to a contravention of any law, official requirement or other regulatory measure or procedure which has been implemented by any relevant regulatory authority or otherwise to combat Money Laundering (as defined in clause 22.5 (*Bribery and corruption*)).

19.35 Sanctions

- (a) No Group Members, nor the Managers nor any of the Disclosed Persons, nor any of their respective directors, officers, employees, agents or representatives:
 - (i) has breached any applicable Sanctions;
 - (ii) is a Restricted Person; or
 - (iii) has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to applicable Sanctions.
- (b) No proceeds of the Loan:
 - (i) shall be made available, directly or indirectly, to or for the benefit of a Restricted Person nor shall they be otherwise directly or indirectly, applied in a manner or for a purpose prohibited by applicable Sanctions; or
 - (ii) will be used by any Group Member:
 - (A) to finance equipment or sectors under embargo decisions of the United Nations or the World Bank; or
 - (B) in breach of the provisions of any applicable Sanctions.
- (c) No Group Member nor any Fleet Vessel does any business relating to Iran or any Iranian owned or incorporated entity, unless the Agent approves so in writing.

19.36 Times when representations are made

- (a) All of the representations and warranties set out in this clause 19 (other than Ship Representations) are deemed to be made on the dates of:
 - (i) this Agreement;
 - (ii) the first Utilisation Request; and
 - (iii) the first Utilisation.
- (b) The Repeating Representations are deemed to be made on the first day of each Interest Period.

- (c) All of the Ship Representations are deemed to be made on the first day of the Mortgage Period for the relevant Ship.
- (d) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

20 Information undertakings

20.1 Each of the Borrower and the Guarantors undertakes that this clause 20 will be complied with throughout the Facility Period, except as approved by the Majority Lenders (or, where specified, all the Lenders).

20.2 In this clause 20:

Annual Borrower Financial Statements means the financial statements for a Financial Year of the Borrower delivered pursuant to paragraph (a) of clause 20.3 (Financial statements).

Annual Financial Statements means the financial statements for a Financial Year of the Group delivered pursuant to paragraph (a) of clause 20.3 (Financial statements).

Semi-Annual Financial Statements means the financial statements for a financial half-year of the Group delivered pursuant to paragraph (b) of clause 20.3 (Financial statements).

20.3 Financial statements

- (a) The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests) as soon as the same become available, but in any event within 180 days after the end of each Financial Year (but commencing with the Financial Year ended 31 December 2018):
 - (i) the audited consolidated financial statements of the Group for that Financial Year;
 - (ii) the audited consolidated financial statements of the Borrower for that Financial Year; and
 - (iii) the unaudited financial statements of each Owner for that Financial Year.
- (b) The Borrower shall supply to the Agent as soon as the same become available, but in any event within 60 days after the end of the first financial half-year of each of its Financial Years (but commencing with the financial half-year ended 30 June 2018):
 - (i) the unaudited consolidated financial statements of the Group for that financial half-year;
 - (ii) the unaudited consolidated financial statements of the Borrower for that financial half-year; and
 - (iii) the unaudited financial statements of each Owner for that financial half-year.

20.4 Provision and contents of Compliance Certificate and Excess Cash Flow Certificate

- (a) The Borrower shall supply to the Agent (i) a Compliance Certificate and (ii) a performance report relating to each Ship (a **Vessel Performance Report**) in the form set out in Schedule 6 (*Semi-annual Vessel Performance Report*), in each case, with each set of Annual Financial Statements and each set of Semi-Annual Financial Statements for the Borrower.

- (b) Each Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with clause 21 (*Financial covenants*) and calculations of the Security Value in accordance with clause 26 (*Minimum security value*) and shall be accompanied by all ship valuations used to calculate the relevant Fleet Market Value at the time and the relevant Security Value at the time.
- (c) The Borrower shall supply, within 45 days after the end of each Calculation Period, an Excess Cash Flow Certificate in an approved form, setting out a detailed calculation, analysis and breakdown by the Borrower of the Excess Cash Flow (if any). Each such calculation shall be made by reference to the methodology set out in clause 7.7 (*Excess Cash Flow calculation and prepayment*).
- (d) Each Compliance Certificate shall be signed by the Chief Financial Officer of the Borrower and each Excess Cash Flow Certificate will be signed by an authorised signatory of the Borrower and the Owners.

20.5 Requirements as to financial statements

- (a) The Borrower shall procure that each set of Annual Financial Statements and Semi-Annual Financial Statements includes a profit and loss account, a balance sheet and a cashflow statement and that, in addition, each set of Annual Financial Statements and Annual Borrower Financial Statements shall be audited by the Auditors.
- (b) Each set of financial statements delivered pursuant to clause 20.3 (*Financial statements*) shall:
 - (i) be prepared in accordance with GAAP;
 - (ii) fairly present, and be certified by a director of the relevant company as fairly presenting, its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the Auditors and accompanying those Annual Financial Statements; and
 - (iii) in the case of Annual Financial Statements, not be the subject of any qualification in the Auditors' opinion.
- (c) Each of the Obligors shall procure that each set of financial statements delivered pursuant to clause 20.3 (*Financial statements*) shall be prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements, unless, in relation to any set of financial statements, the Borrower notifies the Agent that there has been a change in GAAP or the accounting practices, and the Auditors deliver to the Agent:
 - (i) a description of any change necessary for those financial statements to reflect the GAAP or accounting practices and reference periods upon which corresponding Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether clause 21 (*Financial covenants*) has been complied with and to make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.
- (d) Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

20.6 Year-end

The Borrower shall procure that each Financial Year-end of each Obligor falls on the Accounting Reference Date.

20.7 Information: miscellaneous

The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) at the same time as they are dispatched, copies of all documents dispatched by the Parent or any Obligor to all its creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any Group Member, and which, if adversely determined, might have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against any Group Member and which is reasonably likely to have a Material Adverse Effect;
- (d) promptly upon becoming aware of them, the details of any claim, action, suit, proceeding or investigation with respect to Sanctions against it, any other Group Member or any Disclosed Person, any of their respective direct or indirect owners, Subsidiaries or any of their respective directors, officers, employees, agents or representatives;
- (e) promptly, such information as the Agent or the Security Agent may reasonably require about the Charged Property and compliance of the Obligors or the Managers with the terms of any Security Documents provided always that the supply of such information would not result in a breach of any confidentiality undertaking of any Obligor; and
- (f) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any Group Member as any Finance Party through the Agent may reasonably request.

20.8 Notification of Default

- (a) The Borrower shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon any Obligor becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

20.9 Sufficient copies

The Borrower, if so requested by the Agent, shall deliver sufficient copies of each document to be supplied under the Finance Documents to the Agent to distribute to each of the Lenders.

20.10 Use of websites

- (a) The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the Website Lenders) who accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Agent (the Designated Website) if:
 - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;

- (ii) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
- (iii) the information is in a format previously agreed between the Borrower and the Agent.
- (b) If any Lender (a **Paper Form Lender**) does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall supply the Agent with at least one copy in paper form of any information required to be provided by it.
- (c) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.
- (d) The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.
- (e) If the Borrower notifies the Agent under paragraphs (d)(i) to (v) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.
- (f) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within fifteen Business Days.

20.11 "Know your customer" checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of an Obligor (or of a Holding Company of an Obligor) or the composition of the shareholders of an Obligor (or of a Holding Company of an Obligor) after the date of this Agreement; or

- (iii) a proposed assignment by a Lender of any of its rights under this Agreement to a party that is not already a Lender prior to such assignment,
- obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (b) Each Finance Party shall, promptly upon the request of the Agent or the Security Agent, supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent or the Security Agent (for itself) in order for it to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

21 Financial covenants

21.1 Undertaking to comply

Each Obligor who is a Party undertakes that this clause 21 will be complied with throughout the Facility Period.

21.2 Financial definitions

In this clause 21:

Book Leverage Ratio means the ratio of Total Interest Bearing Debt to Total Assets, as shown in the applicable financial statements of the Parent for any accounting period determined in accordance with GAAP.

Financial Statements means any of the Annual Financial Statements and Semi-Annual Financial Statements referred to and defined as such in clause 20 (*Information undertakings*).

Fleet Market Value means, at the time of calculation, the aggregate of:

- (a) in relation to the Mortgaged Ships, the market value thereof as most recently determined pursuant to valuations of such vessels made in accordance with the provisions of clause 26 (*Minimum security value*);
- (b) in relation each Fleet Vessel (other than the Ships), which is not subject to a mortgage/financing, the market value thereof as most recently determined pursuant to valuations of such vessels provided to the Agent together with each Compliance Certificate under clause 20.4 (*Provision and contents of Compliance Certificate and Excess Cash Flow Certificate*) and made in accordance with the provisions of clause 26 (*Minimum security value*) which shall apply for the purposes of this sub-paragraph mutatis mutandis as if it were a Mortgaged Ship; and
- (c) in relation to each Fleet Vessel (other than the Ships and the Fleet Vessels under subparagraph (b) above), the market value thereof determined in accordance with the relevant provisions of the loan agreement in respect of which a Security Interest has been created over such Fleet Vessel.

Fleet Vessels means any vessel owned or chartered by demise under a financial or operating lease by any Group Member (including, but not limited to, the Ships) and **Fleet Vessel** means any of them.

Net Worth means, at any relevant time, the aggregate of the equity payments already advanced in respect of the Fleet Vessels less any accumulated dividends plus retained earnings of the Fleet Vessels, as each such term is defined in the then most recent Financial Statements of the Parent determined on a consolidated basis in accordance with GAAP.

Total Assets means, at any relevant time, the amount of total assets of the Parent at that time which would be included in the then most recent Financial Statements of the Parent determined on a consolidated basis in accordance with GAAP.

Total Interest Bearing Debt means, at any relevant time, in respect of the Parent, the amount of total liabilities of the Parent (as such term is defined in the then most recent Financial Statements of the Parent) at any time on a consolidated basis which would be included in the then most recent Financial Statements of the Parent as total interest bearing debt in accordance with GAAP including the current portion of interest bearing debt (as such term is defined in the then most recent Financial Statements of the Parent) but excluding any cash which is credited as collateral in favour of a creditor and is intended for the purposes of repaying the debt owed by the relevant Group Member to such creditor.

Value Adjusted Leverage Ratio means, at any date, the ratio (expressed as a percentage) of:

- (a) the Total *Interest Bearing Debt* to
- (b) the Value Adjusted Total Assets.

Value Adjusted Total Assets means, at any relevant date, the Total Assets as at such date adjusted (upwards or downwards) for the difference of the book value of all Fleet Vessels (as evidenced in the then most recent Financial Statements of the Parent) and the Fleet Market Value at the time based on recent valuations.

Waiver Period means the period commencing on the Utilisation Date and ending on (inclusive) 31 December 2019.

21.3 Financial condition

Each Party shall ensure that at all times during the Facility Period (and in the case of subclauses (a) and (b) below, other than during the Waiver Period):

- (a) the Value Adjusted Leverage Ratio shall not exceed 75 per cent;
- (b) the Net Worth shall not be less than \$41,000,000; and
- (c) the Book Leverage Ratio shall not exceed:
 - (i) 85 per cent, from the Utilisation Date until 31 December 2018 (inclusive); and
 - (ii) 75 per cent, from 1 January 2019 and at all times thereafter.

21.4 Minimum liquidity

Each Owner shall maintain in its Operating Account at all times throughout the Facility Period cash balances free from any Security Interest (other than under the Finance Documents) not less than \$500,000.

21.5 Most favoured nation

- (a) Each Obligor undertakes to procure that, (i) during the Waiver Period in respect of items listed in sub-paragraphs (B), (D) and (F) below and (ii) throughout the Facility Period in respect of items listed in sub-paragraphs (A), (C) and (E) below, the Finance Parties shall not receive less favourable treatment under this Agreement than that provided or to be provided under any Group Facility Agreement (by way of amendment or supplement to, or refinancing of, that Group Facility Agreement) in relation to:
- (i) any amendment to a maturity date under any such Group Facility Agreement as a result of which the maturity date will fall before 31 December 2020;
 - (ii) the existence of any amortization principal payment profile/schedule until 31 December 2019 (inclusive);
 - (iii) the provisions relevant to the calculation of the Excess Cash Flow and generally the cash sweep mechanism;
 - (iv) the existence of a security cover ratio under any such Group Facility Agreement;
 - (v) the financial covenants relevant to the Value Adjusted Leverage Ratio, Book Leverage Ratio and Net Worth; and
 - (vi) any increase to the aggregate of any amounts to be paid in respect of interest solely related to margin (howsoever defined) for the duration of the Waiver Period (calculated as at the date of that Group Facility Agreement).
- (b) Accordingly, should any member of the Group or the Parent provide to any other creditor more favourable treatment in relation to (A) to (F) above (and, in relation to subparagraphs (B), (D) and (F) above, for the duration of the Waiver Period) than those which the Finance Parties have been provided with under this Agreement or any other Finance Document, the Borrower shall promptly advise the Agent of those arrangements and covenants and shall, on the Agent's request, enter into such documentation supplemental to the Finance Documents as the Finance Parties may require in order to achieve parity with the creditors under such relevant Group Facility Agreement.

22 General undertakings

22.1 Undertaking to comply

Each Obligor who is a Party undertakes that this clause 22 will be complied with by and in respect of each Obligor and, where applicable, each other Group Member throughout the Facility Period except as approved by the Majority Lenders (or, where specified, all the Lenders).

22.2 Use of proceeds

The proceeds of Utilisations shall be used exclusively for the purposes specified in clause 3 (*Purpose*).

22.3 Authorisations

Each Obligor and each Manager shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

- (b) supply upon request certified copies to the Agent of, any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
 - (i) enable it to perform its obligations under the Finance Documents;
 - (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and
 - (iii) carry on its business where failure to do so has, or is reasonably likely to have, a Material Adverse Effect.

22.4 Compliance with laws

- (a) Each Obligor shall (and shall ensure that each other Group Member and each Manager will), comply in all respects with all laws and regulations (including Environmental Laws) to which it may be subject.
- (b) Each Obligor shall (and shall ensure that each other Group Member and each Manager will) comply in all respects with applicable Sanctions.

22.5 Bribery and corruption

- (a) No Group Member nor a Manager nor any of its agents, employees, directors or officers has engaged or shall engage in any Relevant Jurisdiction in:
 - (i) Corrupt Practices, Fraudulent Practices, Collusive Practices or Coercive Practices, including the procurement or the execution of any contract for goods or works relating to its functions;
 - (ii) Money Laundering or acted in breach of any applicable law relating to Money Laundering; or
 - (iii) the Financing of Terrorism.
- (b) Without prejudice to the generality of clause 22.5(a):
 - (i) No Obligor nor a Manager nor any of its agents, employees, directors or officers shall (and shall ensure that no other Group Member nor any of their respective agents, employees, directors or officers will) directly or indirectly use the proceeds of the Facility for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions; and
 - (ii) each Obligor and each Manager shall (and shall ensure that each other Group Member) and any of their agents, employees, directors or officers will:
 - (A) conduct its businesses in compliance with the Bribery Act 2010 or the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions; and
 - (B) maintain policies and procedures designed to promote and achieve compliance with such laws.
- (c) For the purposes of this clause 22.5, clause 19.34 (*No Money Laundering*) and clause 22.16 (*No corrupt practices*), the following definitions shall apply:

Collusive Practice means an arrangement between two or more parties without the knowledge, but designed to improperly influence the actions, of another party.

Corrupt Practice means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to improperly influence the actions of another party.

Coercive Practice means impairing or harming or threatening to impair or harm, directly or indirectly, any party or its property or to improperly influence the actions of that party.

Financing of Terrorism means the act of providing or collecting funds with the intention that they be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.

Fraudulent Practice means any action, including misrepresentation, to obtain a financial or other benefit or avoid an obligation, by deception.

Money Laundering means:

- (i) the conversion or transfer of property, knowing it is derived from a criminal offence, for the purpose of concealing or disguising its illegal origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of its actions;
- (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property knowing that it is derived from a criminal offence; or
- (iii) the acquisition, possession or use of property knowing at the time of its receipt that it is derived from a criminal offence.

22.6 Tax compliance

- (a) Each Obligor shall pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
 - (i) such payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under clause 20.3 (*Financial statements*); and
 - (iii) such payment can be lawfully withheld.
- (b) Except as approved by the Majority Lenders, each Obligor shall maintain its residence for Tax purposes in the jurisdiction in which it is incorporated or formed (as the case may be) and ensure that it is not resident for Tax purposes in any other jurisdiction.

22.7 Change of business

Except as approved by the Majority Lenders, no substantial change will be made to the general nature of the business of the Parent, any of the other Obligors or the Group taken as a whole from that carried on at the date of this Agreement.

22.8 Merger

Except as approved by the Majority Lenders, no Obligor shall (and shall ensure that no other Group Member will) enter into any amalgamation, demerger, merger (other than any Group Member other than the Owners and the Borrower, the Transaction and any merger contemplated by the Transaction), consolidation, redomiciliation, legal migration or corporate reconstruction (other than the solvent liquidation of any Group Member which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other Group Members) or conversion or merger into or incorporation as a European public limited liability company (*Societas Europaea*).

22.9 Pension exposure

The Borrower shall ensure that no Obligor is, or any time becomes, liable to contribute funds to any form of pension scheme or similar arrangement (other than a scheme or arrangement where the benefits conferred by it on its members are calculated solely by reference to a payment or payments made by the relevant member or by any other person in respect of that member).

22.10 Further assurance

- (a) Each Obligor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Agent may reasonably specify (and in such form as the Agent or the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
- (i) to perfect the Security Interests created or intended to be created by that Obligor under, or evidenced by, the Security Documents (which may include the execution of a mortgage, charge, assignment or other security over all or any of the assets which are, or are intended to be, the subject of the Security Documents) or for the exercise of any rights, powers and remedies of the Security Agent and/or any other Finance Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent and/or any other Finance Parties Security Interests over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security Interest intended to be conferred by or pursuant to the Security Documents;
 - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security Documents; and/or
 - (iv) to facilitate the accession by a New Lender to any Security Document following an assignment in accordance with clause 30.1 (*Assignments by the Lenders*).
- (b) Each Obligor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security Interest conferred or intended to be conferred on the Security Agent and/or any other Finance Parties by or pursuant to the Finance Documents.

22.11 Negative pledge in respect of Charged Property

Except as approved by the Majority Lenders and except for Permitted Security Interests, no Obligor or Manager will grant or allow to exist any Security Interest over any Charged Property or (except for the Transaction Security) the shares in any of the Parent, the Owners and/or the Borrower or any rights deriving from, or related to, such shares.

22.12 Environmental matters

- (a) The Agent will be notified as soon as reasonably practicable of any Environmental Claim being made against any Group Member or any Manager or any Fleet Vessel which, if successful to any extent, is reasonably expected to have a Material Adverse Effect and of any Environmental Incident which may give rise to such a claim and will be kept regularly and promptly informed in reasonable detail of the nature of, and response to, any such Environmental Incident and the defence to any such claim.

- (b) Environmental Laws (and any consents, licences or approvals obtained under them) applicable to Fleet Vessels will not be violated.

22.13 Syndication

Each Obligor will provide reasonable assistance to the Arranger in the preparation of the Information Memorandum and the primary syndication of the Facility (including, without limitation, by making the senior management of the Borrower available for the purpose of making presentations to, or meeting, potential lending institutions) and will comply with all reasonable requests for information from potential syndicate members prior to completion of syndication.

22.14 Sanctions

- (a) Each Group Member shall, and the Borrower shall procure that any Affiliate of each Obligor, each Manager and any Disclosed Person shall, ensure that none of their respective directors, officers, agents, employees or persons acting on behalf of the foregoing, is a Restricted Person or acts directly or indirectly on behalf of a Restricted Person.
- (b) No Group Member shall, and the Borrower shall procure that no Disclosed Person or Manager shall, use any revenue or benefit derived from any activity or dealing with a Restricted Person in discharging any obligation due or owing to the Finance Parties.
- (c) Each Group Member shall not, and the Borrower shall procure that each of its Affiliates, each Manager and each Disclosed Person will not, credit proceeds from any activity or dealing with a Restricted Person to any bank account held with any Finance Party in its name or in the name of any other person.
- (d) Each Group Member shall, and the Borrower shall ensure that each Disclosed Person and each Manager takes measures to ensure compliance with applicable Sanctions.
- (e) Each Obligor shall, and the Borrower shall procure that each Disclosed Person and each Manager shall, to the extent permitted by law, promptly upon becoming aware of them, supply to the Agent details of any claim, action, suit, proceedings or investigation against it with respect to applicable Sanctions by any Sanctions Authority.
- (f) No Manager nor any Group Member or its Fleet Vessel will do any business relating to Iran or any Iranian owned or incorporated entity, unless the Agent approves so in writing.

22.15 Use of proceeds

The Obligors shall not, and the Borrower shall procure that each of their respective Affiliates, Managers or any of them shall not, permit or authorise any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of the Facility or other transactions contemplated by this Agreement to fund or facilitate trade, business or other activities: (a) involving or for the benefit of any Restricted Person or (b) in any other manner that would result in any Obligor or any Manager or any Finance Party or any other person (including any person participating hereunder, whether as underwriter, advisor, investor, lender, hedging provider, facility or security agent or otherwise) being in breach of any applicable Sanctions or becoming a Restricted Person.

22.16 No corrupt practices

The Loan will not be used by any Obligor for and no Obligor nor any of its Affiliates nor any Manager shall engage in:

- (a) Corrupt Practices, Fraudulent Practices, Collusive Practices or Coercive Practices (each as defined in clause 22.5 (*Bribery and corruption*)), including the procurement or the execution of any contract for goods or works relating to its functions;
- (b) the Financing of Terrorism (as defined in clause 22.5 (*Bribery and corruption*)).

22.17 Transaction

- (a) The Obligors hereby agree to procure that no Transaction will be attempted, commenced or completed unless the following conditions are met:
 - (i) no Default has occurred at the times when such Transaction commences and when such Transaction completes or immediately thereafter; or
 - (ii) upon and immediately following the completion of such Transaction, no Transaction Change of Control occurs.
- (b) If a Transaction compliant with this clause 22.17 has been completed, then the Obligors who are a Party hereby agree to procure that by no later than 30 days after completion of the Transaction, each Obligor will enter into amendment agreements to the Finance Documents (including a supplemental agreement to this Agreement) for the purpose of implementing any consequential changes to the Finance Documents as may be required as a result of the Transaction and any amendments to the provisions of the Finance Documents as may be agreed between the Lenders and the Borrower, in each case at the cost and expense of the Borrower (provided however that the Lenders shall not require as a result of the operation of this clause 22.17 any guarantees other than the ones already provided by the Guarantors and provided further that failure by the Borrower and/or the other Obligors to agree an amendment required by a Finance Party shall not be deemed to be a breach by an Obligor of the provisions of this sub-paragraph(b)).

22.18 ABN Cash Collateral Account

The Obligors hereby agree to procure that the relevant Account Holder(s) shall, no later than 20 Business Days after the end of the Additional Excess Cash Flow Period, close the ABN Cash Collateral Account.

23 Dealings with Ships

23.1 Undertaking to comply

Each Obligor who is a Party undertakes that this clause 23 will be complied with in relation to each Mortgaged Ship throughout the relevant Ship's Mortgage Period except as approved by the Majority Lenders (or, where specified, all the Lenders) which approval no Lender shall withhold unreasonably in respect of clause 23.2 (*Ship's name and registration*) and clause 23.8(a)(ii).

23.2 Ship's name and registration

- (a) The Ship's name shall only be changed after prior notice to the Agent.
- (b) The Ship shall be permanently registered with the relevant Registry under the laws of its Flag State. Except with approval, the Ship shall not be registered under any other flag or at any other port or fly any other flag (other than that of its Flag State). If that registration is for a limited period, it shall be renewed at least 45 days before the date it is due to expire and the Agent shall be notified of that renewal at least 30 days before that date.
- (c) Nothing will be done and no action will be omitted if that might result in such registration being forfeited or imperilled or the Ship being required to be registered under the laws of another state of registry.

23.3 Sale or other disposal of Ship

Except with approval, each Owner shall not sell, or agree to, transfer, abandon or otherwise dispose its Ship or any share or interest in it, provided that each Owner shall be permitted to sell the Ship, or to enter into an agreement for its sale, if (a) no Default has occurred and is continuing at the time or would result from such sale and (b) the net sale proceeds are sufficient to discharge the Borrower's payment obligations under this Agreement (including pursuant to clause 7.6 (*Sale or Total Loss*)) and the other Finance Documents.

23.4 Manager

A manager of the Ship shall not be appointed unless that manager and the terms of its appointment are approved (such approval, in respect of terms other than such manager's remuneration and other fees payable to such manager, not to be unreasonably withheld or delayed) and it has delivered a duly executed Manager's Undertaking to the Security Agent. There shall be no material change to the terms of appointment of a manager whose appointment has been approved unless such change is also approved (it being agreed that any change to the remuneration of the manager will be deemed material).

23.5 Copy of Mortgage on board

A properly certified copy of the relevant Mortgage shall be kept on board the Ship with its papers and shown to anyone having business with the Ship which might create or imply any commitment or Security Interest over or in respect of the Ship (other than a lien for crew's wages and salvage) and to any representative of the Agent or the Security Agent.

23.6 Notice of Mortgage

A framed printed notice of the Ship's Mortgage shall be prominently displayed in the navigation room and in the Master's cabin of the Ship. The notice must be in plain type and read as follows:

“NOTICE OF MORTGAGE

This Ship is subject to a first mortgage in favour of [here insert name of mortgagee] of [here insert address of mortgagee]. Under the said mortgage and related documents, neither the Owner nor any charterer nor the Master of this Ship has any right, power or authority to create, incur or permit to be imposed upon this Ship any commitments or encumbrances whatsoever other than for crew's wages and salvage.”.

No-one will have any right, power or authority to create, incur or permit to be imposed upon the Ship any lien whatsoever other than for crew's wages and salvage.

23.7 Conveyance on default

Where the Ship is (or is to be) sold in exercise of any power conferred by the Security Documents, the relevant Owner shall, upon the Agent's request, immediately execute such form of transfer of title to the Ship as the Agent may require.

23.8 Chartering

- (a) Except with approval, the relevant Owner shall not enter into any charter commitment for the Ship, which is:
- (i) a bareboat or demise charter or passes possession and operational control of the Ship to another person;
 - (ii) of a fixed duration exceeding 12 calendar months or, in the case of any charter commitment entered into prior to the date of this Agreement, of a remaining fixed duration exceeding 12 calendar months, unless the Owner has complied with the requirements of paragraph (b) below in respect of such charter commitment;

- (iii) on terms as to payment or amount of hire which are materially less beneficial to it than the terms which at that time could reasonably be expected to be obtained on the open market for vessels of the same age and type as the Ship under charter commitments of a similar type and period; or
 - (iv) to another Group Member.
- (b) Further, without prejudice to the rights of the Finance Parties under the provisions of this clause 23.8 and any other provisions of the Finance Documents, the Borrower shall advise the Agent promptly of any proposed charter commitment in respect of a Ship of a fixed duration exceeding 12 calendar months, and:
- (i) deliver a copy of each such charter commitment to the Agent forthwith after it has been entered into;
 - (ii) forthwith following a demand made by the Agent (acting on the instructions of the Majority Lenders):
 - (A) execute a charter assignment in the agreed form of any such charter commitment in favour of the Security Agent and any notice of assignment required in connection therewith; and
 - (B) procure the service of any such notice of assignment on the relevant charterer and use its best endeavours to procure the acknowledgement of such notice by the relevant charterer;
 - (iii) deliver to the Agent such documents and evidence of the type referred to in Schedule 3 (*Conditions precedent*) in relation to any such charter assignment or any other related matter referred to in this paragraph (b) as the Agent (acting on the instructions of the Majority Lenders in their sole discretion) shall require; and
 - (iv) pay on the Agent's demand all documented legal costs and other costs incurred by the Agent and/or any other Finance Party in connection with or in relation to any such charter assignment or any other related matter referred to in this paragraph (b).

23.9 Lay up

Except with approval, the Ship shall not be laid up or deactivated.

23.10 Sharing of Earnings

Except with approval, the relevant Owner shall not enter into any arrangement under which its Earnings from the Ship may be shared with anyone else.

23.11 Payment of Earnings

- (a) The relevant Owner's Earnings from the Ship shall be paid in the way required by the Ship's General Assignment.
- (b) If any Earnings are held by brokers or other agents, they shall be paid to the Security Agent, if it requires this after the Earnings have become payable to it under the Ship's General Assignment.

23.12 No other vessels

No Obligor (other than the Parent and a Manager) shall charter-in, lease-in or operate or enter into any agreement to do so, any vessel other than the Mortgaged Ships.

23.13 Share Transfer

At the Borrower's cost and expense, on the first Utilisation Date (or any other later date which the Agent shall, at the request of the Borrower, have agreed in writing in its absolute discretion):

- (a) effect the Share Transfer;
- (b) execute the Share Security in relation to each Owner;
- (c) deliver to the Agent in relation to the Share Security and the Share Transfer such documents and evidence of the type referred to in Schedule 3 (*Conditions precedent*) (including, without limitation, the original share certificates in the name of the Borrower in relation to each Owner, the executed instruments of transfer in respect of the Share Transfer, evidence of the deletion of any charges registered in respect of the shares in each Owner on or prior to the date of the Share Transfer, evidence in a form satisfactory to the Agent that each Owner is, further to the Share Transfer a Subsidiary of the Borrower and a legal opinion, in a form approved by the Agent, confirming that the Share Transfer has been duly effected).

23.14 Sustainable ship dismantling

- (a) Each Ship sold for scrapping (whether directly or through an intermediary), is recycled at a recycling yard which conducts its recycling business in a socially and environmentally responsible manner, in accordance with the provisions of The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 and, if applicable to such Ship or its Owner, the EU Ship Recycling Regulation.
- (b) For the purposes of this clause "EU Ship Recycling Regulation" means Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (Text with EEA relevance).

24 Condition and operation of Ship

24.1 Undertaking to comply

Each Obligor who is a Party undertakes that this clause 24 will be complied with in relation to each Mortgaged Ship throughout the relevant Ship's Mortgage Period except as approved by the Majority Lenders (or, where specified, all the Lenders).

24.2 Defined terms

In this clause 24 and in Schedule 3 (*Conditions precedent*):

applicable code means any code or prescribed procedures required to be observed by the Ship or the persons responsible for its operation under any applicable law (including but not limited to those currently known as the ISM Code and the ISPS Code).

applicable law means all laws and regulations applicable to vessels registered in the Ship's Flag State or which for any other reason apply to the Ship or to its condition or operation at any relevant time.

applicable operating certificate means any certificates, vessel response plans, or other document relating to the Ship or its condition or operation required to be in force under any applicable law or any applicable code.

24.3 Repair

The Ship shall be kept in a good, safe and efficient state of repair. The quality of workmanship and materials used to repair the Ship or replace any damaged, worn or lost parts or equipment shall be sufficient to ensure that the Ship's value is not reduced.

24.4 Modification

Except with approval, the structure, type or performance characteristics of the Ship shall not be modified in a way which materially and adversely alters the Ship or materially reduces its value.

24.5 Removal of parts

Except with approval, no material part of the Ship or any equipment shall be removed from the Ship if to do so would materially reduce its value (unless at the same time it is replaced with equivalent parts or equipment which to the extent the parts or equipment removed were owned by the relevant Owner, are owned by the relevant Owner free of any Security Interest (except under the Security Documents)).

24.6 Third party owned equipment

Except with approval, equipment owned by a third party shall not be installed on the Ship if it cannot be removed without risk of causing damage to the structure or fabric of the Ship or incurring significant expense.

24.7 Maintenance of class; compliance with laws and codes

The Ship's class shall be the relevant Classification. The Ship and every person who owns, operates or manages the Ship shall comply with all applicable laws and the requirements of all applicable codes. There shall be kept in force and on board the Ship or in such person's custody any applicable operating certificates which are required by applicable laws or applicable codes to be carried on board the Ship or to be in such person's custody.

24.8 Surveys

The Ship shall be submitted to periodic surveys and any other surveys which are required for it to maintain the Classification as its class. Copies of reports of those surveys shall be provided promptly to the Agent if it so requests.

24.9 Inspection and notice of dry-docking

The Agent and/or surveyors or other persons appointed by it for such purpose shall be allowed to board the Ship at all reasonable times to inspect it and given all proper facilities needed for that purpose, without interfering with the Ship's operation or trading and after giving reasonable advance written notice to the relevant Owner. The Agent shall be given reasonable advance notice of any intended dry-docking of the Ship (whatever the purpose of that dry-docking). The Borrower shall bear the cost of only one such inspection per calendar year so long as there is no Event of Default which is continuing.

24.10 Prevention of arrest

All debts, damages, liabilities and outgoings which have given, or may give, rise to maritime, statutory or possessory liens on, or claims enforceable against, the Ship, its Earnings or Insurances shall be promptly paid and discharged.

24.11 Release from arrest

The Ship, its Earnings and Insurances shall promptly be released from any arrest, detention, attachment or levy, and any legal process against the Ship shall be promptly discharged, by whatever action is required to achieve that release or discharge.

24.12 Information about Ship

Upon the Agent's written request, it shall promptly be given any information which it may reasonably require about the Ship or its employment, position, use or operation, including details of towages and salvages, and copies of all its charter commitments entered into by or on behalf of any Obligor or a Manager on behalf of any Obligor whose duration exceeds three (3) calendar months and copies of any applicable operating certificates.

24.13 Notification of certain events

The Agent shall promptly be notified of:

- (a) any damage to the Ship where the cost of the resulting repairs exceeds the Major Casualty Amount for such Ship;
- (b) any occurrence which may reasonably be expected to result in the Ship becoming a Total Loss;
- (c) any requisition of the Ship for hire;
- (d) any Environmental Incident involving the Ship and Environmental Claim being made in relation to such an incident;
- (e) any withdrawal or threat to withdraw any applicable operating certificate;
- (f) upon the Agent's written request, the issue of any operating certificate required under any applicable code;
- (g) the receipt of notification that any application for such a certificate has been refused if such certificate is not issued within 10 days after receipt of such notification;
- (h) any requirement or recommendation made in relation to the Ship by any insurer or the Ship's Classification Society or by any competent authority which is not, or cannot be, complied with in the manner or time required or recommended; and
- (i) any arrest or detention of the Ship or any exercise or purported exercise of a lien or other claim exceeding (in the case of a claim only) \$800,000 on the Ship or its Earnings or Insurances.

24.14 Payment of outgoings

All tolls, dues and other outgoings whatsoever in respect of the Ship and its Earnings and Insurances shall be paid promptly. Proper accounting records shall be kept of the Ship and its Earnings.

24.15 Evidence of payments

The Agent shall be allowed proper and reasonable access subject to prior written notice to the Borrower to those accounting records when it reasonably requests it and, when it reasonably requires it, shall be given satisfactory evidence that:

- (a) the wages and allotments and the insurance and pension contributions of the Ship's crew are being promptly and regularly paid;

- (b) all deductions from its crew's wages in respect of any applicable Tax liability are being properly accounted for; and
- (c) the Ship's master has no claim for disbursements other than those incurred by him in the ordinary course of trading on the voyage then in progress.

24.16 Repairers' liens

Except with approval (such approval not to be unreasonably withheld or delayed), the Ship shall not be put into any other person's possession for work to be done on the Ship (other than any scheduled dry-docking or special survey required by the Classification Society) if the cost of that work will exceed or is likely to exceed the Major Casualty Amount for such Ship unless the Borrower has established to the satisfaction of the Agent that it has sufficient reserves with the Account Bank to pay for such works or unless that person gives the Security Agent a written undertaking in approved terms not to exercise any lien on the Ship or its Earnings for any of the cost of such work.

24.17 Survey report

As soon as reasonably practicable after the Agent requests it (but not more than once a calendar year and at any time a Default is continuing), the Agent shall be given a report on the seaworthiness and/or safe operation of the Ship, from approved surveyors or inspectors. If any recommendations are made in such a report they shall be complied with in the way and by the time recommended in the report.

24.18 Lawful use

The Ship shall not be employed:

- (a) in any way or in any activity which is unlawful under international law or the domestic laws of any relevant country;
- (b) in carrying illicit or prohibited goods;
- (c) in a way which may make it liable to be condemned by a prize court or destroyed, seized or confiscated; or
- (d) if there are hostilities in any part of the world (whether war has been declared or not), in carrying contraband goods,

and the persons responsible for the operation of the Ship shall take all necessary and proper precautions to ensure that this does not happen, including participation in industry or other voluntary schemes available to the Ship and in which leading operators of ships operating under the same flag or engaged in similar trades generally participate at the relevant time.

24.19 War zones

The Ship shall not enter or remain in any zone which has been declared a war zone by any government entity or the Ship's war risk insurers unless any requirements of the Ship's insurers necessary to ensure that the Ship remains properly insured in accordance with the Finance Documents (including any requirement for the payment of extra insurance premiums) are complied with.

25 Insurance

25.1 Undertaking to comply

Each Obligor who is a Party undertakes that this clause 25 shall be complied with in relation to each Mortgaged Ship and its Insurances throughout the relevant Ship's Mortgage Period except as approved by the Majority Lenders (or, where specified, all the Lenders).

25.2 Insurance terms

In this clause 25:

excess risks means the proportion (if any) of claims for general average, salvage and salvage charges not recoverable under the hull and machinery insurances of a vessel in consequence of the value at which the vessel is assessed for the purpose of such claims exceeding its insured value.

excess war risk P&l cover means cover for claims only in excess of amounts recoverable under the usual war risk cover including (but not limited to) hull and machinery, crew and protection and indemnity risks.

hull cover means insurance cover against the risks identified in paragraph (a) of clause 25.3 (*Coverage required*).

minimum hull cover means, in relation to a Mortgaged Ship, an amount equal at the relevant time to 120 per cent of the Advance relevant to such Mortgaged Ship.

P&l risks means the usual risks (including liability for oil pollution, excess war risk P&l cover) covered by a protection and indemnity association which is a member of the International Group of protection and indemnity associations (or, if the International Group ceases to exist, any other leading protection and indemnity association or other leading provider of protection and indemnity insurance) (including, without limitation, the proportion (if any) of any collision liability not covered under the terms of the hull cover).

25.3 Coverage required

The Ship shall at all times be insured:

- (a) against fire and usual marine risks (including excess risks) and war risks (including war protection and indemnity risks and terrorism risks) on an agreed value basis, for at least its minimum hull cover and no less than its market value;
- (b) against P&l risks for the highest amount then available by protection and indemnity associations which are member of the International Group of protection and indemnity associations (or, if the International Group ceases to exist, any other leading protection and indemnity association or other leading provider of protection and indemnity insurance) for vessels of similar age, size and type as the Ship (but, in relation to liability for oil pollution, for an amount of not less than \$1,000,000,000) and a freight, demurrage and defence cover;
- (c) against such other risks and matters which the Agent notifies it that it considers reasonable for a prudent shipowner or operator to insure against at the time of that notice (having regard to general insurance market practice and law at the time but always excluding any loss of hire cover); and
- (d) on terms which comply with the other provisions of this clause 25.

25.4 Placing of cover

The insurance coverage required by clause 25.3 (*Coverage required*) shall be:

- (a) in the name of the relevant Owner, Technomar Shipping Inc. and, in relation to any freight, demurrage and defence cover, ConChart Commercial Inc. and (in the case of the Ship's hull cover) no other person (other than the Security Agent (and any other Finance Party required by the Agent) if required by the Agent) (unless such other person is approved and, if so required by the Agent, has duly executed and delivered a first priority assignment of its interest in the Ship's Insurances to the Security Agent (and any other Finance Party required by the Agent) in an approved form and provided such supporting documents and opinions in relation to that assignment as the Agent requires);
- (b) if the Agent so requests, in the joint names of the relevant Owner and/or a Manager or both of them and the Security Agent (and any other Finance Party required by the Agent) (and, to the extent reasonably practicable in the insurance market, without liability on the part of the Security Agent or such Finance Party for premiums or calls);
- (c) in dollars or another approved currency;
- (d) arranged through approved brokers or direct with approved insurers or protection and indemnity or war risks associations;
- (e) in full force and effect; and
- (f) on approved terms and with approved insurers or associations.

25.5 Deductibles

The aggregate amount of any excess or deductible under the Ship's hull cover shall not exceed the Major Casualty Amount.

25.6 Mortgagee's insurance

The Borrower shall promptly reimburse to the Agent the cost (as conclusively certified by the Agent) of taking out and keeping in force in respect of the Ship and the other Mortgaged Ships on approved terms, or in considering or making claims under:

- (a) a mortgagee's interest insurance and a mortgagee's additional perils (all P&l risks) cover) for the benefit of the Finance Parties for an amount up to 120 per cent of the Loan; and
- (b) any other insurance cover which the Agent reasonably requires in respect of any Finance Party's interests and potential liabilities (whether as mortgagee of the Ship or beneficiary of the Security Documents).

25.7 Fleet liens, set off and cancellations

If the Ship's hull cover also insures other vessels, the Security Agent shall either be given an undertaking in approved terms by the brokers or (if such cover is not placed through brokers or the brokers do not, under any applicable laws or insurance terms, have such rights of set off and cancellation) the relevant insurers that the brokers or (if relevant) the insurers will not:

- (a) set off against any claims in respect of the Ship any premiums due in respect of any of such other vessels insured (other than other Mortgaged Ships); or
- (b) cancel that cover because of non-payment of premiums in respect of such other vessels,

or the Borrower shall ensure that hull cover for the Ship and any other Mortgaged Ships is provided under a separate policy from any other vessels.

25.8 Payment of premiums

All premiums, calls, contributions or other sums payable in respect of the Insurances shall be paid punctually and the Agent shall be provided with all relevant receipts or other evidence of payment upon request.

25.9 Details of proposed renewal of Insurances

At least 14 days (or such shorter period acceptable to the Agent) before any of the Ship's Insurances are due to expire, the Agent shall be notified of the names of the brokers, insurers and associations proposed to be used for the renewal of such Insurances and the amounts, risks and terms in, against and on which the Insurances are proposed to be renewed.

25.10 Instructions for renewal

At least five days (or such shorter period acceptable to the Agent) before any of the Ship's Insurances are due to expire, instructions shall be given to brokers, insurers and associations for them to be renewed or replaced on or before their expiry.

25.11 Confirmation of renewal

The Ship's Insurances shall be renewed upon their expiry in a manner and on terms which comply with this clause 25 and confirmation of such renewal given by approved brokers or insurers to the Agent at least five days (or such shorter period as may be approved) before such expiry.

25.12 P&I guarantees

Any guarantee or undertaking required by any protection and indemnity or war risks association in relation to the Ship shall be provided when required by the association.

25.13 Insurance documents

The Agent shall be provided with pro forma copies of all insurance policies and other documentation issued by brokers, insurers and associations in connection with the Ship's Insurances as soon as they are available after they have been placed or renewed and all insurance policies and other documents relating to the Ship's Insurances shall be deposited with any approved brokers or (if not deposited with approved brokers) the Agent or some other approved person.

25.14 Letters of undertaking

Unless otherwise approved where the Agent is satisfied that equivalent protection is afforded by the terms of the relevant Insurances and/or any applicable law and/or a letter of undertaking provided by another person, on each placing or renewal of the Insurances, the Agent shall be provided promptly with letters of undertaking in an approved form (having regard to general insurance market practice and law at the time of issue of such letter of undertaking) from the relevant brokers, insurers and associations.

25.15 Insurance Notices and Loss Payable Clauses

The interest of the Security Agent as assignee of the Insurances shall be endorsed on all relevant insurance policies and other documents by the incorporation of a Loss Payable Clause and an Insurance Notice in respect of the Ship and its Insurances signed by the relevant Owner and, unless otherwise approved, each other person assured under the relevant cover (other than the Security Agent if it is itself an assured).

25.16 Insurance correspondence

If so required by the Agent, the Agent shall promptly be provided with copies of all written communications between the assureds and brokers, insurers and associations relating to any of the Ship's Insurances as soon as they are available.

25.17 Qualifications and exclusions

All requirements applicable to the Ship's Insurances shall be complied with and the Ship's Insurances shall only be subject to approved exclusions or qualifications.

25.18 Independent report

- (a) If the Agent asks the Borrower for a detailed report from an approved independent firm of marine insurance brokers giving their opinion on the adequacy of the Ship's Insurances then the Agent shall be provided promptly with such a report at no cost to the Agent or (if the Agent obtains such a report itself) the Borrower shall promptly reimburse the Agent for the cost of obtaining that report.
- (b) Unless an Event of Default is continuing, the Borrower and the Owners shall only be obliged to reimburse the Agent with respect to the cost of one such report in any calendar year.

25.19 Collection of claims

All documents and other information and all assistance required by the Agent to assist it and/or the Security Agent in trying to collect or recover any claims under the Ship's Insurances shall be provided promptly.

25.20 Employment of Ship

The Ship shall only be employed or operated in conformity with the terms of the Ship's Insurances (including any express or implied warranties) and not in any other way (unless the insurers have consented and any additional requirements of the insurers have been satisfied).

25.21 Declarations and returns

If any of the Ship's Insurances are on terms that require a declaration, certificate or other document to be made or filed before the Ship sails to, or operates within, an area, those terms shall be complied with within the time and in the manner required by those Insurances.

25.22 Application of recoveries

All sums paid under the Ship's Insurances to anyone other than the Security Agent shall be applied in repairing the damage and/or in discharging the liability in respect of which they have been paid except to the extent that the repairs have already been paid for and/or the liability already discharged in which case such sums shall be applied in reimbursement of such costs incurred.

25.23 Settlement of claims

Any claim under the Ship's Insurances for a Total Loss or Major Casualty shall only be settled, compromised or abandoned with prior approval.

25.24 Change in insurance requirements

If the Agent gives notice to the Borrower and/or the Owners to change the terms and requirements of this clause 25 (which the Agent may only do, in such manner as it reasonably considers appropriate, as a result of material changes of circumstances or practice after the date of this Agreement), this clause 25 shall be modified in the manner so notified by the Agent on the date 14 days after such notice from the Agent is received.

26 Minimum security value

26.1 Undertaking to comply

Each Obligor who is a Party undertakes that this clause 26 will be complied with throughout the Mortgage Period for each Ship except as approved by the Majority Lenders (or, where specified, all the Lenders).

26.2 Valuation of assets

For the purpose of the Finance Documents, the value at any time of any Mortgaged Ship or any other asset over which additional security is provided under this clause 26 will be its value as most recently determined in accordance with this clause 26.

26.3 Valuation frequency

Valuation of each Mortgaged Ship and each such other asset in accordance with this clause 26 may be required by the Agent:

- (a) on 31 December 2018; and
- (b) thereafter, at any time.

26.4 Expenses of valuation

The Borrower shall bear, and reimburse to the Agent where incurred by the Agent, all costs and expenses of providing such a valuation provided that, in the absence of an Event of Default which is continuing, the Borrower shall bear the cost of the valuations of the Ships under this clause 26 only twice per calendar year.

26.5 Valuations procedure

The value of any Mortgaged Ship shall be determined in accordance with, and by valuers approved and appointed in accordance with, this clause 26. Additional security provided under this clause 26 shall be valued in such a way, on such a basis and by such persons (including the Agent itself) as may be approved by the Majority Lenders or as may be agreed in writing by the Borrower and the Agent (on the instructions of the Majority Lenders) provided however that if additional security is provided in the form of a cash deposit in dollars in an Account over which an Account Security exists, full credit shall be given for the amount so deposited for that purpose on a "dollar for dollar" basis.

26.6 Currency of valuation

Valuations shall be provided by valuers in dollars or, if a valuer is of the view that the relevant type of vessel is generally bought and sold in another currency, in that other currency. If a valuation is provided in another currency, for the purposes of this Agreement it shall be converted into dollars at the Agent's spot rate of exchange for the purchase of dollars with that other currency as at the date to which the valuation relates.

26.7 Basis of valuation

Each valuation will be addressed to the Agent in its capacity as such and made:

- (a) without physical inspection (unless required by the Agent);

- (b) on the basis of a sale for prompt delivery for a price payable in full in cash on delivery at arm's length on normal commercial terms between a willing buyer and a willing seller;
- (c) without taking into account the benefit or the burden of any charter commitment;
- (d) no earlier than four (4) weeks prior to the date such valuation is requested by the Agent pursuant to clause 26.3 (*Valuation frequency*) and no later than four (4) weeks from the date such valuation is requested by the Agent pursuant to clause 26.3 (*Valuation frequency*).

26.8 Information required for valuation

The Borrower shall promptly provide to the Agent and any such valuer any information which they reasonably require for the purposes of providing such a valuation.

26.9 Approval of valuers

All valuers of any Mortgaged Ship must be Approved Valuers. The Agent may at any time withdraw an Approved Valuer for the purposes of future valuations, in which case such Approved Valuer shall not be appointed for the purposes of this clause 26. The Agent may at any time by notice to the Borrower reinstate an Approved Valuer which has been previously withdrawn by the Agent under this clause 26.9.

26.10 Appointment of Approved Valuers

When a valuation is required for the purposes of this clause 26, the Agent shall appoint one Approved Valuer and the Borrower shall promptly appoint the other Approved Valuer, in each case to provide such valuation. If the Borrower fails to do so promptly, the Agent may also appoint the other Approved Valuer to provide that valuation.

26.11 Number of valuers

- (a) Each valuation must be carried out by two Approved Valuers one of whom shall be nominated by the Borrower. If the Borrower fails promptly to nominate an Approved Valuer within 15 Business Days of the Agent's request, then the Agent may nominate that Approved Valuer.
- (b) If the two Approved Valuers provide valuations and the higher of the two valuations of the Ship exceeds the other one by more than 20 per cent, then the value of the Ship shall be determined by reference to those two valuations and a third valuation provided by a third Approved Valuer nominated by the Agent.

26.12 Differences in valuations

- (a) If valuations provided by individual Approved Valuers differ, the value of the relevant Ship for the purposes of the Finance Documents will be the mean average of those valuations.
- (b) If a single Approved Valuer provides a range of values for the Ship, its value, for the purposes of the Finance Documents, will be the mean average of the values comprising such range.

26.13 Security shortfall

- (a) If on 1 January 2020 or at any time thereafter the Security Value is less than the Minimum Value, the Agent may, and shall, if so directed by the Majority Lenders, by notice to the Borrower require that such deficiency be remedied. The Borrower shall then within 30 Business Days of receipt of such notice ensure that the Security Value equals or exceeds the Minimum Value. For this purpose, the Borrower and/or an Owner may:
 - (i) provide additional security over other assets approved by the Majority Lenders in accordance with this clause 26; and/or

- (ii) cancel part of the Active Facility under clause 7.2 (*Voluntary cancellation*) and prepay under clause 7.3 (*Voluntary prepayment*) (but on five Business Days' notice instead of the period required by such clause) a corresponding amount of the Loan.

- (b) Any cancellation of part of the Active Facility pursuant to paragraph (a) above shall reduce the Total Commitments by the same amount.

26.14 Creation of additional security

The value of any additional security which the Borrower offers to provide to remedy all or part of a shortfall in the amount of the Security Value will only be taken into account for the purposes of determining the Security Value if and when:

- (a) that additional security, its value and the method of its valuation have been approved by the Majority Lenders;
- (b) a Security Interest over that security has been constituted in favour of the Security Agent or (if appropriate) the Finance Parties in an approved form and manner;
- (c) this Agreement has been unconditionally amended in such manner as the Agent requires in consequence of that additional security being provided; and
- (d) the Agent, or its duly authorised representative, has received such documents and evidence it may require in relation to that amendment and additional security including documents and evidence of the type referred to in Schedule 3 (*Conditions precedent*) in relation to that amendment and additional security and its execution and (if applicable) registration.

26.15 Release of additional security

If the Borrower shall have previously provided further security to the Lenders pursuant to clause 26.13(a) and the Security Value (calculated without taking into account any such additional security) shall for a period of three consecutive Months equal or exceed the Minimum Value (following calculation of the same pursuant to valuations obtained by the Agent pursuant to this clause 26, which are not older than 30 days), the Lenders shall, as soon as reasonably practicable after receiving notice from the Borrower to do so and subject to the Lenders being indemnified to their reasonable satisfaction against the cost of doing so, release any such further security specified by the Borrower provided that the Lenders are satisfied that there is no Default at the time and that, immediately following such release (a) the Security Value will continue to equal or exceed the Minimum Value and (b) no Default will occur as a result of such release.

27 Bank accounts

27.1 Undertaking to comply

Each Obligor who is a Party undertakes that this clause 27 will be complied with throughout the Facility Period.

27.2 Operating Account

- (a) Each Owner shall be the holder of one Account with an Account Bank which is designated as an "Operating Account" for the purposes of the Finance Documents.

- (b) The Earnings of each Owner's Ship and all moneys payable to that Owner under that Ship's Insurances shall be paid by the persons from whom they are due to that Owner's Operating Account unless required to be paid to the Security Agent under the relevant Finance Documents.
- (c) Each Owner shall deposit in its Operating Account an amount of Five hundred thousand dollars (\$500,000) on or before the first Utilisation Date.
- (d) No Owner shall withdraw amounts standing to the credit of an Operating Account except as permitted by paragraph (e) below.
- (e) If there is no continuing Default nor would a Default result from a withdrawal from an Operating Account and if, after the relevant withdrawal, the balance on the relevant Operating Account will be at least Five hundred thousand dollars (\$500,000), an Owner may withdraw amounts from its Operating Account for the following purposes and in the following order of priority:
 - (i) payments of reasonably incurred (and evidenced when required by the Agent) costs and expenses of insuring, repairing, operating, trading and maintaining such Owner's Ship;
 - (ii) transfers to the Facility Account;
 - (iii) transfers to the ABN Cash Collateral Account in accordance with clause 27.3 (*Excess Cash Flow transfer*); and
 - (iv) payment of dividends to the extent permitted by clause 28.13 (*Distributions and other payments*).

27.3 Excess Cash Flow transfer

If, at any time during the Additional Excess Cash Flow Period, the amount of Excess Cash Flow in respect of a Calculation Period is a positive figure, the Borrower shall be entitled to transfer to the ABN Cash Collateral Account an amount equal to seventy five per cent (75%) of such Excess Cash Flow, provided that (i) no payments are due at the time under clause 27.2(e)(i) or clause 27.4(c)(i) to (iii), (ii) no Event of Default is continuing at that time and (iii) no Event of Default would result from doing so.

27.4 Facility Account

- (a) The Borrower shall be the holder of an Account with an Account Bank which is designated as the "Facility Account" for the purposes of the Finance Documents.
- (b) The Borrower shall not withdraw amounts standing to the credit of the Facility Account except as permitted by paragraph (c) below.
- (c) If there is no continuing Default and no Default would result from a withdrawal from the Facility Account, the Borrower may withdraw amounts from the Facility Account for the following purposes and in the following order of priority:
 - (i) payments then due to Finance Parties under the Finance Documents (other than payments due in respect of a prepayment or under clause 6.2 (*Scheduled repayment of Advances*) or in respect of payment of interest);
 - (ii) payments of interest under clause 9.2 (*Payment of interest*);
 - (iii) payments then due to the Finance Parties under clause 6.2 (*Scheduled repayment of Advances*);
 - (iv) payments due in accordance with clause 7.7 (*Excess Cash Flow Calculation and Prepayment*); and
 - (v) payment of dividends to the Parent in accordance with the terms of this Agreement.

27.5 Other provisions

- (a) An Account may only be designated for the purposes described in this clause 27 if:
 - (i) such designation is made in writing by the Agent and acknowledged by the Borrower and specifies the name and address of the Account Bank and the number and any designation or other reference attributed to the Account;
 - (ii) an Account Security has been duly executed and delivered by the relevant Account Holder(s) in favour of the Security Agent (and any other Finance Party required by the Agent);
 - (iii) any notice required by the Account Security to be given to an Account Bank has been given to, and acknowledged by, the Account Bank in the form required by the relevant Account Security; and
 - (iv) the Agent, or its duly authorised representative, has received such documents and evidence it may require in relation to the Account and the Account Security including documents and evidence of the type referred to in Schedule 3 (*Conditions precedent*) in relation to the Account and the relevant Account Security.
- (b) The rates of payment of interest and other terms regulating any Account will be a matter of separate agreement between the relevant Account Holder(s) and an Account Bank.
- (c) If an Account is a fixed term deposit account, the relevant Account Holder(s) may select the terms of deposits until the relevant Account Security has become enforceable and the Security Agent directs otherwise.
- (d) The relevant Account Holder(s) shall not close any Account or alter the terms of any Account from those in force at the time it is designated for the purposes of this clause 27 or waive any of its rights in relation to an Account except with approval.
- (e) The relevant Account Holder(s) shall deposit with the Security Agent all certificates of deposit, receipts or other instruments or securities relating to any Account, notify the Security Agent of any claim or notice relating to an Account from any other party and provide the Agent with any other information it may request concerning any Account.
- (f) Each of the Agent and the Security Agent agrees that if it is an Account Bank in respect of an Account then there will be no restrictions on creating a Security Interest over that Account as contemplated by this Agreement and it shall not (except with the approval of the Majority Lenders) exercise any right of combination, consolidation or set-off which it may have in respect of that Account in a manner adverse to the rights of the other Finance Parties.

28 Business restrictions

28.1 Undertaking to comply

Except as otherwise approved by the Majority Lenders (such approval in respect of clause 28.10 (*Acquisitions and investments*) not to be unreasonably withheld or delayed), the Borrower and the Owners each undertake that this clause 28 will be complied with by and in respect of each person to which each relevant provision of this clause is expressed to apply throughout the Facility Period. For the avoidance of doubt, and without prejudice to clause 29.6 (*Other obligations*), this clause 28 does not apply to the Parent.

28.2 General negative pledge

- (a) In this clause 28.2, Quasi-Security means an arrangement or transaction described in paragraph (c) below.
- (b) Neither the Borrower nor an Owner shall create or permit to subsist any Security Interest over any of its assets except for Permitted Security Interests.
- (c) (Without prejudice to clauses 28.3 (*Financial Indebtedness*) and 28.7 (*Disposals*)), neither the Borrower nor an Owner shall:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to, or re-acquired by, an Obligor, a Manager or any other Group Member;
 - (ii) sell, transfer, factor or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (d) Paragraphs (b) and (c) above do not apply to any Security Interest or (as the case may be) Quasi-Security, listed below:
 - (i) those granted or expressed to be granted by any of the Security Documents; and
 - (ii) in relation to a Mortgaged Ship, Permitted Maritime Liens.

28.3 Financial Indebtedness

Neither the Borrower nor an Owner shall incur or permit to exist, any Financial Indebtedness owed by it to anyone else except:

- (a) Financial Indebtedness incurred under the Finance Documents;
- (b) Financial Indebtedness incurred in the Borrower's or, as the case may be, such Owner's ordinary course of business in an amount not exceeding at any time \$1,000,000; and
- (c) Financial Indebtedness owed by the relevant Obligors under the Existing Loan Agreement and the Existing Master Agreement (provided that any such Financial Indebtedness owed by the Owners is subordinated to the Finance Documents on approved terms).

28.4 Guarantees

Neither an Owner nor the Borrower shall give or permit to exist, any guarantee by it in respect of indebtedness of any person or allow any of its indebtedness to be guaranteed by anyone else except:

- (a) guarantees in favour of its trade creditors and any other third party given in the ordinary course of its business of owning, trading, chartering and operating the relevant Ships;

- (b) guarantees required by any protection and indemnity or war risks association with which the relevant Ship is entered or required to release the relevant Ship from any arrest, detention, attachment or levy or required for the salvage of the relevant Ship; and
- (c) guarantees which are Financial Indebtedness permitted under clause 28.3 (*Financial Indebtedness*).

28.5 Loans and credit

Neither the Borrower nor an Owner shall be a creditor in respect of Financial Indebtedness other than in respect of trade credit granted by it to its customers on normal commercial terms in the ordinary course of its trading activities.

28.6 Bank accounts, operating leases and other financial transactions

Neither the Borrower nor an Owner shall:

- (a) maintain any current or deposit account with a bank or financial institution except for (i) the Accounts, (ii) the ABN Cash Collateral Account until the end of the Additional Excess Cash Flow Period and (iii) the deposit of money, operation of current accounts and the conduct of electronic banking operations with Lenders through the Accounts;
- (b) hold cash in any account (other than the Accounts and the ABN Cash Collateral Account) over or in respect of which any set-off, combination of accounts, netting or Security Interest exists except as permitted by clause 28.2 (*General negative pledge*);
- (c) enter into any obligations under operating leases relating to assets; or
- (d) be party to any banking or financial transaction, whether on or off balance sheet, that is not expressly permitted under this clause 28 (*Business restrictions*).

28.7 Disposals

Neither the Borrower nor an Owner shall enter into a single transaction or a series of transactions, whether related or not and whether voluntarily or involuntarily, to sell, lease, transfer or otherwise dispose of any material asset except for any of the following disposals (so long as they are not prohibited by any other provision of the Finance Documents):

- (a) disposals of assets made in (and on terms reflecting) the ordinary course of trading of the disposing entity;
- (b) disposals permitted by clauses 28.2 (*General negative pledge*) or 28.3 (*Financial Indebtedness*) or 23.3 (*Sale or other disposal of Ship*);
- (c) dealings with its trade creditors or other third parties in the ordinary course of trading; and
- (d) the application of cash or cash equivalents in the acquisition of assets or services in the ordinary course of its business.

28.8 Contracts and arrangements with Affiliates

No Owner shall be party to any arrangement or contract with any of its Affiliates unless such arrangement or contract is on an arm's length basis.

28.9 Subsidiaries

Neither the Borrower nor an Owner shall establish or acquire a company or other entity.

28.10 Acquisitions and investments

Neither the Borrower nor an Owner shall acquire any person, business, assets or liabilities in excess of \$1,000,000 or make any investment in any person or business or undertaking or enter into any joint-venture arrangement except:

- (a) acquisitions of assets in the ordinary course of business (not being new businesses or vessels);
- (b) capital expenditures or investments related to maintenance of the Ship in the ordinary course of its business;
- (c) the incurrence of liabilities in the ordinary course of its business;
- (d) any loan or credit not otherwise prohibited under this Agreement; and
- (e) pursuant to any Finance Documents to which it is party.

28.11 Reduction of capital

Neither the Borrower nor an Owner shall redeem or purchase or otherwise reduce any of its equity or any other share capital or any warrants or any uncalled or unpaid liability in respect of any of them or reduce the amount (if any) for the time being standing to the credit of its share premium account or capital redemption or other undistributable reserve in any manner.

28.12 Increase in capital

- (a) No Owner shall issue shares or other equity interests to anyone other than the Borrower.
- (b) The Borrower shall not issue shares or other equity interests to anyone other than the Parent.

28.13 Distributions and other payments

- (a) The Borrower shall not, without the Agent's prior written consent (acting on the instructions of the Lenders), such consent not to be unreasonably withheld or delayed:
 - (i) declare or pay (including by way of set-off, combination of accounts or otherwise) any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital) or any warrants for the time being in issue;
 - (ii) repay or distribute any dividend or share premium reserve;
 - (iii) pay any management, advisory or other fee to or to the order of any Obligor or any of the shareholders of the Parent;
 - (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so; or
 - (v) make any payment (including by way of set-off, combination of accounts or otherwise) by way of interest, or repayment, redemption, purchase or other payment, in respect of any shareholder loan, loan stock or similar instrument,except if no Event of Default is continuing at that time and no Event of Default would result from doing so.

- (b) Each Owner shall not:
- (i) declare or pay (including by way of set-off, combination of accounts or otherwise) any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital) or any warrants for the time being in issue;
 - (ii) repay or distribute any dividend or share premium reserve;
 - (iii) pay any management, advisory or other fee to or to the order of any Obligor or any of the shareholders of the Parent (other than any management fees payable to the Borrower pursuant to a Management Agreement);
 - (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so; or
 - (v) make any payment (including by way of set-off, combination of accounts or otherwise) by way of interest, or repayment, redemption, purchase or other payment, in respect of any shareholder loan, loan stock or similar instrument, to anyone other than the Borrower.

29 Events of Default

Each of the events or circumstances set out in this clause 29 (except clause 29.24 (*Acceleration*)) is an Event of Default.

29.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by a Disruption Event; and
- (b) payment is made within three Business Days of its due date.

29.2 Financial covenants

The Borrower does not comply with clause 21 (*Financial covenants*).

29.3 Share Transfer

The Borrower does not comply with clause 23.13 (*Share Transfer*).

29.4 Value of security

The Obligors do not comply with clause 26 (*Minimum security value*).

29.5 Insurance

- (a) The Insurances of a Mortgaged Ship are not placed and kept in force in the manner required by clause 25 (*Insurance*).
- (b) Any insurer either:
 - (i) cancels any such Insurances; or
 - (ii) disclaims liability under them or asserts that its liability under them is or should be reduced by reason of any mis-statement or failure or default by any person.

29.6 Other obligations

- (a) An Obligor or a Manager does not comply with any provision of the Finance Documents (other than those referred to in clause 29.1 (*Non-payment*), clause 29.2 (*Financial covenants*), clause 29.3 (*Share Transfer*), clause 29.4 (*Value of security*) and clause 29.5 (*Insurance*)).
- (b) No Event of Default under paragraph (a) above will occur if the Agent considers that the failure to comply is capable of remedy and the failure is remedied within seven Business Days of the earlier of (i) the Agent giving notice to the Borrower and (ii) the Borrower or any other Obligor or Manager becoming aware of the failure to comply.

29.7 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any respect when made or deemed to be made.

29.8 Cross default

- (a) Any Financial Indebtedness of the Borrower or any Guarantor is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of the Borrower or any Guarantor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described), provided that in the event such Financial Indebtedness is a guarantee and indemnity given by the Parent, a demand has been made on the Parent by the relevant creditor(s) under such guarantee.
- (c) Any commitment for any Financial Indebtedness of the Borrower or any Guarantor is cancelled or suspended by a creditor of the Borrower or that Guarantor as a result of an event of default (however described).
- (d) Any creditor of the Borrower or any Guarantor becomes entitled to declare any Financial Indebtedness of the Borrower or that Guarantor due and payable prior to its specified maturity as a result of an event of default (however described), provided that in the case of any Financial Indebtedness created under any guarantee and indemnity of the Parent, a demand is made by the relevant creditor(s) under such guarantee and indemnity.
- (e) No Event of Default will occur under paragraphs (a) to (d) above if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is (i) in the case of the Borrower or an Owner, less than \$800,000 (or its equivalent in any other currency) and (ii) in the case of the Parent, less than \$5,000,000 (or its equivalent in any other currency).

29.9 Insolvency

- (a) An Obligor or a Manager:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law; or
 - (iii) suspends or threatens to suspend making payments on any of its debts,

Provided however that none of the above shall constitute an Event of Default if they occur in respect of a Manager and, within a period of ten days of such occurrence, the Owners substitute such Manager with another ship manager in accordance with clause 23.4 (*Manager*).

- (b) A moratorium is declared in respect of any indebtedness of any Obligor.

If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

- (c) No Event of Default will occur under paragraphs (a) to (b) above if an Obligor, by any reason, including without limitation, any actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (including any Finance Party in its capacity as such) with a view to rescheduling, deferring, re-organising or suspending, any of its indebtedness and/or, as a result of such negotiations, enters into any agreement or contract with one or more creditors (including any Finance Party in its capacity as such) setting out the terms of any such rescheduling, deferral, reorganisation or suspension of its indebtedness, provided that, in the event that such negotiations or agreement or contract relate to a Group Facility Agreement, the Agent has been informed by an Obligor of any such negotiations promptly upon their commencement and the Agent has approved any agreement to be entered into as a result of such negotiation.

29.10 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor or a Manager;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor or a Manager;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor, a Manager or any of its assets; or
 - (iv) enforcement of any Security Interest over any assets of any Obligor,

or any analogous procedure or step is taken in any jurisdiction, Provided however that none of the above shall constitute an Event of Default if they occur in respect of a Manager and, within a period of ten days of such occurrence, the Owners substitute such Manager with another ship manager in accordance with clause 23.4 (*Manager*).

- (b) Paragraph (a) above shall not apply to any winding-up petition (or analogous procedure or step) which is frivolous or vexatious and is discharged, stayed or dismissed within thirty days of commencement or, if earlier, the date on which it is advertised.

29.11 Creditors' process

- (a) Any expropriation, attachment, sequestration, distress, execution or any other analogous process or enforcement action (including enforcement by a landlord) affects any asset or assets of any Obligor (other than an arrest or detention of a Ship referred to in clause 29.19 (*Arrest of Ship*)) and is not discharged within seven days.
- (b) Any judgment or order is made against an Obligor and is not stayed or complied with within seven days.

29.12 Unlawfulness and invalidity

- (a) It is or becomes unlawful for an Obligor or a Manager to perform any of its obligations under the Finance Documents or any Transaction Security ceases to be effective.
- (b) Any obligation or obligations of any Obligor or a Manager under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
- (c) Any Finance Document or any Transaction Security ceases to be in full force and effect or ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective for any reason.
- (d) Any Security Document does not create legal, valid, binding and enforceable security over the assets charged under that Security Document or the ranking or priority of such security is adversely affected.

29.13 Cessation of business

Any Obligor or a Manager suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business unless, in the case of the Manager only, the Owners, within a period of ten days of such occurrence, substitute such Manager with another ship manager in accordance with clause 23.4 (*Manager*).

29.14 Expropriation

The authority or ability of any Obligor or a Manager to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor, a Manager or any of its assets unless, in the case of the Manager only, the Owners, within a period of ten days of such occurrence, substitute such Manager with another ship manager in accordance with clause 23.4 (*Manager*).

29.15 Repudiation and rescission of Finance Documents

An Obligor or a Manager rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

29.16 Litigation

Either:

- (a) any litigation, alternative dispute resolution, arbitration or administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened; or
- (b) any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body is made,

in relation to any Finance Document or the transactions contemplated in the Finance Documents or against any Group Member or any of its assets, rights or revenues which has or might have a Material Adverse Effect.

29.17 Material Adverse Effect

Any event or circumstance (including any Environmental Incident or any change of law) occurs which the Majority Lenders reasonably believe has, or is reasonably likely to have, a Material Adverse Effect.

29.18 Security enforceable

Any Security Interest (other than a Permitted Maritime Lien) in respect of Charged Property becomes enforceable.

29.19 Arrest of Ship

Any Mortgaged Ship is arrested, confiscated, seized, taken in execution, impounded, forfeited, detained in exercise or purported exercise of any possessory lien or other claim and the relevant Owner fails to procure the release of such Ship within a period of 30 days thereafter (or such longer period as may be approved).

29.20 Ship registration

Except with approval, the registration of any Mortgaged Ship under the laws and flag of its Flag State is cancelled or terminated or, where applicable, not renewed or, if such Ship is only *provisionally registered* on the date of its Mortgage, such Ship is not permanently registered under such laws within 90 days of such date.

29.21 Political risk

- (a) Either (1) the Flag State of any Mortgaged Ship or any Relevant Jurisdiction of an Obligor becomes involved in hostilities or civil war or (2) there is a seizure of power in the Flag State or any such Relevant Jurisdiction by unconstitutional means and (in either such case) in the opinion of the Agent such event or circumstance, has or is reasonably likely to have, a Material Adverse Effect.
- (b) No Event of Default under paragraph (a) above will occur if:
 - (i) in the opinion of the Agent it is practicable for action to be taken by the Borrower to prevent the relevant event or circumstance having a Material Adverse Effect; and
 - (ii) the Borrower takes such action to the Agent's satisfaction within 14 days of notice from the Agent (specifying the relevant action to be taken) to do so.

29.22 Change of Control

If a Change of Control occurs or, following the Transaction, a Transaction Change of Control occurs.

29.23 Sanctions

- (a) Any of the Obligors, any Manager, any of the Disclosed Persons or any Affiliate of any of them or any of their respective directors, officers, agents, employees or other persons acting on behalf of the foregoing, becomes a Restricted Person or becomes owned or controlled by, or acts directly or indirectly on behalf of, a Restricted Person or any of such persons becomes the owner or controller of a Restricted Person; or
- (b) any proceeds of the Loan are made available, directly or indirectly, to or for the benefit of a Restricted Person or otherwise is, directly or indirectly, applied in a manner or for a purpose prohibited by applicable Sanctions; or

- (c) any Obligor, any Manager, any of the Disclosed Persons or any of their respective Affiliates or any of their respective directors, officers, agents, employees or other persons acting on behalf of the foregoing, is not in compliance with any applicable Sanctions;
- (d) any Group Member or any Fleet Vessel does any business relating to Iran or any Iranian owned or incorporated entity, unless the Agent approves so in writing.

29.24 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders:

- (a) by notice to the Borrower:
 - (i) declare that no withdrawals be made from any Account;
 - (ii) cancel the Total Commitments at which time they shall immediately be cancelled;
 - (iii) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or
 - (iv) declare that all or part of the Loan be payable on demand, at which time it shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (b) exercise or direct the Security Agent and/or any other beneficiary of the Security Documents to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

30 Changes to the Lenders

30.1 Assignments by the Lenders

A Lender (the **Existing Lender**) may, by giving 30 days' prior notice to the Borrower, assign any of its rights under any Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in commercial shipping loans, securities or other financial assets (the **New Lender**).

30.2 Other conditions of assignment

- (a) An assignment will only be effective:
 - (i) on receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the Borrower and the other Finance Parties as it would have been under if it had been an Original Lender;
 - (ii) on the New Lender entering into any documentation required for it to accede as a party to the Co-ordination Agreement and any Security Document to which the Existing Lender is a party in its capacity as a Lender and, in relation to such Security Documents, completing any filing, registration or notice requirements;
 - (iii) on the performance by the Agent of all necessary "know your customer" or similar checks under all applicable laws and regulations relating to any person that it is required to carry out in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender; and
 - (iv) if that Existing Lender assigns equal fractions of its Commitment and participation in the Loan and each Utilisation (if any) under the Facility.
- (b) Each New Lender, by executing the relevant Transfer Certificate, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with the Finance Documents on or prior to the date on which the assignment becomes effective in accordance with the Finance Documents and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

30.3 Fee and expenses

- (a) Subject to paragraph (b) below, the New Lender shall, on the date upon which an assignment takes effect, pay to the Agent (for its own account) a fee in dollars determined by the Agent in its sole discretion and shall, promptly on demand, pay the Agent and the Security Agent the amount of:
 - (i) all costs and expenses (including legal fees) reasonably incurred by the Agent or the Security Agent in connection with any such assignment; and
 - (ii) any cost, loss or liability the Agent or the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any such assignment.

- (b) No fee or other amount is payable pursuant to (a) above if:
 - (i) the Agent agrees that no fee or other amount is payable; or
 - (ii) the assignment or transfer is made by an Existing Lender:
 - (A) to an Affiliate or partner of that Existing Lender;
 - (B) to a fund which is a Related Fund of that Existing Lender; or
 - (C) in connection with primary syndication of the Facility.

30.4 Transfer costs and expenses relating to security

The New Lender shall, promptly on demand, pay the Agent and the Security Agent the amount of:

- (a) all costs and expenses (including legal fees) reasonably incurred by the Agent or the Security Agent to facilitate the accession by the New Lender to, or assignment or transfer to the New Lender of, any Security Document and/or the benefit of any Security Document and any appropriate registration of any such accession or assignment or transfer (including in respect of the accession by the New Lender to the Co-ordination Agreement and the execution of any deed of accession supplemental to); and
- (b) any cost, loss or liability the Agent or the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any such accession, assignment or transfer.

30.5 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor or any other person of its obligations under the Finance Documents or any other documents;
 - (iv) the application of any Basel II Regulation or Basel III Regulation to the transactions contemplated by the Finance Documents; or
 - (v) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of:
 - (A) the financial condition and affairs of the Obligors and their related entities in connection with its participation in this Agreement; and

- (B) the application of any Basel II Regulation or Basel III Regulation to the transactions contemplated by the Finance Documents; and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document or the Transaction Security;
 - (ii) will continue to make its own independent appraisal of the application of any Basel II Regulation or Basel III Regulation to the transactions contemplated by the Finance Documents; and
 - (iii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
- (i) accept a re-assignment from a New Lender of any of the rights assigned under this clause 30; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under any Finance Document or by reason of the application of any Basel II Regulation to the transactions contemplated by the Finance Documents or otherwise.

30.6 Procedure available for assignment

- (a) Subject to the conditions set out in clause 30.1 (*Assignments by the Lenders*) and clause 30.2 (*Other conditions of assignment*), an assignment may be effected in accordance with paragraph (d) below when (i) the Agent executes an otherwise duly completed Transfer Certificate and (ii) the Agent executes any document required under paragraph (a) of clause 30.2 (*Other conditions of assignment*) which it may be necessary for it to execute in each case delivered to it by the Existing Lender and the New Lender duly executed by them and, in the case of any such other document, any other relevant person. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a Transfer Certificate and any such other document each duly completed, appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate and such other document.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) The Obligors who are Parties and the other Finance Parties irrevocably authorise the Agent to execute any Transfer Certificate on their behalf without any consultation with them.
- (d) On the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Transfer Certificate;
 - (ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the **Relevant Obligations**) and expressed to be the subject of the release in the Transfer Certificate (but the obligations owed by the Obligors under the Finance Documents shall not be released); and
 - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.

- (e) Lenders may utilise procedures other than those set out in this clause 30.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with this clause 30.6 to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in clause 30.1 (*Assignments by the Lenders*) and clause 30.2 (*Other conditions of assignment*).

30.7 Copy of Transfer Certificate to Borrower

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate and any other document required under paragraph (a) of clause 30.2 (*Other conditions of assignment*), send a copy of that Transfer Certificate and such other documents to the Borrower.

30.8 Security over Lenders' rights

In addition to the other rights provided to Lenders under this clause 30, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or other Security Interest shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or other Security Interest for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

31 Changes to the Obligors

No Obligor nor a Manager may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

32 Roles of Agent, Security Agent and Arranger

32.1 Appointment of the Agent and Security Agent

Each other Finance Party (other than the Security Agent) appoints:

- (a) the Agent to act as its agent under and in connection with the Finance Documents; and
- (b) the Security Agent to act as its agent and as trustee under the Security Documents.

32.2 Security Agent as trustee

The Security Agent declares that it holds the Security Property on trust for itself and the other Finance Parties on the terms contained in this Agreement.

32.3 Authorisation of Agent and Security Agent

Each of the Finance Parties authorises the Agent and the Security Agent:

- (a) to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent or (as the case may be) the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions; and
- (b) to execute each of the Security Documents and all other documents that may be approved by the Majority Lenders for execution by it.

32.4 Instructions to Agent and the Security Agent

- (a) The Agent and the Security Agent shall:
 - (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent or (as the case may be) the Security Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Agent and the Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent or (as the case may be) the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.

- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and, unless a contrary indication appears in a Finance Document, any instructions given to the Agent or (as the case may be) the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in a Finance Document;
 - (ii) where a Finance Document requires the Agent or the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Agent's or the Security Agent's own position in its personal capacity as opposed to its role of the Agent or the Security Agent for the Finance Parties including, without limitation, clauses 32.9 (*No duty to account*) to clause 32.14 (*Exclusion of liability*), clause 32.19 (*Confidentiality*) to clause 33.6 (*Custodians and nominees*) and clauses 33.9 (*Acceptance of title*) to 33.12 (*Disapplication of Trustee Acts*).
- (e) If giving effect to instructions given by any other Finance Party or group of Finance Parties would (in the Agent's or (as the case may be) the Security Agent's opinion) have an effect equivalent to an amendment or waiver which is subject to clause 45 (*Amendments and waivers*), the Agent or (as the case may be) the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than itself) whose consent would have been required in respect of that amendment or waiver.
- (f) The Agent or the Security Agent may refrain from acting in accordance with any instructions of any other Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (g) Without prejudice to the provisions of clause 34 (*Enforcement of Transaction Security*) and the remainder of this clause 32, in the absence of instructions, the Agent and the Security Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.

32.5 Legal or arbitration proceedings

Neither the Agent nor the Security Agent is authorised to act on behalf of another Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This clause 32.5 shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security.

32.6 Duties of the Agent and the Security Agent

- (a) The Agent's and the Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent or (as the case may be) the Security Agent shall promptly:
 - (i) (in the case of the Security Agent) forward to the Agent a copy of any document received by the Security Agent from any Obligor under any Finance Document; and

- (ii) forward to a Party the original or a copy of any document which is delivered to the Agent or (as the case may be) the Security Agent for that Party by any other Party.
- (c) Without prejudice to clause 30.7 (*Copy of Transfer Certificate to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate.
- (d) Except where a Finance Document specifically provides otherwise, neither the Agent nor the Security Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) Without prejudice to clause 35.10 (*Notification of prescribed events*), if the Agent or the Security Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Arranger or the Security Agent for their own account) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Agent shall provide to the Borrower within five Business Days of a request by the Borrower (but no more frequently than quarterly per calendar year), a list (which may be in electronic form) setting out the names of the Lenders as at that Business Day, their respective Commitments and the address (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.
- (h) The Agent and the Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

32.7 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document or the transactions contemplated by the Finance Documents.

32.8 No fiduciary duties

Nothing in any Finance Document constitutes the Agent, the Security Agent or the Arranger as a trustee or fiduciary of any other person except to the extent that the Security Agent acts as trustee for the other Finance Parties pursuant to clause 32.2 (*Security Agent as trustee*).

32.9 No duty to account

None of the Agent, the Security Agent or the Arranger shall be bound to account to any other Finance Party for any sum or the profit element of any sum received by it for its own account.

32.10 Business with the Group

The Agent, the Security Agent and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Obligor or any other Group Member or their Affiliates.

32.11 Rights and discretions of the Agent and the Security Agent

- (a) The Agent and the Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or other Finance Parties or any group of Lenders or other Finance Parties are duly given in accordance with the terms of the Finance Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) in the case of the Security Agent, if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing, as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Agent and the Security Agent may assume (unless it has received notice to the contrary in its capacity as agent or (as the case may be) security trustee for the other Finance Parties) that:
 - (i) no Notifiable Debt Purchase Transaction:
 - (A) has been entered into;
 - (B) has been terminated; or
 - (C) has ceased to be with a Borrower Affiliate;
 - (ii) no Default has occurred (unless (in the case of the Agent) it has actual knowledge of a Default arising under clause 29.1 (*Non-payment*));
 - (iii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iv) any notice or request made by the Borrower (other than (in the case of the Agent) a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) Each of the Agent and the Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts.

- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, each of the Agent and the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to it (and so separate from any lawyers instructed by the Lenders or any other Finance Party) if it, in its reasonable opinion, deems this to be desirable.
- (e) Each of the Agent and the Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts (whether obtained by it or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Agent, the Security Agent, any Receiver and any Delegate may act in relation to the Finance Documents, the Transaction Security and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part, of any such person,
 unless such error or such loss was directly caused by the Agent's, the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless any Finance Document expressly specifies otherwise, the Agent or the Security Agent may disclose to any other Party any information it reasonably believes it has received as agent or security trustee under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Borrower or the Majority Lenders shall, as soon as reasonably practicable, disclose the identity of a Defaulting Lender to the other Finance Parties and the Borrower.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent, the Security Agent nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, neither the Agent nor the Security Agent is obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.
- (k) Neither the Agent nor the Arranger shall be obliged to request any certificate, opinion or other information under clause 20 (*Information undertakings*) unless so required in writing by a Lender, in which case the Agent shall promptly make the appropriate request of the Borrower if such request would be in accordance with the terms of this Agreement.

32.12 Responsibility for documentation and other matters

None of the Agent, the Security Agent, the Arranger, any Receiver or any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Security Agent, the Arranger, an Obligor or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document, the Transaction Security or the Security Property;
- (c) the application of any Basel II Regulation or Basel III Regulation to the transactions contemplated by the Finance Documents;
- (d) (in the case of the Security Agent) any loss to the Security Property arising in consequence of the failure, depreciation or loss of any Charged Property or any investments made or retained in good faith or by reason of any other matter or thing;
- (e) the failure of any Obligor or any other party to perform its obligations under any Finance Document or the financial condition of any such person;
- (f) (save as otherwise provided in this clause 32) taking or omitting to take any other action under or in relation to the Security Documents;
- (g) any other beneficiary of a Security Document failing to perform or discharge any of its duties or obligations under any Finance Document; or
- (h) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by any applicable law or regulation relating to insider dealing or otherwise.

32.13 No duty to monitor

Neither the Agent nor the Security Agent shall be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party or any Obligor of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

32.14 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Security Agent, any Receiver or Delegate), none of the Agent, the Security Agent, any Receiver nor any Delegate will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Security Property;

- (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
- (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event), breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Agent, the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Agent, the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property and any officer, employee or agent of the Agent, the Security Agent, a Receiver or a Delegate may rely on this clause subject to clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Neither of the Agent or the Security Agent will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by it if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by it for that purpose.
- (d) Nothing in any Finance Document shall oblige the Agent, the Security Agent or the Arranger to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by any of the Finance Documents might be unlawful for any Finance Party or for any Affiliate of any Finance Party or for any Affiliate of any Finance Party,on behalf of any other Finance Party and each other Finance Party confirms to the Agent, the Security Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent, the Security Agent or the Arranger.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Agent, the Security Agent, any Receiver or any Delegate, any liability of the Agent, the Security Agent, any Receiver or any Delegate arising under or in connection with any Finance Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent, the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent, the Security Agent, Receiver or Delegate (as the case may be) at any time

which increase the amount of that loss. In no event shall the Agent, the Security Agent, any Receiver or any Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent, the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

32.15 Lenders' indemnity to the Agent and others

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their being reduced to zero) indemnify the Agent, the Security Agent, every Receiver and every Delegate, within three Business Days of demand, against any Losses (including, without limitation, for negligence or any other category of liability whatsoever) incurred by any of them (otherwise than by reason of the relevant Agent's, Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) (or, in the circumstances contemplated pursuant to clause 39.11 (*Disruption to payment systems etc*), notwithstanding the Agent's negligence, gross negligence, or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent, Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Finance Documents (unless the relevant Agent, Security Agent, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent or the Security Agent or any Receiver or Delegate pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent or the Security Agent to an Obligor.

32.16 Resignation of the Agent or the Security Agent

- (a) The Agent or the Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively the Agent or the Security Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrower, in which case the Majority Lenders may appoint a successor Agent or Security Agent.
- (c) If the Majority Lenders have not appointed a successor Agent or Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent or Security Agent (after consultation with (in the case of the Agent) the Borrower or (in the case of the Security Agent) the Agent) may appoint a successor Agent or Security Agent.
- (d) If the Agent or Security Agent wishes to resign because it has concluded that it is no longer appropriate for it to remain as agent or trustee and the Agent or (as the case may be) Security Agent is entitled to appoint a successor Agent or (as the case may be) Security Agent under paragraph (c) above, the Agent or (as the case may be) Security Agent may (if it concludes that it is necessary to do so in order to persuade the proposed successor Agent or (as the case may be) Security Agent to become a party to this Agreement as Agent or (as the case may be) Security Agent) agree with the proposed successor Agent or (as the case may be) Security Agent amendments to this clause 32 and any other term of this Agreement dealing with the rights or obligations of the Agent or (as the case may be) Security Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the fee payable to it in its capacity as Agent or (as the case may be) Security Agent under this Agreement which are consistent with the successor Agent's or (as the case may be) Security Agent's normal fee rates and those amendments will bind the Parties.

- (e) The retiring Agent or Security Agent shall make available to the successor Agent or Security Agent such documents and records and provide such assistance as the successor Agent or Security Agent may reasonably request for the purposes of performing its functions as Agent or (as the case may be) Security Agent under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Agent or (as the case may be) Security Agent for the amount of all costs and expenses (including legal fees) (together with any applicable VAT) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Agent's or Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) (in the case of the Security Agent) the transfer or assignment of all the Transaction Security and the other Security Property to that successor and any appropriate filings or registrations, any notices of transfer or assignment and the payment of any fees or duties related to such transfer or assignment which the Security Agent considers necessary or advisable have been duly completed.
- (g) Upon the appointment of a successor, the retiring Agent or Security Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of clause 33.10 (*Winding up of trust*) and paragraph (e) above) but shall remain entitled to the benefit of clauses 15.3 (*Indemnity to the Agent and the Security Agent*) and 15.4 (*Indemnity concerning security*) and this clause 32 (and any agency or other fees for the account of the retiring Agent or Security Agent in its capacity as such shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (h) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three Months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under clause 13.7 (*FATCA information*) and the Borrower or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Agent pursuant to clause 13.7 (*FATCA information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) the Borrower or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and the Borrower or that Lender, by notice to the Agent, requires it to resign.

32.17 Replacement of the Agent

- (a) After consultation with the Borrower, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent.
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of clauses 15.3 (*Indemnity to the Agent and the Security Agent*) and 15.4 (*Indemnity concerning security*) and this clause 32 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

32.18 Replacement of the Security Agent

The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) of clause 32.16 (*Resignation of the Agent or the Security Agent*). In this event, the Security Agent shall resign in accordance with that paragraph.

32.19 Confidentiality

- (a) In acting as agent or trustee for the Finance Parties, the Agent or (as the case may be) the Security Agent shall be regarded as acting through its agency, trustee or other division or department directly responsible for the management of the Finance Documents which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent or (as the case may be) Security Agent, it may be treated as confidential to that division or department and the Agent or (as the case may be) Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent, the Security Agent nor the Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

32.20 Agent's relationship with the Lenders

- (a) The Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and

- (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address and (where communication by electronic mail or other electronic means is permitted under clause 41.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, electronic mail address, department and officer (or such other information) by that Lender for the purposes of clause 41.2 (*Addresses*) and clause 41.6 (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

32.21 Information from the Finance Parties

Each Finance Party shall supply the Agent or the Security Agent with any information that the Agent or (as the case may be) the Security Agent may reasonably specify as being necessary or desirable to enable the Agent or (as the case may be) the Security Agent to perform its functions as Agent or (as the case may be) Security Agent.

32.22 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each other Finance Party confirms to the Agent, the Security Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each Obligor and other Group Member;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Transaction Security or the Security Property;
- (c) the application of any Basel II Regulation or Basel III Regulation to the transactions contemplated by the Finance Documents;
- (d) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the Security Property, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document, the Transaction Security or the Security Property;
- (e) the adequacy, accuracy or completeness of information provided by the Agent, the Security Agent, the Arranger or any other Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

- (f) the right or title of any person in or to, or the value or sufficiency of, any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security Interest affecting the Charged Property.

32.23 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

32.24 Reliance and engagement letters

Each of the Agent, the Security Agent and the Arranger may enter into any reliance letter or engagement letter relating to any valuations, reports, opinions or letters or advice or assistance provided by lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts in connection with the Finance Documents or the transactions contemplated in the Finance Documents on such terms as it may consider appropriate (including, without limitation, restrictions on the lawyer's, accountant's, tax adviser's, insurance consultant's, ship manager's, valuer's, surveyor's or other professional adviser's or expert's liability and the extent to which their valuations, reports, opinions or letters may be relied on or disclosed).

33 Trust and security matters

33.1 Undertaking to pay

- (a) Each Obligor who is a Party undertakes with the Security Agent as trustee for the Finance Parties that it will, on demand by the Security Agent, pay to the Security Agent as trustee for the Finance Parties all money from time to time owing to the other Finance Parties (in addition to paying any money owing under the Finance Documents to the Security Agent for its own account), and discharge all other obligations from time to time incurred, by it under or in connection with the Finance Documents.
- (b) Each payment which such an Obligor makes to another Finance Party in accordance with any Finance Document shall, to the extent of the amount of that payment, satisfy that Obligor's corresponding obligation under paragraph (a) above to make that payment to the Security Agent.

33.2 Parallel debt

- (a) Additional definitions

In this clause 33.2:

Corresponding Debt means any amount, other than any Parallel Debt, which an Obligor owes to a Finance Party under or in connection with the Finance Documents.

Parallel Debt means any amount which an Obligor owes to the Security Agent under clause 33.2(b) or under that clause as incorporated by reference or in full in any other Finance Document.

- (b) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.

- (c) The Parallel Debt of an Obligor:
 - (i) shall become due and payable at the same time as its Corresponding Debt; and
 - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (d) For purposes of this clause 33.2, the Security Agent:
 - (i) is the independent and separate creditor of each Parallel Debt;
 - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
 - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).
- (e) The Parallel Debt of an Obligor shall be:
 - (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Corresponding Debt has increased, and the Corresponding Debt of an Obligor shall be:
 - (A) decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged; and
 - (B) increased to the extent that its Parallel Debt has increased,in each case provided that the Parallel Debt of an Obligor shall never exceed its Corresponding Debt.
- (f) All amounts received or recovered by the Security Agent in connection with this clause 33.2 (*Parallel Debt*) to the extent permitted by applicable law, shall be applied in accordance with clause 35.1 (*Order of application*).
- (g) This clause 33.2 shall apply, with any necessary modifications, to each Finance Document.

33.3 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

- (a) ascertain whether all deeds and documents which should have been deposited with it under or pursuant to any of the Security Documents have been so deposited;
- (b) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;
- (c) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (d) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;

- (e) take, or to require any Obligor to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security Interest under any law or regulation; or
- (f) require any further assurance in relation to any Security Document.

33.4 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Charged Property;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.
- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Agent requests it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

33.5 Common parties

Although the Agent and the Security Agent may from time to time be the same entity, that entity will have entered into the Finance Documents (to which it is party) in its separate capacities as agent for the other Finance Parties and (as appropriate) security agent and trustee for all of the other Finance Parties. Where any Finance Document provides for an Agent or Security Agent to communicate with or provide instructions to the other, while they are the same entity, such communication or instructions will not be necessary.

33.6 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

33.7 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Finance Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

33.8 Additional trustees

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Finance Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the Borrower and the Finance Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.
- (d) At the request of the Security Agent, the other Parties shall forthwith execute all such documents and do all such things as may be required to perfect such appointment or removal and each such Party irrevocably authorises the Security Agent in its name and on its behalf to do the same.
- (e) Such a person shall accede to this Agreement as a Security Agent to the extent necessary to carry out their role on terms satisfactory to the Security Agent.
- (f) The Security Agent shall not be bound to supervise, or be responsible for any loss incurred by reason of any act or omission of, any such person if the Security Agent shall have exercised reasonable care in the selection of such person.

33.9 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Obligor may have to any of the Charged Property and shall not be liable for, or bound to require any Obligor to remedy, any defect in its right or title.

33.10 Winding up of trust

If the Security Agent, with the approval of the Agent, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Finance Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and

- (ii) any Security Agent which has resigned pursuant to clause 32.16 (*Resignation of the Agent or the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

33.11 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

33.12 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

34 Enforcement of Transaction Security

34.1 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by Majority Lenders.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms, the Majority Lenders may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this clause 34.1.

34.2 Manner of enforcement

If the Transaction Security is being enforced pursuant to clause 34.1 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner as the Majority Lenders shall instruct or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate.

34.3 Waiver of rights

To the extent permitted under applicable law and subject to clause 34.1 (*Enforcement Instructions*), clause 34.2 (*Manner of enforcement*) and clause 35 (*Application of Proceeds*), each of the Finance Parties and the Obligors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

34.4 Enforcement through Security Agent only

- (a) The other Finance Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising or to grant any consents or releases under the Security Documents except through the Security Agent.

- (b) Each Finance Party (other than the Security Agent) shall, promptly upon being requested by the Agent to do so, grant a power of attorney or other sufficient authority to the Security Agent to enable the Security Agent to enforce or have recourse to the relevant Transaction Security or to exercise any such right, power, authority or discretion or to grant any such consent or release.

35 Application of proceeds

35.1 Order of application

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this clause 35, the **Recoveries**) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this clause 35), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (other than pursuant to clause 33.1 (*Undertaking to pay*) or 33.2 (*Parallel debt*)), any Receiver or any Delegate;
- (b) in discharging all costs and expenses incurred by any Finance Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement;
- (c) in payment or distribution to the Agent on its own behalf and on behalf of the other Finance Parties for application in accordance with clause 39.6 (*Partial payments*);
- (d) if none of the Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Obligor; and
- (e) the balance, if any, in payment or distribution to the relevant Obligor.

35.2 Investment of cash proceeds

Prior to the application of any Recoveries in accordance with clause 35.1 (*Order of Application*) the Security Agent may, in its discretion, hold:

- (a) all or part of any Recoveries which are in the form of cash; and
- (b) any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any proceeds of the Security Property which are not in the form of cash

in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this clause 35.

35.3 Currency conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may:
 - (i) convert any moneys received or recovered by the Security Agent from one currency to another; and

- (ii) notionally convert the valuation provided in any opinion **or** valuation from one currency to another, in each case at the Security Agent's spot rate of exchange for the purchase of that other currency with the currency in which the relevant moneys are received or recovered or the valuation is provided in the London foreign exchange market at or about 11:00 am (London time) on a particular day.
- (b) The obligations of any Obligor to pay in the due currency shall only be satisfied:
 - (i) in the case of paragraph (a)(i) above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
 - (ii) in the case of paragraph (a)(ii) above, to the extent of the amount of the due currency which results from the notional conversion referred to in that paragraph.

35.4 Permitted Deductions

The Security Agent shall be entitled, in its discretion, (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any law or regulation to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties or exercising its rights, powers, authorities and discretions, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

35.5 Good discharge

- (a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent may be made to the Agent on behalf of the Finance Parties.
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent to the extent of that payment.
- (c) The Security Agent is under no obligation to make the payments to the Agent under paragraph (a) above in the same currency as that in which the Secured Liabilities owing to the relevant Finance Party are denominated pursuant to the relevant Finance Document.

35.6 Calculation of amounts

For the purpose of calculating any person's share of any amount payable to or by it, the Security Agent shall be entitled to:

- (a) notionally convert the Secured Liabilities owed to any person into a common base currency (decided in its discretion by the Security Agent), that notional conversion to be made at the spot rate at which the Security Agent is able to purchase the notional base currency with the actual currency of the Secured Liabilities owed to that person at the time at which that calculation is to be made; and
- (b) assume that all amounts received or recovered as a result of the enforcement or realisation of the Security Property are applied in discharge of the Secured Liabilities in accordance with the terms of the Finance Documents under which those Secured Liabilities have arisen.

35.7 Release to facilitate enforcement and realisation

- (a) Each Finance Party acknowledges that, for the purpose of any enforcement action by the Security Agent or a Receiver and/or maximising or facilitating the realisation of the Charged Property, it may be desirable that certain rights or claims against an Obligor and/or under certain of the Transaction Security, be released.
- (b) Each other Finance Party hereby irrevocably authorises the Security Agent (acting on the instructions of the Agent) to grant any such releases to the extent necessary to effect such enforcement action and/or realisation including, to the extent necessary for such purpose, to execute release documents in the name of and on behalf of the other Finance Parties.
- (c) Where the relevant enforcement is by way of disposal of shares in an Owner or in the Borrower, the requisite release may include releases of all claims (including under guarantees) of the Finance Parties and/or the Security Agent against such Owner or the Borrower and of all Security Interests over the assets of such Owner or the Borrower.

35.8 Dealings with Security Agent

Subject to clause 41.5 (*Communication when Agent is Impaired Agent*), each Finance Party shall deal with the Security Agent exclusively through the Agent.

35.9 Disclosure between Finance Parties and Security Agent

Notwithstanding any agreement to the contrary, each of the Obligors consents, until the end of the Facility Period, to the disclosure by any Finance Party to each other (whether or not through the Agent or the Security Agent) of such information concerning the Obligors as any Finance Party shall see fit.

35.10 Notification of prescribed events

- (a) If an Event of Default or Default either occurs or ceases to be continuing, the Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent.
- (b) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each other Finance Party of that action.
- (c) If any Finance Party exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Finance Party of that action.

36 Reference Banks

36.1 Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this clause 36 subject to clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

36.2 Third party Reference Banks

A Reference Bank which is not a Party may rely on clause 36 (*Role of Reference Banks*), paragraph (a) of clause 45.3 (*Other exceptions*) and clause 47 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

37 Conduct of business by the Finance Parties

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

38 Sharing among the Finance Parties

38.1 Payments to Finance Parties

If a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from an Obligor other than in accordance with clause 39 (*Payment mechanics*) (a **Recovered Amount**) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with clause 39 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the **Sharing Payment**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with clause 39.6 (*Partial payments*).

38.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the **Sharing Finance Parties**) in accordance with clause 39.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

38.3 Recovering Finance Party's rights

On a distribution by the Agent under clause 38.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

38.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the **Redistributed Amount**); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

38.5 Exceptions

- (a) This clause 38 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings;
 - (ii) the taking legal or arbitration proceedings was in accordance with the terms of this Agreement; and
 - (iii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

39 Payment mechanics

39.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Agent) and with such bank as the Agent, in each case, specifies.

39.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to clause 39.3 (*Distributions to an Obligor*) and clause 39.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

39.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with clause 40 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

39.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- (c) If the Agent is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to a Borrower:
 - (i) the Borrower shall on demand refund it to the Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

39.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, the Borrower or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with clause 39.1 (*Payments to the Agent*) may instead either:
- (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Borrower or the Lender making the payment (the **Paying Party**) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the **Recipient Party** or **Recipient Parties**).

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this clause 39.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with this Agreement, each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with clause 39.2 (*Distributions by the Agent*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
 - (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party,give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

39.6 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment pro rata of any unpaid amount owing to the Agent, the Security Agent or the Arranger for their own account under those Finance Documents;

- (ii) **secondly**, in or towards payment to the Lenders pro rata of any amount owing to the Lenders under clause 32.15 (*Lenders' indemnity to the Agent and others*);
- (iii) **thirdly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by all the Lenders, vary the order set out in paragraphs (ii) to (iii) of paragraph (a) above and will notify the Borrower of such variation.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

39.7 No set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

39.8 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

39.9 Currency of account

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of all or part of the Loan or an Unpaid Sum and each payment of interest shall be made in dollars on its due date.
- (c) Each payment in respect of the amount of any costs, expenses or Taxes or other losses shall be made in dollars and, if they were incurred in a currency other than dollars, the amount payable under the Finance Documents shall be the equivalent in dollars of the relevant amount in such other currency on the date on which it was incurred.
- (d) All moneys received or held by the Security Agent or by a Receiver under a Security Document in a currency other than dollars may be sold for dollars and the Obligor which executed that Security Document shall indemnify the Security Agent against the full cost in relation to the sale. Neither the Security Agent nor such Receiver will have any liability to that Obligor in respect of any loss resulting from any fluctuation in exchange rates after the sale.

39.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and

- (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Interbank Market and otherwise to reflect the change in currency.

39.11 Disruption to payment systems etc.

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its reasonable opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its reasonable opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of clause 45 (*Amendments and waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this clause 39.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

40 Set-off

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

41 Notices

41.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by letter.

41.2 Addresses

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Obligor, each Manager or Finance Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of any Obligor who is a Party, that identified with its name in Schedule 1 (*The original parties*);
- (b) in the case of any Obligor or a Manager which is not a Party, that identified in any Finance Document to which it is a party;
- (c) in the case of the Security Agent, the Agent and any other original Finance Party, that identified with its name in Schedule 1 (*The original parties*); and
- (d) in the case of each Lender or other Finance Party, that notified in writing to the Agent on or prior to the date on which it becomes a Party in the relevant capacity,

or, in each case, any substitute address, email address, or department or officer as an Obligor, a Manager or Finance Party may notify to the Agent (or the Agent may notify to the other Finance Parties and the Borrower, if a change is made by the Agent) by not less than five Business Days' notice.

41.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) If by way of email, when a delivery receipt is obtained; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address and, if a particular department or officer is specified as part of its address details provided under clause 41.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or the Security Agent and then only if it is expressly marked for the attention of the department or officer identified in Schedule 1 (*The original parties*) (or any substitute department or officer as the Agent or the Security Agent shall specify for this purpose).
- (c) All notices from or to an Obligor or a Manager shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Borrower in accordance with this clause 41.3 will be deemed to have been made or delivered to each of the Obligors and the Managers.

- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

41.4 Notification of address and email address

Promptly upon changing its' address or email address, the Agent shall notify the other Parties.

41.5 Communication when Agent is Impaired Agent

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

41.6 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and, in the case of any electronic communication made by a Party to the Agent or the Security Agent, only if it is addressed in such a manner as the Agent or the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement or any other Finance Document shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this clause 41.6.

41.7 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or

- (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

42 Calculations and certificates

42.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

42.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

42.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Interbank Market differs, in accordance with that market practice.

43 Partial invalidity

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

44 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

45 Amendments and waivers

45.1 Required consents

- (a) Subject to clause 45.2 (*All Lender matters*) and clause 45.3 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all the Finance Parties and other Obligors.
- (b) The Agent may (or, in the case of the Security Documents, instruct the Security Agent to) effect, on behalf of any Finance Party, any amendment or waiver permitted by this clause 45.
- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of clause 32.11 (*Rights and discretions of the Agent*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

- (d) Each Obligor agrees to any such amendment or waiver permitted by this clause 45 which is agreed to by the Borrower. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of the Guarantors.

45.2 All Lender matters

An amendment, waiver or discharge or release or a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of “Majority Lenders” in clause 1.1 (*Definitions*);
- (b) the definition of “Last Availability Date” in clause 1.1 (*Definitions*);
- (c) an extension to the date of payment of any amount under the Finance Documents;
- (d) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable or the rate at which they are calculated;
- (e) an increase in, or an extension of, any Commitment or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
- (f) a change to the Borrower or any other Obligor;
- (g) the definition of “Change of Control” or “Transaction Change of Control” in clause 1.1 (*Definitions*);
- (h) any provision which expressly requires the consent or approval of all the Lenders;
- (i) clause 38 (*Sharing among the Finance Parties*);
- (j) clause 2.2 (*Finance Parties’ rights and obligations*), clause 7.1 (*Illegality*), clause 30 (*Changes to the Lenders*), clause 8.9 (*Application of prepayments*), this clause 45, clause 50 (*Governing law*) or clause 51.1 (*Jurisdiction of English courts*);
- (k) the order of distribution under clause 35.1 (*Order of application*);
- (l) the order of distribution under clause 39.6 (*Partial payments*);
- (m) the currency in which any amount is payable under any Finance Document;
- (n) an increase in any Commitment or the Total Commitments, an extension of any period within which the Facility is available for Utilisation or any requirement that a cancellation of Commitments reduces the Commitments rateably;
- (o) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (i) any guarantee and indemnity granted under any Finance Document (including under clause 18 (*Guarantee and indemnity*));
 - (ii) the Charged Property; or
 - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed;

(p) the circumstances in which any of the Transaction Security is permitted or required to be released under any of the Finance Documents, shall not be made, or given, without the prior consent of all the Lenders.

45.3 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of the Agent, the Security Agent, a Reference Bank or the Arranger in their respective capacities as such (and not just as a Lender) may not be effected without the consent of the Agent, the Security Agent, that Reference Bank or the Arranger (as the case may be).
- (b) Notwithstanding clauses 45.1 and 45.2 and paragraph (a) above, the Agent may make technical amendments to the Finance Documents arising out of manifest errors on the face of the Finance Documents, where such amendments would not prejudice or otherwise be adverse to the interests of any Finance Party without any reference or consent of the Finance Parties.

45.4 Replacement of Screen Rate

- (a) Subject to clause 45.3 (*Other exceptions*), if a Screen Rate Replacement Event has occurred, any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Benchmark in place of the Screen Rate; and
 - (ii) any or all of the following:
 - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Benchmark;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Borrower.

Relevant Nominating Body means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

Replacement Benchmark means a benchmark rate which is:

- (b) formally designated, nominated or recommended as the replacement for the Screen Rate by:
 - (i) the administrator of the Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
 - (ii) any Relevant Nominating Body,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement under paragraph (ii) above;
- (c) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the Screen Rate; or
- (d) in the opinion of the Majority Lenders and the Borrower, an appropriate successor to the Screen Rate.

Screen Rate Replacement Event means, in relation to the Screen Rate:

- (e) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders and the Borrower, materially changed;
- (f) any of the following applies:
 - (i) either:
 - (A) the administrator of the Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
 - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the Screen Rate is insolvent,provided that, in each case, at that time, there is no successor administrator to continue to provide the Screen Rate;
 - (ii) the administrator of the Screen Rate publicly announces that it has ceased or will cease, to provide the Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the Screen Rate;
 - (iii) the supervisor of the administrator of the Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
 - (iv) the administrator of the Screen Rate or its supervisor announces that the Screen Rate may no longer be used; or
- (g) the administrator of the Screen Rate determines that the Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or
- (h) in the opinion of the Majority Lenders and the Borrower, the Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

45.5 Releases

Except with the approval of the Lenders or for a release which is expressly permitted or required by the Finance Documents, the Agent shall not have authority to authorise the Security Agent to release:

- (a) any Charged Property from the Transaction Security; or
- (b) any Obligor from any of its guarantee or other obligations under any Finance Document.

45.6 Disenfranchisement of Defaulting Lenders

(a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:

- (i) the Majority Lenders; or
- (ii) whether:
 - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the Facility; or
 - (B) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents, that Defaulting Lender's Commitment will be reduced by the amount of its Available Commitment and, to the extent that such reduction results in that Defaulting Lender's Commitment being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

(b) For the purposes of this clause 45.6, the Agent may assume that the following Lenders are Defaulting Lenders:

- (i) any Lender which has notified the Agent that it has become a Defaulting Lender; and
- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

45.7 Excluded Commitments

If:

- (a) any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within five Business Days of that request being made; or

- (b) any Lender which is not a Defaulting Lender fails to respond to such a request (other than an amendment, waiver or consent referred to in paragraphs (b), (c), (d) and (n) of clause 45.2 (*All Lender matters*)) or other or such a vote within five Business Days of that request being made,

(unless (in either such case) the Borrower and the Agent agree to a longer time period in relation to any request):

- (i) its Commitment or its participation in the Loan shall not be included for the purpose of calculating the Total Commitments or the amount of the Loan when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments or the amount of the Loan has been obtained to approve that request; and
- (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

45.8 Disenfranchisement of Borrower Affiliates

- (a) For so long as a Borrower Affiliate:

- (i) beneficially owns a Commitment; or
- (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining:

(A) the Majority Lenders; or

(B) whether:

- (1) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or
- (2) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents

such Commitment shall be deemed to be zero and such Borrower Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above (unless in the case of a person not being a Borrower Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

- (b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Borrower Affiliate (a Notifiable Debt Purchase Transaction), such notification to be substantially in the form set out in Part I of Schedule 9 (*Forms of Notifiable Debt Purchase Transaction Notice*).

- (c) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:

- (i) is terminated; or
- (ii) ceases to be with a Borrower Affiliate,

such notification to be substantially in the form set out in Part II of Schedule 9 (*Forms of Notifiable Debt Purchase Transaction Notice*).

- (d) Each Borrower Affiliate that is a Lender agrees that:
- (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
 - (ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

46 Confidential Information

46.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by clause 46.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

46.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns (or may potentially assign) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives, partners and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives, partners and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraphs (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of clause 32.20 (*Relationship with the Lenders*));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraphs (b)(i) or (b)(ii) above;

- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to clause 30.8 (*Security over Lenders' rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate, provided however that:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information; and
 - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraphs (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party; and
 - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

46.3 Entire agreement

This clause 46 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

46.4 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

46.5 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made to any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body or the rules of any relevant stock exchange or pursuant to any applicable law or regulation pursuant to clause 46.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any such person during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this clause 46.

46.6 Continuing obligations

The obligations in this clause 46 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve calendar months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

47 Confidentiality of Funding Rates and Reference Bank Quotations

47.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Agent may disclose:
 - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to clause 9.4 (*Notification of rates of interest*); and

- (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The Agent's obligations in this clause 46 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under clause 9.4 (*Notification of rates of interest*) provided that (other than pursuant to paragraph (b)(i) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

47.2 Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank:
 - (i) of the circumstances of any disclosure made pursuant to clause 47.1 (c)(ii) (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

- (ii) upon becoming aware that any information has been disclosed in breach of this clause 47.

47.3 No Event of Default

No Event of Default will occur under clause 29.6 (*Other obligations*) by reason only of an Obligor's failure to comply with this clause 47.

48 Counterparts

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

49 Contractual recognition of bail-in

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party and each Obligor acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

50 Governing law

This Agreement and any non-contractual obligations connected with it are governed by English law.

51 Enforcement

51.1 Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement or any non-contractual obligations connected with it (including a dispute regarding the existence, validity or termination of this Agreement) (a Dispute).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraph (a) above, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

51.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, any Obligor who is a Party:

- (a) irrevocably appoints the person named in Schedule 1 (*The original parties*) as that Obligor's English process agent as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document;
- (b) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned; and
- (c) if any person appointed as process agent for an Obligor is unable for any reason to act as agent for service of process, that Obligor must immediately (and in any event within ten days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Schedule 1
The original parties

Borrower

Name	THD Maritime Co. Limited
Original Jurisdiction	Republic of Cyprus
Registration number (or equivalent, if any)	HE387721
Registered office	16 Sophouli Street, Chanteclair Building, Floor 4, Flat 403, Nicosia, Cyprus
Address for service of notices	c/o Technomar Shipping Inc., 3-5 Menandrou Street, 145 61 Kifissia, Greece
English process agent (if not incorporated in England)	Saville & Co., One Carey Lane, London, EC2V 8AE, United Kingdom

Owners

Name	Tasman Marine LLC
Original Jurisdiction	Republic of the Marshall Islands
Registration number (or equivalent, if any)	963174
Registered office	Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960
Address for service of notices	c/o Technomar Shipping Inc., 3-5 Menandrou Street, 145 61 Kifissia, Greece
English process agent (if not incorporated in England)	Saville & Co., One Carey Lane, London, EC2V 8AE, United Kingdom

Name	Hudson Marine LLC
Original Jurisdiction	Republic of the Marshall Islands
Registration number (or equivalent, if any)	963182
Registered office	Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960
Address for service of notices	c/o Technomar Shipping Inc., 3-5 Menandrou Street, 145 61 Kifissia, Greece
English process agent (if not incorporated in England)	Saville & Co., One Carey Lane, London, EC2V 8AE, United Kingdom

Name	Drake Marine LLC
Original Jurisdiction	Republic of the Marshall Islands
Registration number (or equivalent, if any)	963184
Registered office	Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960
Address for service of notices	c/o Technomar Shipping Inc., 3-5 Menandrou Street, 145 61 Kifissia, Greece
English process agent (if not incorporated in England)	Saville & Co., One Carey Lane, London, EC2V 8AE, United Kingdom

Parent

Name:	Poseidon Containers Holdings LLC
Original Jurisdiction	Republic of the Marshall Islands
Registration number (or equivalent, if any)	961853
Registered office	Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960
Address for service of notices	c/o Technomar Shipping Inc., 3-5 Menandrou Street, 145 61 Kifissia, Greece
English process agent (if not incorporated in England)	Saville & Co., One Carey Lane, London, EC2V 8AE, United Kingdom

The Original Lenders

Name	Amsterdam Trade Bank N.V.
Commitment \$	17,100,000
TOTAL \$	17,100,000

The Agent

Name
Facility Office, address and attention details for notices

Amsterdam Trade Bank N.V.

Non-administrative matters:

World Trade Center
Tower I, Level 6
Strawinskyiaan 1939
1077 XX Amsterdam
The Netherlands

Attn: Iraklis Tsirigotis / Rik van der Kolk
Email: i.tsirigotis@atbank.nl / r.vanderkolk@atbank.nl
Cc: shipping.finance@atbank.nl
Telephone No.: +31 (0) 205 209 404 / +31 (0) 205 209 245

Administrative matters:

World Trade Center
Tower I, Level 6
Strawinskyiaan 1939
1077 XX Amsterdam
The Netherlands

Attn: Shipping Finance—Business Support Office
Email: shipping.finance@atbank.nl
Cc: i.tsirigotis@atbank.nl / r.vanderkolk@atbank.nl
Telephone No.: +31 (0) 205 209 404 / +31 (0) 205 209 245

The Security Agent

Name
Facility Office, address and attention details for notices

Amsterdam Trade Bank N.V.

Non-administrative matters:

World Trade Center
Tower I, Level 6
Strawinskyiaan 1939
1077 XX Amsterdam
The Netherlands

Attn: Iraklis Tsirigotis / Rik van der Kolk
Email: i.tsirigotis@atbank.nl / r.vanderkolk@atbank.nl
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Cc: i.tsirigotis@atbank.nl / r.vanderkolk@atbank.nl
Telephone No.: +31 (0) 205 209 404 / +31 (0) 205 209 245

The Account Bank

Name Amsterdam Trade Bank N.V.

Address and attention details for notices World Trade Center
Tower I, Level 6
Strawinskylaan 1939
1077 XX Amsterdam
The Netherlands

Attn: Shipping Finance—Business Support Office
Email: shipping.finance@atbank.nl
Cc: i.tsirigotis@atbank.nl / r.vanderkolk@atbank.nl
Telephone No.: +31 (0) 205 209 404 / +31 (0) 205 209 245

**Schedule 2
Ship information**

Ship A

Owner: Tasman Marine LLC
Name of Ship: *Tasman*
Flag State: Republic of the Marshall Islands
Port of Registry: Majuro
IMO Number: 9189342
Official Number: 6111
Classification: I XHULL XMACH Container Ship Unrestricted navigation X AUT-UMS, MON-SHAFT, INWATERSURVEY
Classification Society: Bureau Veritas
Major Casualty Amount: \$800,000
Advance Commitment: \$5,700,000

Ship B

Owner: Hudson Marine LLC
Name of Ship: *Dimitris Y*
Flag State: Republic of Liberia
Port of Registry: Monrovia
IMO Number: 9189354
Official Number: 16979
Classification: I XHULL XMACH Container Ship Unrestricted navigation X AUT-UMS, MON-SHAFT, INWATERSURVEY, GREEN PASSPORT EU
Classification Society: Bureau Veritas
Major Casualty Amount: \$800,000
Advance Commitment: \$5,700,000

Ship C

Owner: Drake Marine LLC

Name of Ship: *Ian H*

Flag State: Republic of Liberia

Port of Registry: Monrovia

IMO Number: 9189500

Official Number: 16980

Classification: I XHULL XMACH Container Ship Unrestricted navigation X AUT-UMS, MON-SHAFT, INWATERSURVEY

Classification Society: Bureau Veritas

Major Casualty Amount: \$800,000

Advance Commitment: \$5,700,000

Schedule 3
Conditions precedent

Part 1
Conditions precedent to any Utilisation

1 Original Obligors' corporate documents

- (a) A copy of the Constitutional Documents of each Original Obligor.
- (b) A copy of a resolution of the board of directors of each Original Obligor and each Manager (or, if applicable, any committee of such board empowered to approve and authorise the following matters):
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party (its **Relevant Documents**) and resolving that it execute, deliver and perform the Relevant Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute its Relevant Documents on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and any Selection Notice) to be signed and/or despatched by it under or in connection with its Relevant Documents.
- (c) If applicable, a copy of a resolution of the board of directors of the relevant company, establishing any committee referred to in paragraph (b) above and conferring authority on that committee.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to its Relevant Documents and related documents.
- (e) A copy of a resolution signed by all the holders of the issued shares in each Original Obligor, approving the terms of, and the transactions contemplated by, its Relevant Documents.
- (f) If required by the legal advisers to the Agent, a copy of a resolution of the board of directors of each corporate shareholder of each Original Obligor approving the terms of the resolution referred to in paragraph (e) above.
- (g) A certificate of each Original Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Original Obligor to be exceeded.
- (h) A copy of any power of attorney under which any person is appointed by any Original Obligor to execute any of its Relevant Documents on its behalf.
- (i) A certificate of an authorised signatory of each relevant Original Obligor certifying that each copy document relating to it specified in this Part of this Schedule is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement and that any such resolutions or power of attorney have not been revoked.

2 Legal opinions

- (a) The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facility:
- (b) A legal opinion of Norton Rose Fulbright Greece, addressed to the Arranger, the Security Agent and the Agent on matters of English law, substantially in the form approved by the Agent prior to signing this Agreement.
- (c) A legal opinion of the legal advisers to the Arranger, the Security Agent and the Agent in England and also each jurisdiction in which an Obligor or a Manager is incorporated and/or which is or is to be the Flag State of a Mortgaged Ship, or in which an Account opened at the relevant time is established substantially in the form approved by the Agent prior to signing this Agreement.

3 Other documents and evidence

- (a) Evidence that any process agent referred to in clause 51.2 (*Service of process*) or any equivalent provision of any other Finance Document entered into on or before the first Utilisation Date, if not an Original Obligor, has accepted its appointment.
- (b) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (c) The Original Financial Statements.
- (d) The Co-ordination Agreement duly executed by all parties to it other than the Security Agent.
- (e) The Fee Letters duly executed and evidence that the fees, commissions, costs and expenses then due from the Borrower pursuant to clause 12 (*Fees*) and clause 17 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.

4 Bank Accounts

Evidence that any Account required to be established under clause 27 (*Bank accounts*) has been opened and established, that any Account Security in respect of each such Account has been executed and delivered by the relevant Account Holder(s) and that any notice required to be given to an Account Bank under that Account Security has been given to it and acknowledged by it in the manner required by that Account Security and that an amount has been credited to it.

5 “Know your customer” information

Such documentation and information as any Finance Party may reasonably request through the Agent to comply with “know your customer” or similar identification procedures under all laws and regulations applicable to that Finance Party.

Part 2

Ship and security conditions precedent

1 Corporate documents

- (a) A certificate of an authorised signatory of the relevant Owner certifying that each copy document relating to it specified in Part 1 of this Schedule remains correct, complete and in full force and effect as at a date no earlier than a date approved for this purpose and that any resolutions or power of attorney referred to in Part 1 of this Schedule in relation to it have not been revoked or amended.
- (b) A certificate of an authorised signatory of each other Obligor or Manager which is party to any of the Original Security Documents required to be executed on or before the relevant Utilisation Date certifying that each copy document relating to it specified in Part 1 of this Schedule remains correct, complete and in full force and effect as at a date no earlier than a date approved for this purpose and that any resolutions or power of attorney referred to in Part 1 of this Schedule in relation to it have not been revoked or amended.

2 Security

- (a) The Mortgage and the General Assignment duly executed by the relevant Owner.
- (b) Any Manager's Undertaking then required pursuant to the Finance Documents duly executed by the relevant Manager or, as the case may be, Managers.
- (c) Duly executed notices of assignment and acknowledgements of those notices as required by any of the above Security Documents (but in respect of the acknowledgements of the notices required by the Charter Assignments, only if provided by the Charterer further to the relevant Owner using its best endeavours to obtain the same).
- (d) The Co-ordination Agreement duly executed by all parties other than the Security Agent.

3 Delivery and registration of Ship

Evidence that the relevant Ship:

- (a) is legally and beneficially owned by the relevant Owner and registered provisionally in the name of the relevant Owner through the relevant Registry as a ship under the laws and flag of the relevant Flag State;
- (b) is classed with the relevant Classification free of all overdue requirements and recommendations of the relevant Classification Society;
- (c) is insured in the manner required by the Finance Documents;
- (d) is free of any charter commitment which would require approval under the Finance Documents; and
- (e) any prior registration (other than through the relevant Registry in the relevant Flag State) of the relevant Ship has been or will (within such period as may be approved) be cancelled.

4 Mortgage registration

Evidence that the Mortgage in respect of the relevant Ship has been registered against the relevant Ship through the relevant Registry under the laws and flag of the relevant Flag State.

5 Legal opinions

The following further legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facility:

- (a) A legal opinion of Norton Rose Fulbright Greece, addressed to the Security Agent and the Agent on matters of English law, substantially in the form approved by the Agent prior to signing this Agreement in relation to Security Documents.
- (b) A legal opinion of the legal advisers to the Security Agent and the Agent in each jurisdiction in which an Obligor or a Manager is incorporated and/or which is or is to be the Flag State of a Mortgaged Ship, or in which an Account opened at the relevant time is established substantially in the form approved by the Agent prior to signing this Agreement.

6 Insurance

In relation to the relevant Ship's Insurances:

- (a) an opinion (in a form and substance acceptable to the Agent) from Edge Brokers (London) appointed by the Agent on such Insurances;
- (b) evidence that such Insurances have been placed in accordance with clause 25 (*Insurance*); and
- (c) evidence that approved brokers, insurers and/or associations have issued or will issue letters of undertaking in favour of the Security Agent in an approved form in relation to the Insurances.

7 ISM and ISPS Code

Copies of:

- (a) the document of compliance issued in accordance with the ISM Code to the person who is the operator of the relevant Ship for the purposes of that code;
- (b) the safety management certificate in respect of the relevant Ship issued in accordance with the ISM Code;
- (c) the international ship security certificate in respect of the relevant Ship issued under the ISPS Code; and
- (d) if so requested by the Agent, any other certificates issued under any applicable code required to be observed by the relevant Ship or in relation to its operation under any applicable law.

8 Fees and expenses

Evidence that the fees, commissions, costs and expenses then due from the Borrower pursuant to clause 12 (*Fees*) and clause 17 (*Costs and expenses*) have been paid or will be paid by the relevant Utilisation Date.

9 Survey report

A survey report from surveyors appointed by the Borrower obtained prior to the Utilisation Date evidencing that the relevant Ship is seaworthy, capable of safe operation and in all respects in a condition acceptable to the Agent.

10 Management Agreements

Where a manager of the relevant Ship has been approved in accordance with clause 23.4 (*Manager*), a copy, certified by an approved person to be a true and complete copy, of each Management Agreement.

11 Share Security

The Share Security in respect of each Owner duly executed by the Borrower and the Share Security in respect of the Borrower duly executed by the Parent, in each case together with all letters, transfers, certificates and other documents required to be delivered under the Share Security.

12 Charter

Evidence that relevant Ship is subject to a Charter and that such Charter has been duly assigned in favour of the Security Agent.

13 Existing Indebtedness

Evidence in all respects satisfactory to the Agent:

- (a) that the Existing Indebtedness relating to the Ship relevant to the Advance, has been or, at the same time as the relevant Utilisation, will be repaid in full and that any undrawn or available commitments in relation to it have been cancelled; and
- (b) evidence that the Owner of the relevant Ship and its Managers have been fully released from all their respective obligations and liabilities under the Existing Loan Agreement and the Existing Master Agreement (in the case of the Owner) and all other documents executed in connection with or as a result of the Existing Loan Agreement and that the Existing Master Agreement and that all Security Interests created in connection with or as a result of the Existing Loan Agreement and/or the Existing Master Agreement have been duly discharged and/or, as the case may be, re-assigned.

**Schedule 4
Utilisation Request**

From: THD Maritime Co. Limited

To: Amsterdam Trade Bank N.V.

Dated: [•]

Dear Sirs

**\$17,100,000
Facility Agreement dated [•] (the Facility Agreement)**

1 We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2 We wish to borrow Advance A, B and C on the following terms:

Advance A

Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)

Amount: \$ [•]

Advance B

Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)

Amount: \$ [•]

Advance C

Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)

Amount: \$ [•]

3 We confirm that each condition specified in clause 4.4 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.

4 The purpose of each Advance is [**specify purpose complying with clause 3 of the Facility Agreement**] [and its proceeds should be credited to [•] [**specify account**]].

5 We request that the first Interest Period for each Advance be three Months.

6 This Utilisation Request is irrevocable.

Yours faithfully

Signed by:
authorised signatory for
THD MARITIME CO. LIMITED

**Schedule 5
Selection Notice**

From: THD Maritime Co. Limited

To: Amsterdam Trade Bank N.V.

Dated: [•]

Dear Sirs

**\$17,100,000
Facility Agreement dated [•] (the Facility Agreement)**

- 1 We refer to the Facility Agreement. This is a Selection Notice. Terms defined in the Facility Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
- 2 We request that the next Interest Period for Advance [A] [B] [C] be [•] Months.
- 3 This Selection Notice is irrevocable.

Yours faithfully

Signed by:
authorised signatory for
THD MARITIME CO. LIMITED

Schedule 6
Semi-Annual Vessel Performance Report

From: THD Maritime Co. Limited

To: Amsterdam Trade Bank N.V.

For the attention of: Mr. Iraklis Tsirigotis (i.tsirigotis@atbank.nl) and Mr. Rik van der Kolk (r.vanderkolk@atbank.nl)

[Day, Month, Year]

Semi-Annual Vessel Performance Report

[Vessel Name, IMO Number]

[[6]-Month Period Covered]

<u>Item</u>	<u>Unit</u>	<u>Actual</u>	<u>Comment</u>
1) Average daily gross TCE hire earned	USD		
2) Total brokerage commission charged	USD		
3) Average daily net TCE hire earned	USD		
4) Total on-hire days	No.		
5) Total off-hire days	No.		
6) Average daily operating expenses	USD		
7) Average daily management fee	USD		
8) Average daily SG&A expenses	USD		
9) Total maintenance expenses*	USD		
10) Other expenses	USD		

* Maintenance expenses should include any expenditures incurred by the relevant Owner during the period (annual and semi-annual) for non-routine maintenance and repairs that are not reported under operating expenses or other profit & loss account, rather are eligible for capitalization in accordance with GAAP, including, but not limited to, fixed assets, major improvements and upgrades and shall also include, without limitation, any and all survey and dry-docking expenditures normally capitalized under GAAP.

For and on behalf of
THD MARITIME CO. LIMITED

Schedule 7
Form of Transfer Certificate

To: Amsterdam Trade Bank N.V. as Agent

From: **[The Existing Lender]** (the **Existing Lender**) and **[The New Lender]** (the **New Lender**)

Dated:

\$17,100,000 Facility Agreement dated [•] (the Facility Agreement)

- 1 We refer to the Facility Agreement. This agreement (the **Agreement**) shall take effect as a Transfer Certificate for the purposes of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
- 2 We refer to clause 30.6 (*Procedure for assignment*) of the Facility Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facility Agreement and the other Finance Documents which correspond to that portion of the Existing Lender's Commitment and participation in the Loan under the Facility Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from the obligations owed by it which correspond to that portion of the Existing Lender's Commitment and participation in the Loan under the Facility Agreement specified in the Schedule (but the obligations owed by the Obligors under the Finance Documents shall not be released).
 - (c) On the Transfer Date the New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
 - (d) The proposed Transfer Date is [•].
 - (e) The Facility Office and address and attention details for notices of the New Lender for the purposes of clause 41.2 (*Addresses*) of the Facility Agreement are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in clause 30.5 (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement.
- 4 The New Lender confirms that it [is]/ [is not] a Borrower Affiliate.
- 5 This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with clause 30.7 (*Copy of Transfer Certificate to Borrower*), to the Borrower (on behalf of each Obligor) of the assignment referred to in this Agreement.
- 6 This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
- 7 ***[Consider including reference to accession to the co-ordination agreement to which Lenders may need to be party and checklist of steps necessary for the New Lender to obtain the benefit of the Security Documents.]***
- 8 This Agreement and any non-contractual obligations connected with it are governed by English law.
- 9 This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Transfer Certificate may not assign a proportionate share of the Existing Lender's interest in the Security Documents in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect an assignment of such a share in the Security Documents in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

The Schedule

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

[Facility Office address and attention details for notices and account details for payments.]

[Existing Lender] [New Lender]

By:

By:

This Agreement is accepted by the Agent as a Transfer Certificate for the purposes of the Facility Agreement and the Transfer Date is confirmed as [•].

Signature of this Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

Schedule 8
Form of Compliance Certificate

To: Amsterdam Trade Bank N.V. as Agent
From: THD Maritime Co. Limited
Dated: [•]

Dear Sirs

\$17,100,000
Facility Agreement dated [•] (the Facility Agreement)

- 1 I/We refer to the Facility Agreement. This is a Compliance Certificate. Terms defined in the Facility Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
- 2 I/We confirm that during the [half] financial year ending on [•]:
 - (a) **Minimum liquidity:** the cash balance in the Operating Account of each Ship was [•] versus the minimum required amount of \$500,000, as shown in Appendix A **[attach relevant evidence]**;
 - (b) **Book Leverage Ratio:** the ratio of the Total Interest Bearing Debt to the Total Assets, was [•]:1.00 versus the maximum required ratio of 0.75:1.00, as shown in Appendix B **[attach relevant evidence]**;
 - (c) **Value Adjusted Leverage Ratio:** the ratio of the Total Interest Bearing Debt to the Value Adjusted Total Assets, was [•]:1.00 versus the maximum required ratio of 0.75:1.00, as shown in Appendix C **[attach relevant evidence including all valuations required for all Fleet Vessels]**; *[N.B: subject to clause 21.5 (Most favoured nation), this item will be confirmed only for the financial year ending 31 December 2020]*
 - (d) **Net Worth:** the Net Worth was [•] versus the minimum required amount of \$41,000,000, as shown in Appendix D **[attach relevant evidence]**; and *[N.B: subject to clause 21.5 (Most favoured nation), this item will be confirmed only for the financial year ending 31 December 2020]*
 - (e) **Security Value:** the Security Value was [equal to] [less than] [more than] the Minimum Value calculated as shown in Appendix E **[attach relevant evidence including all valuations required for all Mortgaged Ships]**. *[N.B: subject to clause 21.5 (Most favoured nation), this item will be confirmed only for the financial year ending 31 December 2020]*
- 3 [I/We confirm that no Default is continuing.] *[N.B.: If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.]*

Signed by:

[Authorised signatory]
THD MARITIME CO. LIMITED

[Note: Required only in respect of audited annual financial statements] Auditors of THD MARITIME CO. LIMITED]

Schedule 9
Forms of Notifiable Debt Purchase Transaction Notice
Form of Notice on Entering into Notifiable Debt Purchase Transaction

To: [] as Agent
From: **[The Lender]**
Dated:

\$17,100,000
Facility Agreement dated [•] (the Facility Agreement)

- 1 We refer to clause 45.8 (*Disenfranchisement of Borrower Affiliates*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
- 2 We have entered into a Notifiable Debt Purchase Transaction.
- 3 The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment as set out below.
Amount of our Commitment to [insert amount (of that Commitment) to which the which Notifiable Debt Purchase relevant Debt Purchase Transaction applies] Transaction relates:

[Lender]

By:

**Form of Notice on Termination of Notifiable Debt Purchase Transaction/
Notifiable Debt Purchase Transaction ceasing to be with Borrower Affiliate**

To: [] as Agent

From: **[The Lender]**

Dated:

**\$17,100,000
Facility Agreement dated [•] (the Facility Agreement)**

- 1 We refer to clause 45.8 (*Disenfranchisement of Borrower Affiliates*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
- 2 A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [•] has [terminated] / [ceased to be with a Borrower Affiliate].
- 3 The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment as set out below.

Amount of our Commitment to [insert amount (of that Commitment) to which the which Notifiable Debt Purchase relevant Debt Purchase Transaction applies] Transaction relates:

[Lender]


By:

SIGNATURES

THE BORROWER

THD MARITIME CO. LIMITED

By:


) 
AIKATERINI C. EMMANOUIL

THE GUARANTORS

THE OWNERS


TASMAN MARINE LLC

By:

) 
AIKATERINI C. EMMANOUIL


HUDSON MARINE LLC

By:

) 
AIKATERINI C. EMMANOUIL


DRAKE MARINE LLC

By:

) 
AIKATERINI C. EMMANOUIL

POSEIDON CONTAINERS HOLDINGS LLC


By:

) 
AIKATERINI C. EMMANOUIL

THE PARENT

POSEIDON CONTAINERS HOLDINGS LLC

By: *Angeliki Skindilas*

) 
AIKATERINI C. EMMANOUIL

THE ARRANGER

By:
AMSTERDAM TRADE BANK N.V.

) 

THE AGENT

AMSTERDAM TRADE BANK N.V.

By: *Angeliki Skindilas*

) 

THE SECURITY AGENT

AMSTERDAM TRADE BANK N.V.
By:

THE LENDERS
AMSTERDAM TRADE BANK N.V.

) /s/AuJUJd SitadLAoJ
AuJUJd SitadLAoJ

) /s/AuJUJd SitadLAoJ
AuJUJd SitadLAoJ

Private & confidential

Dated: 11 August, 2017

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK
(as Lender)
- and -
HECTOR MARINE LLC
HEPHAESTUS MARINE LLC and
PERICLES MARINE LLC
(as joint and several Borrowers)

LOAN AGREEMENT

for a secured floating interest rate loan facility
of US\$55,650,000



Theo V. Sioufas & Co.
Law Offices
Piraeus

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SCHEDULE 1: Form of Drawdown Notice

SCHEDULE 2: Form of Compliance Certificate

SCHEDULE 3: Form of Surplus Cash Income Certificate

THIS AGREEMENT is dated the 11th day of August, 2017 made BETWEEN:

- (1) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French *société anonyme* incorporated under the laws of France and registered in Nanterre under No. B 304 187 701 and having its siège social at 12, place des Etats-Unis, CS 70052, 92547 Montrouge Cedex, France, as lender (hereinafter called the “**Lender**”, which expression shall include its successors and assigns); and
- (2) **HECTOR MARINE LLC**, a company duly formed in the Republic of The Marshall Islands having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, P.O. Box 1405, Majuro, Marshall Islands MH 96960(hereinafter called the “**Hector Borrower**” and includes its successors);
- (3) **HEPHAESTUS MARINE LLC**, a company duly formed in the Republic of the Marshall Islands having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, P.O. Box 1405, Majuro, Marshall Islands MH 96960 (hereinafter called the “**Hephaestus Borrower**” and includes its successors); and
- (4) **PERICLES MARINE LLC**, a company duly formed in the Republic of the Marshall Islands having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, P.O. Box 1405, Majuro, Marshall Islands MH 96960 (hereinafter called the “**Pericles Borrower**” and includes its successors),

(hereinafter together called the “**Borrowers**” and singly a “**Borrower**”);

AND IT IS HEREBY AGREED as follows:

1. PURPOSE, DEFINITIONS AND INTERPRETATION

1.1 **Amount and Purpose.** This Agreement sets out the terms and conditions upon and subject to which the Lender agrees to make available to the Borrowers, as joint and several borrowers, a loan facility of Fifty five million six hundred fifty thousand Dollars (\$55,650,000) by way of up to three (3) Tranches as follows:

- (a) Hephaestus Tranche: Nineteen million four hundred thousand Dollars (\$19,400,000) (the “**Hephaestus Tranche**”);
- (b) Pericles Tranche: Ten million five hundred thousand Dollars (\$10,500,000) (the “**Pericles Tranche**”)

both such Tranches to be used for the purpose of re-financing in full the Prior Indebtedness; and

- (c) Hector Tranche: Twenty five million seven hundred fifty thousand Dollars (\$25,750,000), to be used for the purpose of refinancing part of the DB Indebtedness (the “**Hector Tranche**”).

1.2 **Definitions.** Subject to Clause 1.3 (*Interpretation*) and Clause 1.4 (*Construction of certain terms*), in this Agreement (unless otherwise defined in the relevant Finance Document and unless the context otherwise requires) and the other Finance Documents each term or expression defined in the recital of the parties and in this Clause shall have the meaning given to it in the recital of the parties and in this Clause:

“ABN Facility Agreement” means the loan facility agreement to be entered into by any member of the Group with, inter alios, ABN Amro Bank N.V. to refinance the facility agreement dated 14 November 2016 entered into by, inter alios, ABN Amro Bank N.V. as a lender, agent, arranger, swap bank and security trustee) and Zeus One Marine LLC, Ikaros Marine LLC, Tasman Marine LLC, Hudson Marine LLC and Drake Marine LLC, as joint and several borrowers as amended and supplemented from time to time;

“Accounts” means, together, the Operating Accounts and the Retention Account and **“Account”** means any of them as the context may require;

“Accounts Pledge Agreement” means an agreement to be made between the Borrowers and the Lender for the creation of a pledge in favour of the Lender over the Accounts, in form and substance as the Lender may approve or require as the same may from time to time be amended and/or supplemented;

“Alternative Rate” means a rate agreed between the Lender and the Borrowers on the basis of which (instead of LIBOR) the interest rate is determined pursuant to Clause 3.6 (*Market disruption – Non Availability*);

“Applicable Margin” means two hundred seventy five base points (275 bps) per annum;

“Approved Shipbrokers” means any of Messrs Kontiki Shipbrokers, Barry Rogliano Salles, RS Platou, Howe Robinson, Maersk, or any other first class independent firm of internationally known shipbrokers, appointed by the Lender at its discretion and includes their respective successors in title and **“Approved Shipbroker”** means any of them;

“Asset Cover Ratio” means, at the relevant time the ratio of (a) the aggregate Market Value of the Vessels then subject to a Mortgage and (b) the net realisable value of any additional security provided at that time pursuant to Clause 8.5 (Provision of additional security cover) expressed as a percentage of the Loan;

“Assignee” has the meaning ascribed thereto in Clause 14.3 (*Assignment by the Lender*):

“Associated Fleet Vessel(s)” means for the time being each of the m/vs **“MAIRA”, “NIKOLAS”, “NEWYORKER”, “CC ORCA”, “AGIOS DIMITRIOS”, “MARY”,**

“KATHERINE”, “TASMAN”, “DIMITRIS Y”, and “IAN H”, each wholly owned by members of the Group and, in the singular, means any of them;

“**Associated Fleet Vessel Finance Agreement**” means any finance agreement made between an owner or owners of an Associated Fleet Vessel or Associated Fleet Vessels, as borrower(s) and a bank or financial institution, as lender providing finance to the owner or owners of an Associated Fleet Vessel or Associated Fleet Vessels, as appropriate;

“**Availability Period**” means the period starting on the date hereof and ending on

- (a) the 31st August 2017 or until such later date as the Lender may agree in writing; or
- (b) on such earlier date (if any): (i) on which the whole Commitment has been advanced by the Lender to the Borrowers, or (ii) on which the Commitment is reduced to zero pursuant to Clauses 3.6 (*Market disruption – Non Availability*), 9.2 (*Consequences of Default – Acceleration*), 12.1 (*Unlawfulness*) or 12.2 (*Change of circumstances*) or any other Clause of this Agreement;

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers.

“**Bail-In Legislation**” means:

- “(a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“**Balloon Instalment**” means the Hephaestus Balloon Instalment, the Hector Balloon Instalment and the Pericles Balloon Instalment each of which becomes due for repayment by the Borrowers to the Lender on the Final Maturity Date pursuant to Clause 4.1 (*Repayment*) (together the “**Balloon Instalments**”);

“**Banking Day**” means any day (other than Saturday or Sunday) on which banks in Athens, Paris, London and in each country or place in or at which an act is required to be done under this Agreement in accordance with the usual practice of the Lender, are open for the transaction of business of the nature contemplated in this Agreement; and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York;

“Borrowed Money” means Financial Indebtedness incurred in respect of (i) money borrowed or raised, (ii) any bond, note, loan stock, debenture or similar instrument, (iii) acceptance of documentary credit facilities, (iv) deferred payments for assets or services acquired, (v) rental payments under leases (whether in respect of land, machinery, equipment or otherwise) entered into primarily as a method of raising finance or of financing the acquisition of the asset leased, (vi) guarantees, bonds, stand-by letters of credit or other instruments issued in connection with the performance of contracts and (vii) guarantees or other assurances against financial loss in respect of Financial Indebtedness of any person falling within any of sub-paragraphs (i) to (vi) above;

“Borrowers” means the Borrowers as specified in the beginning of this Agreement;

“Break Costs” means all costs, losses, premiums or penalties incurred by the Lender in the circumstances contemplated by Clause 10.1 (*Miscellaneous indemnities*), or as a result of it receiving any prepayment of all or any part of the Loan (whether pursuant to Clause 4 (*Repayment-Prepayment*) or otherwise), or any other payment under or in relation to the Security Documents on a day other than the due date for payment of the sum in question, and includes (without limitation) any losses or costs incurred in liquidating or re-employing deposits from third parties acquired to effect or maintain the Loan;

“Charterparty” means:

- (i) in respect of the Hephaestus Vessel, the time charterparty dated 8 May 2017 entered into between the Hephaestus Borrower, as owner and ZIM Intergrated Shipping Services of Haifa, Israel as charterers and at a daily rate of \$10,750 and on terms acceptable to the Lender (the **“Hephaestus Charterparty”**);
- (ii) in respect of the Hector Vessel, the time charterparty dated 21st April 2017 entered into between the Hector Borrower, as owner and Wan Hai Lines (Singapore PTE Ltd) of Singapore as charterers and at a daily rate of \$18,500 (the **“Hector Charterparty”**); and
- (iii) in respect of the Pericles Vessel, the time charterparty dated 31st March 2017 entered into between the Pericles Borrower, as owner and MSC-Mediterranean Shipping Co. S.A., of Geneva, as charterers and at a daily rate of \$6,350 and on terms acceptable to the Lender (the **“Pericles Charterparty”** and together with the Hephaestus Charterparty and the Hector Charterparty hereinafter called the **“Existing Charterparties”**);

and following redelivery under any of the Existing Charterparties any time or bareboat charterparty or contract of affreightment, agreement or related document in respect of the employment of that Vessel entered or to be entered by an Owner or any person, firm or company on its behalf, as owner, and a charterer acceptable to

the Lender (herein a “**Charterer**”), which Charterparty exceeds or is capable by way of optional extension of exceeding twelve (12) months in duration and on terms and conditions in all respects acceptable to the Lender, such Lender’s acceptance not to be unreasonably withheld (and shall include any addenda thereto) and in the plural means all of them;

“**Charterparty Assignment**” means in relation to a Charterparty, the assignment of that Charterparty executed or (as the context may require) to be executed by the Owner of a Vessel which is subject to that Charterparty in favour of the Lender and respective notices of any such assignment addressed to the relevant charterer and, in such case, the relevant Owner to use its best efforts to obtain an endorsement with an acknowledgement of receipt by the relevant charterer and in the plural means all of them (together the “**Charterparty Assignments**”);

“**Classification**” in relation to a Vessel means the classification referred to in the Mortgage registered thereon with the relevant Classification Society or such other classification society as the Lender shall, at the request of the Borrowers, have agreed to in writing which shall be treated as the Classification Society for the purposes of the Finance Documents;

“**Classification Society**” means such classification society which is a member of IACS and which the Lender shall, at the request of the Borrowers, have agreed to in writing to be treated as the Classification Society for the purposes of the Finance Documents;

“**Commercial Manager**” means for the time being **CONCHART COMMERCIAL INC.**, a company duly incorporated in the Republic of Marshall Islands, or any other management company appointed by any of the Borrowers, with the prior written consent of the Lender (such consent not to be unreasonably withheld), which provides commercial services to the Vessels and includes its respective successors in title;

“**Commitment**” means the amount which the Lender has agreed to lend to the Borrowers under Clause 2.1 (*Commitment to Lend*) as reduced pursuant to any relevant term of this Agreement;

“**Commitment Letter**” means the commitment letter dated 18th May, 2017 addressed by the Lender to the Corporate Guarantor and shall include any amendments or addenda thereto;

“**Compliance Certificate**” means a certificate in form set out in Schedule 2 of this Agreement (*Form of Compliance Certificate*);

“**Compulsory Acquisition**” in relation to a Vessel means requisition for title or other compulsory acquisition, requisition, appropriation, expropriation, deprivation, forfeiture or confiscation for any reason of such Vessel by any Government Entity or other competent authority, whether de jure or de facto, but shall exclude requisition for use or hire not involving requisition of title;

“Corporate Guarantee” means the irrevocable and unconditional guarantee executed or (as the context may require) to be executed by the Corporate Guarantor as a security for the Outstanding Indebtedness and any and all other obligations of the Borrowers under this Agreement and the Security Documents, in form and substance satisfactory to the Lender as the same may from time to time be amended and/or supplemented;

“Corporate Guarantor” means POSEIDON CONTAINERS HOLDINGS LLC, of Majuro, Marshall Islands and/or any other person nominated by the Borrowers and acceptable to the Lender which may give a corporate guarantee, and includes its successors in title;

“DB” means DEUTSCHE BANK AG FILIALE DEUTSCHLANDGESCHAFT, Frankfurt/Main, acting through its office at Adolphsplatz 7, D-20457, Hamburg, Germany;

“DB Indebtedness” means the principal amount outstanding to DB under a loan agreement 28 February 2013 made between the Hector Borrower, as borrower and DB, net of any cash deposit or equivalent payable to DB against discharge of the DB existing mortgage on the Hector Vessel;

“Debt Service” in relation to any period means an amount (as conclusively certified by the Lender) which is equal to the aggregate payments of principal and interest which the Borrowers will be obliged to pay to the Lender pursuant to this Agreement and the other Security Documents during such period (including sums credited to the Retention Account);

“Default” means any Event of Default or any event which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of the foregoing) constitute an Event of Default;

“Default Rate” means that rate of interest per annum which is determined in accordance with the provisions of Clause 3.4 (Default Interest);

“Deferral Period” means the period starting from the Drawdown Date and terminating on 31st December 2019;

“Deferred Amounts” in relation to all Tranches means the aggregate amount of the Deferred Instalments ie \$14,000,000 (Dollars Fourteen Million) and more particularly: (a) Dollars Three Million Five Hundred Thousand (\$3,500,000), in relation to the Hephaestus Tranche (b) Dollars Two Million (\$2,000,000), in relation to the Pericles

Tranche and (c) Dollars Eight Million Five Hundred Thousand (\$8,500,000), in relation to the Hector Tranche, and in any such case, as such amount may from time to time be reduced and/or repaid by any payments to be made pursuant to Clause 8.1 (k) (*Surplus Cash Income*);

“Deferred Instalments” in relation to each Tranche means the ten (10) consecutive quarterly Repayment Instalments the first falling due on the 30th September 2017 and more particularly:

- (a) the first ten (10) Hephaestus Repayment Instalments each in the amount of Dollars Three hundred fifty thousand (\$350,000), in relation to the Hephaestus Tranche (the **“Hephaestus Deferred Instalments”**);
- (b) the first ten (10) Pericles Repayment Instalments each in the amount of Dollars Two hundred thousand (\$200,000), in relation to the Pericles Tranche (the **“Pericles Deferred Instalments”**); and
- (c) the first ten (10) Hector Repayment Instalments each in the amount of Dollars Eight hundred fifty thousand (\$850,000), in relation to the Hector Tranche (the **“Hector Deferred Instalments”**);

“DOC” means a document of compliance issued to an Operator in accordance with rule 13 of the ISM Code;

“Dollars” (and the sign “\$”) means the lawful currency for the time being of the United States of America;

“Drawdown Date” means the date, being a Banking Day, falling not later than the last day of the Availability Period, requested by the Borrowers for a Tranche to be made available, or (as the context requires) the date on which such Tranche is actually made available;

“Drawdown Notice” means a notice substantially in the terms of Schedule 1 (*Form of Drawdown Notice*) (or in any other form which the Lender approves);

“Earnings” in relation to a Vessel means all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrowers and which arise out of the use or operation of such Vessel, including (but not limited to) all freight, hire and passage moneys, compensation payable to its Owner in the event of requisition of such Vessel for hire, remuneration for salvage and towage services, demurrage and detention moneys, contributions of any nature whatsoever in respect of general average, damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of such Vessel and any other earnings whatsoever due or to become due to its Owner in respect of such Vessel and all sums recoverable under the Insurances in respect of loss of Earnings (if

applicable) and includes, if and whenever such Vessel is employed on terms whereby any and all such moneys as aforesaid are pooled or shared with any other person, that proportion of the net receipts of the relevant pooling or sharing agreement which is attributable to such Vessel;

“Encumbrance” means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, trust arrangement or security interest, title retention, arrest, seizure, garnishee order (whether nisi or absolute) or any other order or judgement having similar effect or other encumbrance of any kind securing or any right conferring a priority of payment in respect of any obligation of any person;

“Environmental Affiliate” means any agent or employee of any of the Borrowers or any other Relevant Party or any person having a contractual relationship with any of the Borrowers or any other Relevant Party in connection with any Relevant Ship or her operation or the carriage of cargo thereon;

“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 her operation or the carriage of cargo thereon and/or passengers therein and/or provisions of goods and/or services on or from the Relevant Ship required under any Environmental Law;

“Environmental Claim” means any and all enforcement, clean up, removal or other governmental or regulatory actions or orders instituted or completed pursuant to any Environmental Law or any Environmental Approval together with claims made by any third party relating to damage, contribution, loss or injury, resulting from any actual or threatened emission, spill, release or discharge of a Material of Environmental Concern from any Relevant Ship ;

“Environmental Incident” means (i) any release of Material of Environmental Concern from a Vessel, (ii) any incident in which Material of Environmental Concern is released from a vessel other than the Vessels and which involves collision between a Vessel and such other vessel or some other incident of navigation or operation, in either case, where a Vessel, the Borrowers (or any of them) or the Technical Manager are actually or allegedly at fault or otherwise liable (in whole or in part) or (iii) any incident in which Material of Environmental Concern is released from a vessel other than the Vessels and where a Vessel is actually or potentially liable to be arrested as a result and/or where the Borrowers (or any of them) or the Technical Manager are actually or allegedly at fault or otherwise liable;

“Environmental Laws” means all national, international and state laws, rules, regulations, treaties and conventions applicable to any Relevant Ship pertaining to the pollution or protection of human health or the environment including, without limitation, the carriage or Materials of Environmental Concern and actual or

threatened emissions, spills, releases or discharges of Materials of Environmental Concern and actual or threatened emissions, spills, releases or discharges of Materials of Environmental Concern from any Relevant Ship;

“Event of Default” means any event or circumstance set out in Clause 9.1 (*Events*) or described as such in any of the Finance Documents;

“Expenses” means the aggregate at any relevant time (to the extent that the same have not been received or recovered by the Lender) of:

- (a) all losses, liabilities, costs, charges, expenses, damages and outgoings of whatever nature, (including, without limitation, Taxes, repair costs, registration fees and insurance premiums, crew wages, repatriation expenses and seamen’s pension fund dues) suffered, incurred, charged to or paid or committed to be paid by the Lender in connection with the exercise of the powers referred to in or granted by any of the Finance Documents or otherwise payable by the Borrowers in accordance with the terms of any of the Finance Documents;
- (b) the expenses referred to in Clause 10.2 (*Expenses*); and
- (c) interest on all such losses, liabilities, costs, charges, expenses, damages and outgoings from, in the case of Expenses referred to in sub-paragraph (b) above, the date on which such Expenses were demanded by the Lender from the Borrowers and in all other cases, the date on which the same were suffered, incurred or paid by the Lender until the date of receipt or recovery thereof (whether before or after judgement) at the Default Rate (as conclusively certified by the Lender but always absent manifest error);

“FATCA” means:

- (a) sections 1471 to 1474 of the US Internal Revenue Code of 1986 (the **“Code”**) or any associated regulations or other associated official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

“FATCA Application Date” means:

- (a) in relation to a **“withholdable payment”** described in section 1473(l)(A)(i) of the

Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;

- (b) in relation to a “*withholdable payment*” described in section 1473(l)(A)(ii) of the Code (which relates to “*gross proceeds*” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a “*passthru payment*” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement;

“**FATCA Deduction**” means a deduction or withholding from a payment under a Finance Document required by FATCA;

“**FATCA Exempt Party**” means a party that is entitled to receive payments free from any FATCA Deduction;

“**Final Maturity Date**” in relation to a Tranche means the earlier of (a) thirty (30) months from the Drawdown Date and (b) 31st December, 2020;

“**Finance Documents**” means this Agreement, the Security Documents and any other document designated as such by the Lender and the Borrowers;

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

- (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 designated transaction entered into by the debtor or, if the agreement under which any such designated transaction is entered into requires netting of mutual liabilities, the liability of the debtor for the net amount; or

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

“Financial Year” means, in relation to the Borrowers (and as appropriate, the Corporate Guarantor), each period of 1 year commencing on 1st January thereof in respect of which financial statements referred to in Clause 8.1(e) (*Financial statements*) are or ought to be prepared;

“Flag State” means, in relation to the Hephaestus Vessel and the Pericles Vessel, Panama and in relation to the Hector Vessel, Marshall Islands or such other state or territory proposed in writing by the Borrowers to the Lender and approved by the Lender, as being the Flag State of such Vessel for the purposes of the Finance Documents;

“Fleet Vessel(s)” means the Vessels, the Associated Fleet Vessels and all of the ships from time to time wholly owned by members of the Group and, in the singular, means any of them;

“General Assignment” in relation to each Vessel means the first priority assignment of the Earnings, Insurances and Requisition compensation collateral to the Mortgage relative thereto executed or (as the context may require) to be executed by the Owner thereof in favour of the Lender, in form and substance satisfactory to the Lender as the same may from time to time be amended and/or supplemented (together, the **“General Assignments”**);

“Government Entity” means and includes (whether having a distinct legal personality or not) any national or local government authority, board, commission, department, division, organ, instrumentality, court or agency and any association, organisation or institution of which any of the foregoing is a member or to whose jurisdiction any of the foregoing is subject or in whose activities any of the foregoing is a participant;

“Governmental Withholdings” means withholdings and any restrictions or conditions resulting in any charge whatsoever imposed, either now or hereafter, by any sovereign state or by any political sub-division or taxing authority of any sovereign state;

“Group” means the Borrowers, the Corporate Guarantor and all other shipping companies now or in the future substantially directly or indirectly owned and/or controlled by the Corporate Guarantor and **“Member of the Group”** means any member of the Group;

“Hector Tranche” means, in respect of the Commitment, the amount of Twenty five million seven hundred fifty thousand Dollars (\$25,750,000) or, as the context may require, the principal amount thereof owing to the Lender under this Agreement at any relevant time;

“Hephaestus Tranche” means, in respect of the Commitment, the amount of Nineteen million four hundred thousand Dollars (\$19,400,000) or, as the context may require, the principal amount thereof owing to the Lender under this Agreement at any relevant time;

“IFRS” means International Financial Reporting Standards;

“Insurances” in relation to a Vessel means all policies and contracts of insurance (including, without limitation, all entries of such Vessel in a protection and indemnity, war risks or other mutual insurance association) which are from time to time in place or taken out or entered into by or for the benefit of its Owner (whether in the sole name of its Owner or in the joint names of the Owner and the Technical Manager or (if the Lender so requires) in the joint names of its Owner and the Lender) in respect of such Vessel and its earnings (if applicable) or otherwise howsoever in connection with such Vessel and all benefits of such policies and/or contracts (including all claims of whatsoever nature and return of premiums);

“Interest Payment Date” means in respect of the Loan or any part thereof in respect of which a separate Interest Period is fixed the last day of the relevant Interest Period and in case of any Interest Period longer than three (3) months the date(s) falling at successive three (3) monthly intervals during such longer Interest Period and the last day of such Interest Period, provided, however, that if any of the aforesaid dates falls on a day which is not a Banking Day the Borrowers shall pay the accrued interest on the first Banking Day thereafter unless the result of such extension would be to carry such Interest Payment Date over into another calendar month in which event such Interest Payment Date shall be the immediately preceding Banking Day;

“Interest Period” means in relation to the Loan or any part thereof, each period for the calculation of interest in respect of the Loan or such part ascertained in accordance with Clauses 3.2 (Selection of Interest Period) and 3.3 (Determination of Interest Periods);

“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 4th November, 1993 and incorporated on 19th 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 25th November, 1995;

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

“**ISM Code Documentation**” includes:

- (a) the DOC and SMC issued by the Classification Society in all respects acceptable to the Lender in its absolute discretion pursuant to the ISM Code in relation to the Vessels within the period specified by the ISM Code;
- (b) all other documents and data which are relevant to the ISM SMS and its implementation and verification which the Lender may require by request; and
- (c) any other documents which are prepared or which are otherwise relevant to establish and maintain the relevant Vessel’s or its Owner compliance with the ISM Code which the Lender may require by request;

“**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 Organization and includes any amendments or extensions thereto and any regulation issued pursuant thereto;

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

“**Lender**” means the Lender as specified in the beginning of this Agreement and includes its successors in title and transferees;

“**Lending Office**” means the office of the Lender appearing at the beginning of this Agreement or any other office of the Lender designated by the Lender as the Lending Office by notice to the Borrowers;

“**LIBOR**” means, for an Interest Period:

- (a) the London interbank offered rate administered by ICE Benchmark Administration Limited (“**ICE**”) (or any other person which takes over the

administration of that rate) for deposits in Dollars for a period equal to, or as near as possible equal to, the relevant Interest Period which appears on Thomson Reuters Page Libor 01 at or about 11.00 a.m. (London time) on the Quotation Day for that Interest Period (and, for the purposes of this Agreement, “**Thomson Reuters Page Libor 01**” means the display designated as the “Page LIBOR 01” on the Thomson Reuters Service or such other page as may replace Page LIBOR 01 on that service for the purpose of displaying rates comparable to that rate or on such other service as may be nominated by ICE as the information vendor for the purpose of displaying ICE Interest Settlement Rates for Dollars); or

- (b) if on such date no rate is displayed, LIBOR for such period shall be the Lender’s offered rate for deposits of Dollars in an amount approximately equal to the amount in relation to which LIBOR is to be determined for a period equivalent to such period to prime banks in the London Interbank Market at or about 11:00 a.m. (London time) on the Quotation Date for such period and for delivery on the first Banking Day of it,

Provided, however, that if any such rate is below zero LIBOR shall be deemed zero;

“**K&T Loan Agreement**” means the loan facility agreement dated 4 May 2016 (as amended and supplemented from time to time) between K&T Marine LLC and the Corporate Guarantor relating to a loan facility of up to \$12,211,552.74;

“**Loan**” means *the* aggregate principal amount borrowed by the Borrowers in respect of the Commitment or (as the context may require) the principal amount thereof owing to the Lender under this Agreement at any relevant time;

“**Major Casualty**” in relation to a Vessel means any casualty to such Vessel in respect whereof the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds the Major Casualty Amount;

“**Major Casualty Amount**” in relation to the (a) Hephaestus Vessel and the Pericles Vessel, means Five hundred thousand Dollars (\$500,000) and (b) in relation to the Hector Vessel, means Seven hundred fifty thousand Dollars (\$750,000), or in either case the equivalent in any other currency;

“**Management Companies**” means the Commercial Manager and the Technical Manager and “**Management Company**” means either of them;

“**Management Companies’ Undertakings**” means in relation to each Vessel, the undertakings executed or (as the context may require) to be executed by the relevant Management Company in favor of the Lender, such undertaking to be in form and substance satisfactory at all times to the Lender as the same may from time to time be amended and/or supplemented;

“Management Agreement” in relation to a Vessel means the agreement made between the Owner thereof and each Management Company providing (*inter alia*) for such Management Company to manage such Vessel, as amended and /or supplemented from time to time (together, the **“Management Agreements”**);

Manager’s Account” means an account in the name of the Technical Manager held with the Lender;

“Market Value” means, in relation to a Vessel, the market value of such Vessel as determined in accordance with Clause 8.5(b) (*Valuation of Vessels*);

“Material of Environmental Concern” means and includes pollutants, contaminants, toxic substances, oil as defined in the United States Oil Pollution Act of 1990 and all hazardous substances as defined in the United States Comprehensive Environmental Response, Compensation and Liability Act 1988;

“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 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” in relation to a Vessel means the first preferred ship mortgage or, as the case may be the first priority ship mortgage and the deed of covenants supplemental thereto on such Vessel to be executed by the Owner thereof in favour of the Lender in form and substance satisfactory to the Lender as the same may from time to time be amended and/or supplemented (together, the **“Mortgages”**);

“Mortgaged Vessel” means, at any relevant time, any Vessel which is at such time subject to a Mortgage and/or the Earnings, the Insurances and Requisition Compensation (each as defined in the relevant Mortgage or, as the case may be, General Assignment) of which are subject to an Encumbrance pursuant to the relevant Security Documents and a Vessel shall for the purposes of this Agreement be deemed to be a Mortgaged Vessel as from the earlier of (a) the Drawdown Date and (b) the date that the Mortgage of that Vessel shall have been executed and registered in accordance with this Agreement until the earlier of (i) the payment in full of the amount required to be paid by the Borrowers pursuant to Clause 4.3 following the sale or Total Loss of such Vessel and (ii) the date on which all monies owing under the Security Documents have been repaid in full;

“Operating Account” in relation to each Borrower means an interest bearing Dollar account of such Borrower opened or (as the context may require) to be opened by such Borrower with the Lending Office or with any other branch of the Lender, as may be required by and at the discretion of the Lender, to which (inter alia) all Earnings of the Vessel owned by such Borrower are to be paid and from which all the Operating Expenses of each respective Vessel are to be paid and includes any sub-accounts thereof and any other account designated in writing by the Lender to be the Operating Account of such Borrower for the purposes of this Agreement (together, the **“Operating Accounts”**);

“Operating Expenses” means in relation to a Vessel and in relation to a Surplus Cash Income Calculation Period the expenses properly and reasonably incurred by the Borrowers in connection with, crewing, victualing, insuring, normal maintenance and repairs, spares, management and operation of such Vessel (including voyage expenses, provisioning for dry-docking, intermediate or special survey costs and management fees) and any such expenses deemed by the Lender to be reasonable for the operation of any such similar in size and type vessel;

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

“Outstanding Indebtedness” means the aggregate of (a) the Loan and interest accrued and accruing thereon, (b) the Expenses, and (c) all other sums of any nature (together with all interest on any of those sums) which from time to time may be payable by the Borrowers to the Lender pursuant to the Finance Documents, whether actually or contingently and (d) any damages payable as a result of any breach by the Borrowers of any of the Finance Documents and (e) any damages or other sums payable as a result of any of the obligations of the Borrowers under or pursuant to any of the Finance Documents being disclaimed by a liquidator or any other person, or, where the context permits, the amount thereof for the time being outstanding;

“Owner” in relation to a Vessel means the owner of such Vessel as specified in the definition of **“Vessels”** in this Clause 1.2 (together, the **“Owners”**);

“Party” means a party to this Agreement;

“Pericles Tranche” means, in respect of the Commitment, the amount of Ten million five hundred thousand Dollars (\$10,500,000) or (as the context may require) the principal amount thereof owing to the Lender under this Agreement at any relevant time;

“Permitted Encumbrance” means any Encumbrance in favour of the Lender created pursuant to the Security Documents and Permitted Liens;

“Permitted Lien” in relation to a Vessel means any lien on such Vessel for master’s, officers’ or crew’s wages outstanding in the ordinary course of trading, any lien for salvage, any ship repairer’s or outfitter’s possessory lien for a sum not (except with the prior written consent of the Lender) exceeding the Major Casualty Amount, broker’s liens on policies of insurance in respect of such Vessel and encumbrances over such Vessel created by the Security Documents;

“Prior Indebtedness” means the principal amount of \$29,900,00 owing to the Lender under a Loan Agreement dated 4th May 2011 and made between the Hephaestus Borrower and the Pericles Borrower, as joint and several borrowers and the Lender, as lender in respect of a loan facility of (initially) \$47,500,000, as subsequently amended and / or supplemented;

“Quotation Day” means, in respect of any period in respect of which LIBOR falls to be determined under this Agreement, the second Banking Day before the first day of such period;

“Receiving Bank” means JP MORGAN CHASE BANK New York (Swift code CHASUS33) for account of: CA-CIB Paris, Account number 786419036 (Swift Code: BSUIFRPP), or such other bank in New York as the Lender may notify to the Borrowers;

“Registry” in relation to a Vessel means the offices of such registrar, commissioner or representative of the relevant Flag State who is duly authorised to register such Vessel, its Owner’s title to such Vessel and the Mortgage registered over such Vessel under the laws and flag of the relevant Flag State;

“Regulatory Agency” means the Government Entity or other organization in the relevant Flag State which has been designated by the government of the relevant Flag State to implement and/or administer and/or enforce the provisions of the ISM Code;

“Related Company” means any company which is under the ultimate control, direct or indirect, of any individual who has ultimate control, whether alone or with others, of the Borrowers or other entity of which such company is a Subsidiary and any Subsidiary of any such company or entity;

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

“Relevant Party” means the Borrowers, the Borrowers’ Related Companies and the other corporate Security Parties;

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

“Repayment Date” means each of the dates specified in Clause 4.1 (*Repayment*) on which the Repayment Instalments shall be payable by the Borrowers to the Lender;

“Repayment Instalment” means each of the Hephaestus Tranche Repayment Instalments, the Hector Tranche Repayment Instalments and the Pericles Tranche Repayment Instalments which becomes due for repayment by the Borrowers to the Lender on a Repayment Date pursuant to Clause 4.1 (*Repayment*);

“Requisition Compensation” in relation to a Vessel means all sums of money or other compensation from time to time payable by reason of requisition of such Vessel otherwise than by requisition for hire;

“Restructuring Plan” in relation to the Corporate Guarantor and its present Subsidiaries (including the Borrowers) means all the actions, covenants, undertakings and operations described in Clause 8.1 (m) (Most Favoured Nation) and Clause 7.2 (w) (*Equity requirement for the implementation of the Restructuring Plan*) which have, or as the case may be, shall have been complied with by the Corporate Guarantor and its Subsidiaries and its Shareholders (as applicable) at the time prescribed therein and in any case no later than the end of the Deferral Period;

“Retention Account” means a Dollar account of the Borrowers opened or (as the context may require) to be opened in the name of the Borrowers with the Lending Office;

“Sanctions” means any economic, financial or trade sanctions laws, regulations, embargoes or other restrictive measures adopted, administered, enacted or enforced by any Sanctions Authority, or otherwise imposed by any law or regulation compliance with which is reasonable in the ordinary course of business of the Borrowers, any Security Party and the Lender or to which any Borrower, any Security Party and the Lender are subject (which shall include without limitation, any extra-territorial sanctions imposed by law or regulation of the United States of America);

“Sanctions Authority” means;

- (a) the government of the United States of America;
- (b) the United Nations;
- (c) the European Union (or the governments of any of its member states);
- (d) the United Kingdom; or

- (e) the respective governmental institutions and agencies of any of the foregoing including the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”), the United States Department of State, the United States Department of Commerce and Her Majesty’s Treasury;

“**Sanctions Restricted Jurisdiction**” means any country or territory which is the target of country-wide or territory-wide Sanctions;

“**Sanctions Restricted Person**” means a person or vessel:

- (a) that is, or is directly or indirectly, owned or controlled (as such terms are defined by the relevant Sanctions Authority) by, or acting on behalf of, one or more persons or entities on any list (each as amended, supplemented or substituted from time to time) of restricted entities, persons or organisations (or equivalent) published by a Sanctions Authority;
- (b) that is located or resident in or incorporated under the laws of, or owned or controlled by, a person located or resident in or incorporated under the laws of a Sanctions Restricted Jurisdiction; or
- (c) that is otherwise the target or subject of Sanctions;

“**Security Documents**” means:

- (a) the Accounts Pledge Agreement;
- (b) the Management Companies’ Undertakings;
- (c) the Charterparty Assignments;
- (d) the General Assignments;
- (e) the Corporate Guarantee;
- (f) the Mortgages;
- (g) the Share Pledge Agreements; and
- (h) any other document (whether creating an Encumbrance or not) which is executed at any time by the Borrowers or 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 Lender under this Agreement or any of the documents referred to in this definition;

“**Security Party**” means each of the Borrowers, the Corporate Guarantor, the Share Pledgors and any other person (other than the Lender) which is or may become a party to any of the Finance Documents (together, the “**Security Parties**”);

“**Security Period**” means the period commencing on and including the date hereof and terminating on and including the date upon which the Outstanding Indebtedness has been paid in full to the Lender;

“Security Value” means the amount in Dollars (as certified by the Lender whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrowers) which, at any relevant time is the aggregate of (i) the Market Value of the Vessels as most recently determined in accordance with Clause 8.5(b) (Valuation of Vessels), and (ii) the market value of any additional security provided under Clause 8.5(a) (Security shortfall-Additional Security) and accepted by the Lender (if any);

“Shareholder(s)” means the person or persons in writing disclosed to the Lender as being the ultimate legal and/or beneficial owner or owners of 100% of the shares and the voting rights in the Corporate Guarantor;

“Shares Pledge Agreement” in relation to each Borrower, means the pledge agreement to be executed by the respective Share Pledgors in favour of the Lender whereby such Share Pledgors shall pledge all the issued share capital of such Borrower, in form and substance satisfactory to the Lender as the same may from time to time be amended and/or supplemented (together the **“Share Pledge Agreements”**);

“Share Pledgors” in relation to a Borrower, means persons acceptable to the Lender who have executed or (as the context may require) shall execute a Shares Pledge Agreement;

“SMC” in relation to a Vessel means a safety management certificate issued in respect of such Vessel in accordance with rule 13 of the ISM Code;

“Subsidiary” of a person means any company or entity directly or indirectly controlled by such person;

“Surplus Cash Income” in relation to a Vessel and in relation to a Surplus Cash Income Calculation Period means the amount (as conclusively calculated and determined by the Lender pursuant to Clause 8.1 (k) (Surplus Cash Income) of this Agreement which is the Total Revenue of such Vessel received by the respective Owner thereof during such period, less (i) the aggregate of such Vessel’s Operating Expenses and (ii) the Debt Service during such Surplus Cash Income Calculation Period;

“Surplus Cash Income Calculation Period” in relation to each Vessel means each successive quarterly period in each financial year during the Security Period the first commencing on the 30th June 2017 and ending on the Final Maturity Date or on the earlier date on which either of the below conditions is complied with:

- (i) the Deferred Amounts shall have been paid in full; and

(ii) the Asset Cover Ratio shall have been restored to 130%;

“Surplus Cash Income Certificate” means a certificate in the form set out in Schedule 3 of this Agreement in relation to a Surplus Cash Income Calculation Period setting out the Operating Expenses, the Debt Service, the Total Revenue of the respective Vessel and the relevant Surplus Cash Income during such period certified as to its accuracy by the Chief Financial Officer of the Corporate Guarantor;

“Taxes” includes all present and future taxes, levies, imposts, duties, fees or charges of whatever nature together with interest thereon and penalties in respect thereof (except taxes concerning the Lender and imposed on the net income of the Lender) and **“Taxation”** shall be construed accordingly;

“Technical Manager” means for the time being **TECHNOMAR SHIPPING INC.**, a company duly incorporated in the Republic of Liberia and having an office established in Greece, at 3-5 Menandrou str., 145 61 Kifissia pursuant to the Greek laws 378/68, 27/75 and 814/79 (as amended) or any other management company appointed by any of the Borrowers, with the prior written consent of the Lender (such consent not to be unreasonably withheld), which provides technical services to the Vessels and includes its respective successors in title;

“Total Loss” in relation to a Vessel means:

- (a) actual, constructive, compromised or arranged total loss of such Vessel; or
- (b) the Compulsory Acquisition of such Vessel; or
- (c) the condemnation, capture, seizure, confiscation, arrest or detention of such Vessel (other than where the same amounts to the Compulsory Acquisition of such Vessel) by any Government Entity, or by persons acting on behalf of any Government Entity or otherwise, unless such Vessel be released and restored to from such condemnation, capture, seizure, confiscation arrest or detention within ninety (90) days after the occurrence thereof (or within such longer time period the Borrowers may request and the Lender at its sole and absolute discretion may approve such consent not to be unreasonably withheld); and
- (d) the hijacking, capture, seizure or confiscation of such Vessel arising as a result of a piracy or related incident unless such Vessel be released and restored to from such hijacking, capture, seizure or confiscation within one hundred twenty(120) days after the occurrence thereof;

“Total Revenue” in relation to a Vessel and in relation to a Surplus Cash Income Calculation Period means the total income of such Vessel received during such Surplus Cash Income Calculation Period less brokerage fees and commissions and withholding taxes (if any);

“Tranches” means the Hephaestus Tranche, the Hector Tranche and the Pericles Tranche, or (as the context may require) the principal amount of such borrowing under such respective Tranche and **“Tranche”** means any of them;

“Transferee” has the meaning ascribed thereto in Clause 14.3 (*Assignment by the Lender*):

“US Tax Obligor” means:

- (a) a Borrower, if it is resident for tax purposes in the United States of America; or
- (b) a Security Party some or all of whose payments under the Finance Documents are from sources within the United States for US Federal income tax purposes;

“Vessels” means:

- (a) the containership **“DOLPHIN II”**, IMO No. 9318125, of 54309 gt and 34011 nt, built in 2007, registered through the Panama Ships Registry in the ownership of the Hephaestus Borrower under the laws and flag of Panama, Off. Reg. No. 41426-PEXT (the **“Hephaestus Vessel”**); and
- (b) the containership **“ATHENA”**, IMO No. 9275361 of 34610 gt and 16865 nt, built in 2003, registered through the Panama Ships Registry in the ownership of the Pericles Borrower under the laws and flag of Panama Off. Reg. No. 30876-pevt-2 (the **“Pericles Vessel”**); and
- (c) the containership **“KRISTINA”**, IMO No: 9641223 of 71,021 gt tons, **40,452** nt, built in 2013, registered through the Marshall Islands Ships Registry in the ownership of the Hector Borrower under the laws and flag of the Marshall Islands under Official No. 4913 (the **“Hector Vessel”**);

in each case together with all her boats, engines, machinery tackle outfit spare gear fuel consumable and other stores belongings and appurtenances whether on board or ashore and whether now owned or hereafter acquired and all the additions, improvements and replacements in or on the above described relevant Vessel,

(together, the **“Vessels”** and **“Vessel”** means any of them, as the context may require);

“Write-down and Conversion Powers” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and

- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

1.3 **Interpretation.** In this Agreement:

- (a) Clause headings and the table of contents are inserted for convenience of reference only and shall be ignored in the interpretation of this Agreement;
- (b) subject to any specific provision of this Agreement or of any assignment and/or participation or syndication agreement of any nature whatsoever, reference to each of the parties hereto and to the other Finance Documents shall be deemed to be reference to and/or to include, as appropriate, their respective successors and permitted assigns;
- (c) where the context so admits, words in the singular include the plural and vice versa;
- (d) the words “*including*” and “*in particular*” shall not be construed as limiting the generality of any foregoing words;
- (e) all obligations imposed on, or assumed by the Borrowers are joint and several even if not so expressed;
- (f) references to (or to any specified provisions of) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as it may from time to time be amended, restated, novated or replaced, however fundamentally, whether before the date of this Agreement or otherwise;

- (g) references to Clauses and Schedules are to be construed as references to the Clauses of, and the Schedules to, the relevant Finance Document and references to a Finance Document include all the terms of that Finance Document and any Schedules, Annexes or Appendices thereto, which form an integral part of same;
- (h) references to the opinion of the Lender or a determination or acceptance by the Lender or to documents, acts, or persons acceptable or satisfactory to the Lender or the like shall be construed as reference to opinion, determination, acceptance or satisfaction of the Lender at the sole discretion of the Lender and such opinion, determination, acceptance or satisfaction of the Lender shall be conclusive and binding on the Borrowers;
- (i) 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 governmental or intergovernmental body, agency, authority, central bank or government department or any self regulatory or other national or supra-national authority or organisation and includes (without limitation) any Basel II Regulation or Basel III Regulation or any amendment, supplement or re-enactment thereof;
- (j) references to any person include such person’s assignees and successors in title; and
- (k) 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.

1.4 **Construction of certain terms.** In this Agreement:

“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;

“control” of an entity means:

- (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (i) cast, or control the casting of, more than 50 per cent of the maximum number of votes that might be cast at a general meeting of that entity; or

- (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of that entity; or
 - (iii) give directions with respect to the operating and financial policies of that entity with which the directors or other equivalent officers of that entity are obliged to comply; and/or
- (b) the holding beneficially of more than 50 per cent of the issued share capital of that entity (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital) (and, for this purpose, any Encumbrance over share capital shall be disregarded in determining the beneficial ownership of such share capital);

and **controlled** shall be construed accordingly;

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

“guarantee” means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness and **“guaranteed”** shall be construed accordingly;

“law” includes any form of delegated legislation, any order or decree, 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;

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

“person” includes any individual, firm, company, corporation, unincorporated body of persons or any state, political sub-division or any agency thereof 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;

“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;

“right” means any right, privilege, power or remedy, any proprietary interest in any asset and any other interest or remedy of any kind, whether actual or contingent, present or future, arising under contract or law, or in equity;

“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;

“liquidation”, “winding up”, “dissolution”, or “administration” of (i) a person or (ii) a **“receiver”** or **“administrative receiver”** or **“administrator”** in the context of insolvency proceedings or security enforcement actions in respect of a person shall be construed so as to include any equivalent or analogous proceedings or any equivalent and analogous person or appointee (respectively) under the law of the jurisdiction in which such person is established or incorporated or any jurisdiction in which such person carries on business including (in respect of proceedings) the seeking or occurrences of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors.

- 1.5 **Same meaning.** Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- 1.6 **Inconsistency.** Unless a contrary indication appears, in the event of any inconsistency between the terms of this Agreement and the terms of any other Finance Document when dealing with the same or similar subject matter (other than as relates to the creation and/or perfection of security) and, in the event of any conflict between any provision of this Agreement and any provision of any Finance Document (other than in relation to the creation and/or perfection of security) the provisions of this Agreement shall prevail.
- 1.7 **Finance Documents.** Where any other Finance Document provides that Clause 1.3 (*Interpretation*) and Clause 1.4 (*Construction of certain terms*), shall apply to that Finance Document, any other provision of this Agreement which, by its terms, purports to apply to all or any of the Finance Documents and/or any Security Party shall apply to that Finance Document as if set out in it but with all necessary changes.

2. **THE LOAN**

- 2.1 **Commitment to Lend.** The Lender, relying upon (inter alia) each of the representations and warranties set forth in Clause 6 (*Representations and warranties*)

and in each of the Security Documents, agrees to lend to the Borrowers, as joint and several borrowers, by way of the Tranches and upon and subject to the terms of this Agreement, the amount specified in Clause 1.1 (*Amount and Purpose*) and the Borrowers shall apply all amounts borrowed under the Commitment in accordance with Clause 1.1 (*Amount and Purpose*).

- 2.2 **Drawdown Notice and Commitment to Borrow.** Subject to the terms and conditions of this Agreement, the Commitment shall be advanced to the Borrowers following receipt by the Lender from the Borrowers of a Drawdown Notice not later than 10:00 a.m. (London time) on the second Banking Day before the date on which the drawdown is intended to be made.
- 2.3 **Drawdown Notice irrevocable.** A Drawdown Notice must be signed by a duly authorised signatory or attorney-in-fact of the Borrowers and shall be effective on actual receipt thereof by the Lender and, once served, it, subject as provided in Clause 3.6 (*Market disruption – Non Availability*), cannot be revoked without the prior consent of the Lender.
- 2.4 **Number of Tranches Agreed.** The Commitment shall be advanced to the Borrowers by the Tranches and after the advance of the Tranches any amount undrawn under the Commitment shall be cancelled and may not be borrowed by the Borrowers at a later date.
- 2.5 **Disbursement.** Upon receipt of the Drawdown Notice complying with the terms of this Agreement the Lender shall, subject to the provisions of Clause 7 (*Conditions precedent*), on the date specified in the Drawdown Notice, make the Commitment available to the Borrowers, and payment to the Borrowers shall be made to the account which the Borrowers specify in the Drawdown Notice.
- 2.6 **Application of Proceeds.** Without prejudice to the Borrowers' obligations under Clause 8.1(c) (*Use of Loan proceeds*), the Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement and shall have no responsibility for the application of the proceeds of the Loan (or any part thereof) by the Borrowers.
- 2.7 **Termination Date of the Commitment.** Any part of the Commitment undrawn and uncanceled at the end of the Availability Period shall thereupon be automatically cancelled.
- 2.8 **Evidence.** It is hereby expressly agreed and admitted by the Borrowers that abstracts or photocopies of the books of the Lender as well as statements of accounts or a certificate signed by an authorised officer of the Lender shall be conclusive binding and full evidence, save for manifest error, on the Borrowers as to the existence and/or the amount of the at any time Outstanding Indebtedness, of any amount due under this Agreement, of the applicable interest rate or Default Rate or any other rate

provided for or referred to in this Agreement, the Interest Period, the value of additional securities under Clause 8.5(a) (*Security Shortfall-Additional Security*), the payment or non payment of any amount due under a Finance Document. Nevertheless, enforcement procedures or any other court or out-of-court procedure can be commenced by the Lender on the basis of the above mentioned means of evidence including written statements or certificates of the Lender.

2.9

2.10 **No security or lien from other person.** The Borrowers have not taken or received, and the Borrowers undertake that until all moneys, obligations and liabilities due, owing or incurred by the Borrowers under this Agreement and the Security Documents have been paid in full, they will not take or receive, any security or lien from any other person liable or for any liability whatsoever.

2.11 **Interest to co-borrow.** The Borrowers have an interest in borrowing jointly and severally in that they are companies which have close financial co-operation and mutual assistance and in that the Commitment would not have been available to each one of the Borrowers separately.

3. **INTEREST**

3.1 **Normal Interest Rate.** The Borrowers shall pay interest on each Tranche, or as the case may be, the Loan (or as the case may be, each portion thereof to which a different Interest Period relates) in respect of each Interest Period (or part thereof) on each Interest Payment Date. The interest rate for the calculation of interest shall be the rate per annum determined by the Lender to be the aggregate of (i) the Applicable Margin and (ii) LIBOR for such Interest Period, unless there is an Alternative Rate in which case the interest rate for the calculation of interest shall be the rate per annum determined by the Lender to be the aggregate of (i) the Applicable Margin and (ii) the Alternative Rate.

3.2 **Selection of Interest Period.**

- (a) **Notice:** The Borrowers may by notice received by the Lender not later than 10:00 a.m. (London time) on the second Banking Day before the beginning of each Interest Period specify (subject to Clause 3.3 (*Determination of Interest Periods*) below) whether such Interest Period shall have a duration of three (3) or six (6) or twelve (12) months (or such other period as may be requested by the Borrowers and as the Lender, in its sole discretion, may agree to).
- (b) **Non-availability of matching deposits for Interest Period selected:** If, after the Borrowers by notice to the Lender have selected an Interest Period longer than 3 months, the Lender notifies the Borrowers on the same Banking 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 selected by the Borrowers will be available to it in the London Interbank Market when such Interest Period commences, that Interest Period shall be of such duration as the Lender may advise the Borrowers in writing.

- 3.3 **Determination of Interest Periods.** Every Interest Period shall, subject to market availability to be conclusively determined by the Lender, be of the duration specified by the Borrowers pursuant to Clause 3.2 (*Selection of Interest Period*) but so that:
- (a) the initial Interest Period applicable to the Loan will commence on the Drawdown Date and each subsequent Interest Period will commence forthwith upon the expiry of the preceding Interest Period;
 - (b) if any Interest Period would otherwise overrun one or more Repayment Dates, 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 or Dates the Loan shall be divided into parts so that there is one part equal to the amount of the Repayment Instalment due on each Repayment Date falling during that Interest Period and having an Interest Period ending on the relevant Repayment Date and another part equal to the amount of the balance of the Loan having an Interest Period determined in accordance with Clause 3.2 (*Selection of Interest Period*) and the other provisions of this Clause 3.3 and the expression “**Interest Period in respect of the Loan**” when used in this Agreement refers to the Interest Period in respect of the balance of the Loan; and
 - (c) if the Borrowers fail to specify the duration of an Interest Period in accordance with the provisions of Clause 3.2 (*Selection of Interest Period*) and this Clause 3.3, such Interest Period shall have a duration of three (3) months unless another period shall be agreed between the Lender and the Borrowers provided, always, that such period (whether of three months or different duration) shall comply with this Clause 3.3.
- 3.4 **Default Interest.**
- (a) Default interest: If the Borrowers fail to pay any sum (including, without limitation, any sum payable pursuant to this Clause 3.4) on its due date for payment under any of the Finance Documents, the Borrowers shall pay interest on such sum from the due date up to the date of actual payment (as well after as before judgement) at the rate determined by the Lender pursuant to this Clause 3.4. The period beginning 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 Lender each of which (other than the first, which shall commence on such due date) shall commence 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 Lender) of (i) two per cent (2%), per annum, (ii) the Applicable Margin and (iii) LIBOR. Such interest shall be due and payable on the last day of each such period as determined by the Lender 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 of principal which became due and payable by reason of a declaration by the Lender under Clause 9.2 (*Consequences of Default – Acceleration*) on a date other than an Interest Payment Date relating thereto, the first such period selected by the Lender 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 two per cent (2%) above the rate applicable thereto immediately before it fell due. If for the reasons specified in Clause 3.6 (*Market disruption – Non Availability*), the Lender is unable to determine a rate in accordance with the foregoing provisions of this Clause 3.4 (*Default interest*), interest on any sum not paid on its due date for payment shall be calculated at a rate determined by the Lender to be two per cent (2%) per annum above the aggregate of (i) the Applicable Margin and (ii) the Alternative Rate. Interest payable by the Borrowers as aforesaid shall be (at the sole discretion of the Lender) compounded quarterly and shall be payable on demand.

3.5 **Notification of Interest and interest rate.** The Lender shall notify the Borrowers promptly of the duration of each Interest Period and of each rate of interest determined by it under this Clause 3 without prejudice to the right of the Lender to make determinations at its sole discretion, 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 Lender’s notification. However, omission of the Lender to make such notification will not constitute and will not be interpreted as if to constitute a breach of obligation of the Lender except in case of wilful misconduct.

3.6 **Market disruption – Non Availability**

(a) Market Disruption Event: If and whenever, at any time prior to the commencement of any Interest Period, the Lender (in its discretion) shall have determined (which determination shall be conclusive in the absence of manifest error) that a Market Disruption Event has occurred in relation to the Loan for any such Interest Period, then the Lender shall forthwith give notice thereof (a “**Determination Notice**”) to the Borrowers and the rate of interest on the Loan (or the relevant part thereof) for that Interest Period shall be the percentage rate per annum which is the sum of:

- (i) the Applicable Margin; and

- (ii) the rate which expresses as a percentage rate per annum the cost to the Lender of funding the Loan (or the relevant part thereof) from whatever source it may select.
- (b) Suspension of drawdown: If the Determination Notice is given before the Commitment (or a part thereof) is advanced, the Lender's obligation to make the Commitment (or a part thereof) available shall be suspended while the circumstances referred to in the Determination Notice continue.
- (c) Meaning of "Market Disruption Event": In this Agreement "**Market Disruption Event**" means:
 - (i) at or about noon on the Quotation Day for the relevant Interest Period LIBOR is not available; and/or
 - (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Lender determines (in its sole discretion) that the cost to it of obtaining matching deposits in the London Interbank Market to fund the Loan (or the relevant part thereof) for such Interest Period would be in excess of the LIBOR for such Interest Period; and
 - (iii) before close of business in London on the Quotation Day for the relevant Interest Period, deposits in Dollars are not available to the Lender in the London Interbank Market in the ordinary course of business in sufficient amounts to fund the Loan (or the relevant part thereof) for such Interest Period.
- (d) Alternative basis of interest or funding:
 - (i) If a Market Disruption Event occurs and the Lender or the Borrowers so require, the Lender and the Borrowers shall enter into negotiations (for a period of not more than fourteen (14) days (the "**Negotiation Period**")) after the giving of the relevant Determination Notice with a view to agreeing a substitute basis for determining the rate of interest.
 - (ii) Any alternative basis agreed pursuant to paragraph (i) above shall be binding on the Lender and all Security Parties.
- (e) Alternative basis of interest in absence of agreement: If the Lender and the Borrowers will not enter into negotiations as provided in Sub-Clause 3.6(d)(i) or 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 Lender shall set the following Interest Period and an interest rate representing the cost of funding of the Lender in

Dollars of the Loan (or the relevant part thereof) plus the Applicable Margin for such Interest Period; if the relevant circumstances are continuing at the end of the Interest Period so set by the Lender, the Lender shall continue to set the following Interest Period and an interest rate representing its cost of funding in Dollars of the Loan (or the relevant part thereof) plus the Applicable Margin for such Interest Period.

- (f) Notice of prepayment: If the Borrowers do not agree with an interest rate set by the Lender in accordance with Clause 3.6(e) (*Alternative basis of interest in absence of agreement*), the Borrowers may give the Lender not less than 5 Banking Days' notice of their intention to prepay the Loan (or the relevant part thereof) at the end of the interest period set by the Lender.
- (g) Prepayment; termination of Commitment: A notice under Clause 3.6(f) (*Notice of Prepayment*) shall be irrevocable; and on the last Banking Day of the interest period set by the Lender, the Borrowers shall prepay (without premium or penalty) the Loan (or the relevant part thereof) together with accrued interest thereon at the applicable rate representing the Lender's cost of funding in Dollars of the Loan plus the Applicable Margin.

4. REPAYMENT - PREPAYMENT

4.1 **Repayment.** The Borrowers shall and it is expressly undertaken by the Borrowers to, repay the Loan as follows:

- (a) Hephaestus Tranche: the Hephaestus Tranche shall be repaid jointly and severally by the Borrowers by (i) fourteen (14) consecutive quarterly repayment instalments, each in the amount of Dollars Three hundred fifty thousand (\$350,000) (the "**Hephaestus Tranche Repayment Instalments**"), the first to be repaid on the 30th September 2017 and each of the subsequent ones consecutively falling due for payment on each of the dates falling three (3) months after the immediately preceding Repayment Date with the last (the 14th) of such Repayment Instalments falling due for payment on the Final Maturity Date and (ii) a balloon payment of Fourteen million five hundred thousand Dollars (\$14,500,000) (the "**Hephaestus Balloon Instalment**"), such Balloon Instalment payable together with the last (the 14th) Hephaestus Tranche Repayment Instalment on the Final Maturity Date;

Provided however that in the context of the Restructuring Plan and throughout the Deferral Period, the Borrowers are entitled without notice to the Lender or the Lender's consent to repay the Hephaestus Deferred Instalments on the Final Maturity Date together with the Hephaestus Balloon Instalment always to the extent not already reduced and/or repaid from time to time by any payments to be made pursuant to Clause 8.1 (k) (*Surplus Cash Income*);

- (b) **Pericles Tranche:** the Pericles Tranche shall be repaid jointly and severally by the Borrowers by (i) fourteen (14) consecutive quarterly repayment instalments, each in the amount of Dollars Two hundred thousand (\$200,000) (the “**Pericles Tranche Repayment Instalments**”), the first to be repaid on the 30th September 2017 and each of the subsequent ones consecutively falling due for payment on each of the dates falling three (3) months after the immediately preceding Repayment Date with the last (the 14th) of such Repayment Instalments falling due for payment on the Final Maturity Date and (ii) a balloon payment of Seven million seven hundred thousand Dollars (\$7,700,000) (the “**Pericles Balloon Instalment**”), such Balloon Instalment payable together with the last (the 14th) Pericles Tranche Repayment Instalment on the Final Maturity Date;

Provided however that in the context of the Restructuring Plan and throughout the Deferral Period, the Borrowers are entitled to pay **without** notice to the Lender or the Lender’s consent the Pericles Deferred Instalments on the Final Maturity Date together with the Pericles Balloon Instalment always to the extent not already reduced and/or repaid from time to time by any payments to be made pursuant to Clause 8.1 (k) (Surplus Cash Income); and

- (c) **Hector Tranche:** the Hector Tranche shall be repaid jointly and severally by the Borrowers by (i) fourteen (14) consecutive quarterly repayment instalments, each in the amount of Dollars Eight hundred fifty thousand (\$850,000) (the “**Hector Tranche Repayment Instalments**”), the first to be repaid on the 30th September 2017 and each of the subsequent ones consecutively falling due for payment on each of the dates falling three (3) months after the immediately preceding Repayment Date with the last (the 14th) of such Repayment Instalments falling due for payment on the Final Maturity Date and (ii) a balloon payment of Thirteen million eight hundred fifty thousand Dollars (\$13,850,000) (the “**Hector Balloon Instalment**”), such Balloon Instalment payable together with the last (the 14th) Hector Tranche Repayment Instalment on the Final Maturity Date;

Provided however that in the context of the Restructuring Plan and throughout the Deferral Period, the Borrowers are entitled to pay without notice notice to the Lender or the Lender’s consent the Hector Deferred Instalments on the Final Maturity Date together with the Hector Balloon Instalment always to the extent not already reduced and/or repaid from time to time by any payments to be made pursuant to Clause 8.1 (k) (*Surplus Cash Income*); and

and further Provided, always, that (aa) if the last Repayment Date under the Tranches would otherwise fall after the Final Maturity Date, such last Repayment Date shall be the Final Maturity Date, (bb) there shall be no

Repayment Dates in relation to a Tranche after the Final Maturity Date, (cc) on the Final Maturity Date, the Borrowers shall also pay to the Lender any and all other monies then payable under this Agreement and the other Security Documents, and (dd) if any of the Repayment Instalments shall become due on a day which is not a Banking Day, the due date therefor shall be extended to the next succeeding Banking Day, unless such Banking Day falls in the next calendar month, in which event such due date shall be the immediately preceding Banking Day.

- 4.2 **Voluntary Prepayment.** The Borrowers shall have the right, upon giving the Lender not less than five (5) Banking Days' notice in writing, to prepay, without penalty or prepayment fee, part or all of the Loan, together with all unpaid interest accrued on the amount to be prepaid and all other sums of money whatsoever due and owing from the Borrowers to the Lender hereunder or pursuant to the other Finance Documents, provided, that:
- (a) the giving of such notice by the Borrowers will irrevocably commit the Borrowers to prepay such amount as stated in such notice;
 - (b) if the Borrowers shall request consent to make such prepayment on a day other than the last day of an Interest Period the Borrowers will pay, in addition to the amount to be prepaid, any such sum as may be payable to the Lender pursuant to Clause 10.1 (*Miscellaneous Indemnities*) within three (3) Banking Days of demand by the Lender;
 - (c) each such prepayment shall be in an amount of \$100,000 or a whole multiple thereof or the balance of the Loan and will be applied by the Lender in the manner to be agreed between the Lender and the Borrowers;
 - (d) every notice of prepayment shall be effective only on actual receipt (including by fax) by the Lender, shall be irrevocable and shall oblige the Borrowers to make such prepayment on the date specified;
 - (e) the Borrowers shall have provided evidence satisfactory to the Lender that any consent required by the Borrowers 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 the Borrowers or any Security Party has been complied with;
 - (f) no amount prepaid may be re-borrowed; and
 - (g) the Borrowers may not prepay the Loan or any part thereof, save as expressly provided in this Agreement or as otherwise agreed by the Lender.

- 4.3 **Compulsory Prepayment in case of Total Loss or sale of a Mortgaged Vessel.**

- (a) **Total Loss:** On a Mortgaged Vessel becoming a Total Loss (i) prior to the advance of the Tranche relative to such Vessel (or any part thereof), the obligation of the Lender to advance the Tranche relative to such Vessel (or any part thereof) shall immediately cease and the Tranche relative to the Vessel so lost shall be reduced to zero or (ii) in the event that the Commitment, or as the case may be, a Tranche (or any part thereof) has already been advanced, the Borrowers shall prepay the Relevant Required Amount (as hereinafter defined) together with any and all additional amounts payable (as applicable) pursuant to the provisions of Clause 4.4, without penalty, premium or prepayment fee, the latest on the date falling one hundred and eighty (180) days following the occurrence of such Total Loss or, if earlier, on the date upon which the insurance proceeds in respect of such Total Loss are or Requisition Compensation is received by the relevant Borrower (or the Lender pursuant to the Security Documents).

The Lender shall notify to the Borrowers the total additional amounts payable (as applicable) pursuant to the foregoing provisions of this Clause 4.3(a) and the Borrowers shall be obliged to make such prepayment of the Loan and payment of interest and other monies as aforesaid on the date specified in the foregoing provisions of this Clause 4.3(a)

For the purpose of this Agreement a Total Loss of a Vessel is deemed to have occurred:

- (aa) in the case of an actual total loss of a Vessel, at the actual date and time such Vessel was lost but in the event of the date of the loss being unknown then the actual total loss shall be deemed to have occurred on the date falling fifteen (15) days after the date on which such Vessel was last reported;
- (bb) in the case of a constructive total loss of a Vessel, at the date and time notice of abandonment (the “**NOA date**”) of such Vessel is given to the insurers of such Vessel (provided a claim for such Total Loss is admitted by such insurers) or, if such insurers do not admit such a claim on the earlier of (aa) the date when either the total loss is subsequently admitted by the insurers, or (bb) a total loss is subsequently adjudged by a competent court of law or arbitration tribunal to have occurred and (cc) the date falling sixty (60) days after the NOA date, or, in the event that such notice of abandonment is not given by its Owner to the insurers of such Vessel, at the date and time on which occurred the incident and which may result, in the opinion of the Lender, in such Vessel being subsequently determined to be a Total Loss;

- (cc) 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;
 - (dd) in the case of Compulsory Acquisition of a Vessel, on the date upon which the relevant requisition of title or other compulsory acquisition occurs excluding a requisition for hire;
 - (ee) in the case of, condemnation, capture, seizure, confiscation, arrest, or detention of such Vessel (other than where the same amounts to Compulsory Acquisition of such Vessel) by any Government Entity, or by persons acting on behalf of any Government Entity or otherwise, which deprives its Owner of the use of such Vessel for more than ninety (90) days, upon the expiry of the period of ninety (90) days after the date upon which the relevant condemnation, capture, seizure or confiscation, arrest or detention (or within such longer time period the Borrowers may request and the Lender at its sole discretion may approve such consent not to be unreasonably withheld); and
 - (ff) in the case of hijacking, capture, seizure or confiscation of a Vessel arising as a result of a piracy or related incident unless such Vessel be released and restored to its Owner from such hijacking, capture, seizure or confiscation within one hundred twenty (120) days after the date upon which the relevant hijacking, capture, seizure or confiscation.
- (b) Compulsory Prepayment in case of sale of a Mortgaged Vessel: In the event of a sale or other disposal of a Mortgaged Vessel or in case of refinancing by another bank or if the Borrowers request, and the the Lender’s consent is granted for the discharge of the Mortgage registered on such Vessel, the Borrowers shall prepay an amount equal to the Relevant Required Amount and the Borrowers shall thereupon be obliged to make such partial prepayment of the Loan;

and for the purpose of this Clause 4.3 “**Relevant Required Amount**” in relation to a Mortgaged Vessel, means the higher of :

- (i) the total amount outstanding under the relevant Tranche and in particular (aa) the Hephaestus Tranche, in relation to the Hephaestus Vessel (bb) the Hector Tranche, in relation to the Hector Vessel and (cc) the Pericles Tranche, in relation to the Pericles Vessel; and

- (ii) the amount which is equal to the pro-rata share of the Market Value of the Mortgaged Vessel so lost or sold in the aggregate Market Value of all the Mortgaged Vessels as determined in accordance with Clause 8.5(b) (*Valuation of Vessels*) hereof immediately before the Total Loss or, as the case may be, the sale or other disposal of the relevant Mortgaged Vessel or discharge of the relevant Mortgage registered on such Mortgaged Vessel; and
- (iii) such amount of the Loan, which results in the Asset Cover Ratio being equal to the Asset Cover Ratio maintained immediately prior to the prepayment made pursuant to this Clause 4.3 (and for the duration of the Deferral Period and only for the purposes of this Clause 4.3 by way of the Lender testing and determining such applicable Asset Cover Ratio pursuant to the provisions of Clause 8.5(b));

In the event that after prepaying the Relevant Required Amount (and for the duration of the Deferral Period), the Asset Cover Ratio is tested and found below 130% and always provided that after such Relevant Required Amount prepayment there remain any surplus sale or insurance or other disposal proceeds (the "Surplus Proceeds"), the Loan shall be prepaid by any part of such Surplus Proceeds as would be required for the Asset Cover Ratio to reach to a percentage of 130% ; for the avoidance of doubt the Parties agree that the provisions of Clause 8.5(a) (Security Shortfall- Additional Security) shall not apply in this Clause 4.3 for the duration of the Deferral Period.

Provided however that in case the Hephaestus Vessel is sold pursuant to the provisions of Clause 8.1(j) (Sale of the Hephaestus Vessel), then the Relevant Required Amount shall be the total amount of the sale proceeds of the Hephaestus Vessel to be applied against full or partial repayment (as the case may be) of the Hephaestus Tranche with allocation and amortisation of the balance unpaid amount to be agreed between the Bank and the Borrowers.

For the avoidance of doubt in the event that the Total Loss or, as the case may be, sale proceeds of such Mortgaged Vessel are insufficient to pay in full the whole of the Relevant Required Amount (save for the provisions of Clause 8.1 (j), and save as otherwise provided in this Clause 4.3 for the duration of the Deferral Period the Borrowers shall be obliged to pay the shortfall to the Lender simultaneously with the payment of the full amount of the Total Loss or, as the case may be, sale proceeds of such Mortgaged Vessel;

provided, always, that if the relevant Mortgaged Vessel, so lost or sold or otherwise

disposed of, is the last Mortgaged Vessel, then the full amount of the insurance or, as the case may be, the sale proceeds shall apply against full repayment of the Outstanding Indebtedness and additionally the Borrowers shall prepay to the Lender the balance (if any) of the Outstanding Indebtedness in full and any remaining balance (after such prepayment) of the insurance or, as the case may be, the sale proceeds shall be paid to the Borrowers.

4.4 Amounts payable on prepayment

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

- (a) accrued interest on the prepaid amount to the date of such prepayment (calculated, in the case of a prepayment pursuant to Clause 3.6 (*Market disruption – Non Availability*) at a rate equal to the aggregate of the Applicable Margin and the cost to the Lender of funding the Loan);
- (b) any additional amount payable under Clause 5.3 (*Gross Up*);
- (c) all other sums payable by the Borrowers to the Lender under this Agreement or any of the other Finance Documents including, without limitation, any amounts payable under Clause 10 (*Indemnities - Expenses – Fees*): and
- (d) in relation to any prepayment made on a date other than an Interest Payment Date in respect of the whole of the Loan, it shall, in addition to the amount prepaid and accrued interest, pay to the Lender any amount which the Lender may certify is necessary to compensate the Lender for any Break Costs incurred by the Lender as a result of the making of the prepayment in question.

5. PAYMENTS, TAXES, LOAN ACCOUNT AND COMPUTATION

5.1 Payments – No set-off or Counterclaims

- (a) The Borrowers acknowledge that, in performing their obligations under this Agreement, the Lender will be incurring liabilities to third parties in relation to the funding of amounts to the Borrowers, such liabilities matching the liabilities of the Borrowers to the Lender and that it is reasonable for the Lender to be entitled to receive payments from the Borrowers gross on the due date in order that the Lender is put in a position to perform its matching obligations to the relevant third parties. Accordingly, all payments to be made by the Borrowers under this Agreement and/or any of the other Finance Documents shall be made in full, without any set-off or counterclaim whatsoever and, subject as provided in Clause 5.3, free and clear of any deductions or withholdings or Governmental Withholdings whatsoever, as follows:
 - (i) in Dollars, not later than 10.00 a.m. (London time) on the Banking Day (in Paris, London and New York City) on which the relevant payment is due under the terms of this Agreement; and

- (ii) to the Receiving Bank for the account of the Lender, reference, reference: **“HEPHAESTUS MARINE LLC - HECTOR MARINE LLC PERICLES MARINE LLC - LOAN AGREEMENT DATED: 11th AUGUST, 2017”**, provided, however, that the Lender shall have the right to change the place of account for payment, upon three (3) Banking Days’ prior written notice to the Borrowers.
- (b) If at any time it shall become unlawful or impracticable for the Borrowers to make, a payment under this Agreement to the relevant account or bank referred to in Clause 5.1(a), the Borrowers may request and the Lender may agree to alternative arrangements for the payment of the amounts due by the Borrowers to the Lender under this Agreement or the other Finance Documents.
- 5.2 **Payments on Banking Days.** All payments due shall be made on a Banking Day. If the due date for payment falls on a day which is not a Banking Day, that payment due shall be made on 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.
- 5.3 **Gross Up.** If at any time any law, regulation, regulatory requirement or requirement of any governmental authority, monetary agency, central bank or the like compels the Borrowers to make a payment subject to Governmental Withholdings, or any other deduction or withholding, the Borrowers shall pay to the Lender such additional amounts as may be necessary to ensure that there will be received by the Lender a net amount equal to the full amount which would have been received had payment not been made subject to such Governmental Withholdings or other deduction or withholding. The Borrowers shall indemnify the Lender against any losses or costs incurred by the Lender 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 shall, not later than thirty (30) days after each deduction, withholding or payment of any Governmental Withholdings, forward to the Lender official receipts and any other documentary receipts and any other documentary evidence reasonably required by the Lender in respect of the payment made or to be made of any deduction or withholding or Governmental Withholding. The obligations of the Borrowers under this provision shall, subject to applicable law, remain in force notwithstanding the repayment of the Loan and the payment of all interest due thereon pursuant to the provisions of this Agreement.

- 5.4 **Loan Account.** All sums advanced by the Lender to the Borrowers under this Agreement and all interest accrued thereon and all other amounts due under this Agreement from time to time and all repayments and/or payments thereof shall be debited and credited respectively to a separate loan account maintained by the Lender in accordance with its usual practices in the name of the Borrowers. The Lender may, however, in accordance with its usual practices or for its accounting needs, maintain more than one account, consolidate or separate them but all such accounts shall be considered parts of one single loan account maintained under this Agreement. In case that a ship mortgage in the form of Account Current is granted as security under this Agreement, the account(s) referred to in this Clause shall be the Account Current referred to in such mortgage.
- 5.5 **Computation.** All interest and other payments payable by reference to a rate per annum under this Agreement shall accrue from day to day and be calculated on the basis of actual days elapsed and a 360 day year.

6. **REPRESENTATIONS AND WARRANTIES**

- 6.1 **Representations and warranties.** The Borrowers, jointly and severally, hereby represent and warrant to the Lender that:
- (a) **Due Incorporation/ Due Formation /Valid Existence:** each of the Borrowers and the other corporate Security Parties is duly incorporated or formed, as appropriate and validly existing and in good standing under the laws of their respective countries of incorporation or formation, as appropriate, and have power to own their respective property and assets, to carry on their respective business as the same is now being lawfully conducted and to purchase, own, finance and operate vessels, or, as the case may be, manage vessels, as well as to undertake the obligations which they have undertaken or shall undertake pursuant to the Finance Documents;
 - (b) **Due Corporate Authority:** each of the Borrowers and the other corporate Security Parties has power to execute, deliver and perform its obligations under the Finance Documents to which it is a party and to borrow the Commitment under this Agreement and to make all the payments contemplated by, and to comply with, those Finance Documents to which it is or is to be a party, and each of the corporate Security Parties has power to execute and deliver and perform its obligations under the Finance Documents to which it is or is to be a party; all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same and no limitation on the powers of the Borrowers to borrow will be exceeded as a result of borrowing the Loan;

- (c) Litigation: no litigation or arbitration, tax claim or administrative proceeding (including action relating to any alleged or actual breach of the ISM Code and the ISPS Code) involving a potential liability of the Borrowers or any other Security Party is current or pending or threatened against the Borrowers or such other Security Party, which, if adversely determined, would have a material adverse effect on the business, position, profitability, assets or the financial condition of any of them;
- (d) No conflict with other obligations: the execution and delivery of, the performance of its obligations under, and compliance with the provisions of, the Finance 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 the Borrowers or any other Security Party 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 the Borrowers or any other Security Party is a party or is subject to or by which it or any of its property is bound, (iii) contravene or conflict with any provision of the memorandum and articles of association/articles of incorporation/by-laws/statutes or other constitutional documents of the Borrowers or any other Security Party or (iv) result in the creation or imposition of or oblige the Borrowers or any other Security Party to create any Encumbrance (other than a Permitted Encumbrance) on any of the undertakings, assets, rights or revenues of the Borrowers or any other Security Party;
- (e) Financial Condition: the financial condition of the Borrowers and of the other Security Parties has not suffered any material deterioration since that condition was last disclosed to the Lender;
- (f) No Immunity: neither the Borrowers nor any other Security Party nor any of their respective assets are entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding (which shall include, without limitation, suit, attachment prior to judgement, execution or other enforcement);
- (g) Shipping Company: each of the Borrowers and the Management Companies is a shipping company involved in the owning or, as the case may be, managing of ships engaged in international voyages and earning profits in free foreign currency;
- (h) Licences/Authorisation: every consent, authorisation, license or approval of, or registration with or declaration to, governmental or public bodies or authorities or courts required by any Security Party to authorise, or required by any Security Party in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of each of the Finance Documents

or the performance by each Security Party of its obligations under the Finance Documents to which such Security Party is or is to be a party has been obtained or made and is in full force and effect and there has been no default in the observance of any of the conditions or restrictions (if any) imposed in, or in connection with, any of the same so far as each Borrower is aware;

- (i) Perfectured Securities: when duly executed, the Finance Documents will create a perfected security interest in favour of the Lender, with the intended priority, over the assets and revenues intended to be covered, valid and enforceable against the Borrowers and the other Security Parties (as applicable);
- (j) No Notarisation/Filing/Recording: save for the registration of each of the Mortgages in the Registry, it is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of this Agreement or any of the other Finance Documents that it or they or any other instrument be notarised, filed, recorded, registered or enrolled in any court, public office or elsewhere or that any stamp, registration or similar tax or charge be paid on or in relation to this Agreement or the other Finance Documents;
- (k) Validity and Binding effect: the Finance Documents constitute (or upon their execution - and in the case of any mortgage upon its registration at the Registry - will constitute) valid and legally binding obligations of the relevant Security Parties enforceable against the Borrowers and the other Security Parties in accordance with their respective terms and that there are no other agreements or arrangements which may adversely affect or conflict with the Finance Documents or the security thereby created;
- (l) Valid Choice of Law: the choice of law agreed to govern this Agreement and/or any other Finance Document and the submission to the jurisdiction of the courts agreed in each of the Finance Documents are or will be, on execution of the respective Finance Documents, valid and binding on the Borrowers and any other Security Party which is or is to be a party thereto;
- (m) Direct obligations - 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 Financial Indebtedness of the Borrowers with the exception of any obligations which are mandatorily preferred by law;
- (n) Information: all information, accounts, statements of financial position, exhibits and reports furnished by or on behalf of any Security Party to the Lender in connection with the negotiation and preparation of this Agreement and each of the other Finance Documents are true and accurate in all material

- respects and not misleading, do not omit material facts and all reasonable enquiries have been made to verify the facts and statements contained therein; there are no other facts the omission of which would make any fact or statement therein misleading and, in the case of accounts and statements of financial position, they have been prepared in accordance with generally accepted accounting principles which have been consistently applied;
- (o) No Default: at the date of this Agreement and on the Drawdown Date no Default has occurred (or shall have occurred) and is continuing;
 - (p) No Taxes: no Taxes are imposed by deduction, withholding or otherwise on any payment to be made by the Borrowers under this Agreement and/or any other of the Finance Documents or are imposed on or by virtue of the execution or delivery of this Agreement and/or any other of the Finance Documents or any document or instrument to be executed or delivered hereunder or thereunder. In case that any Tax exists now or will be imposed in the future, it will be borne by the Borrowers;
 - (q) No Default under other Financial Indebtedness: neither the Borrowers nor the Corporate Guarantor has been declared in default under any agreement relating to Financial Indebtedness to which it is a party or by which it may be bound;
 - (r) Ownership/Flag/Seaworthiness/Class/Insurance of the Vessels: each of the Vessels is and on the Drawdown Date and at any time thereafter will be:
 - (i) in the absolute and free from Encumbrances (other than in favour of the Lender or any Permitted Encumbrances) ownership of the Owner thereof who is and will on and after such Drawdown Date be the sole legal and beneficial owner of such Vessel;
 - (ii) registered in the name of the Owner thereof through the Registry under the laws and flag of the relevant Flag State;
 - (iii) operationally seaworthy and in every way fit for service;
 - (iv) classed with the Classification Society and such class will be free of any overdue requirements and recommendations of the Classification Society affecting class;
 - (v) insured in accordance with the provisions of this Agreement and the Mortgage relative thereto;
 - (vi) managed by the Management Companies; and
 - (vii) in full compliance with the ISM and the ISPS Code;

- (s) No Charter: save for the Existing Charterparties and unless otherwise permitted in writing by the Lender, none of the Vessels is nor will on the Drawdown Date be subject to any charter or contract nor to any agreement to enter into any charter or contract which, if entered into after the Drawdown Date would have required the consent of the Lender under any of the Finance Documents and there will not on or before the Drawdown Date be any agreement or arrangement whereby the Earnings of such Vessel may be shared with any other person;
- (t) No Encumbrances: neither the Vessels (or any of them) nor their/her Earnings, Insurances or Requisition Compensation nor the Operating Accounts (or any of them) nor any other properties or rights which are, or are to be, the subject of any of the Security Documents will be, on the Drawdown Date subject to any Encumbrance save for the Permitted Encumbrances and further save for any Encumbrances securing the DB Indebtedness to DB;
- (u) Compliance with Environmental Laws and Approvals: except as may already have been disclosed by the Borrowers in writing to, and acknowledged in writing by, the Lender:
 - (i) the Borrowers and their respective Related Companies have complied with the provisions of all Environmental Laws;
 - (ii) the Borrowers and their respective Related Companies have obtained all Environmental Approvals and are in compliance with all such Environmental Approvals; and
 - (iii) neither the Borrowers nor any of their respective Related Companies have received notice of any Environmental Claim that the Borrowers or any of their respective Related Companies are not in compliance with any Environmental Law or any Environmental Approval;
- (v) No Environmental Claims: except as may already have been disclosed by the Borrowers in writing to, and acknowledged in writing by, the Lender:
 - (i) there is no Environmental Claim pending or, to the best of the Borrowers' knowledge and belief, threatened against the Borrowers (or any of them) or the Vessels (or any of them) or any of the Borrowers' Related Companies or any other Relevant Ship ; and
 - (ii) there has been no emission, spill, release or discharge of a Material of Environmental Concern from any of the Vessels or any other Relevant Ship or any of the Vessels owned by, managed or crewed by or chartered to any of the Borrowers which could give rise to an Environmental Claim;

- (w) Copies true and complete: the copies of the Management Agreements, the Existing Charterparties and any Charterparty delivered or to be delivered to the Lender pursuant to Clause 7.2 (Conditions precedent to the making of the Commitment) are, or will when delivered be, true and complete copies of such documents; such documents will when delivered constitute valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and there will have been no amendments or variations thereof or defaults thereunder;
- (x) Compliance with the ISPS code: each of the Vessels complies and will comply on the Drawdown Date and the Operator complies with the requirements of the ISM Code and the SMC which has been or, as the case may be, shall be issued in respect of such Vessel and shall remain valid on such Drawdown Date and thereafter throughout the Security Period.
- (y) Compliance with ISPS Code: each Owner has a valid and current ISSC in respect of its Vessel and is in full compliance with the ISPS Code;
- (z) FATCA: None of the Security Parties is a US Tax Obligor;
- (aa) Shareholding: all the shares in the Borrowers are legally owned by the Corporate Guarantor and all the shares in the Corporate Guarantor are legally and beneficially owned by the Shareholders as disclosed to the Lender in writing;
- (bb) Taxes paid: each of the Borrowers has paid all taxes when due and as applicable to, or imposed on or in relation to itself, its business or the Vessels; and
- (cc) Sanctions:
 - (A) (i) neither any Borrower nor any Security Party:
 - (1) is a Sanctions Restricted Person;
 - (2) owns or controls directly or indirectly a Sanctions Restricted Person; or
 - (3) has a Sanctions Restricted Person serving as a director, officer or, to the best of its knowledge, employee; and
 - (B) no proceeds of the Loan shall be made available, directly or to the knowledge of the Borrowers, or any of them (after reasonable enquiry) indirectly, to or for the benefit of a Sanctions Restricted Person contrary to Sanctions or for transactions in a Sanctions Restricted Jurisdiction nor shall they be otherwise directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions.

(dd) Compliance with certain undertakings: At the date of this Agreement, the Borrowers are in compliance with Clauses 8.2(a) (*Negative pledge*), 8.2(g) (*Other obligations*) and 11.2 (*Maintenance of Securities*);

- 6.3 **Acting for its own account - Money laundering.** Each of the Borrowers represents, warrants and confirms that it is the beneficiary of the Loan made or to be made available to it and it will promptly inform the Lender by written notice if it is not, or ceases to be, the beneficiary and notify the Lender in writing of the name and the address of the new beneficiary/beneficiaries; each of the Borrowers is aware that under applicable money laundering provisions, it has an obligation to state for whose account the Loan is obtained; each of the Borrowers confirms that, by entering into this Agreement and the other Finance Documents, it is acting on its own behalf and for its own account and it is obtaining the Loan for its own account. In relation to the borrowing by the Borrowers of the Loan, the performance and discharge of its obligations and liabilities under this Agreement or any of the other Finance Documents and the transactions and other arrangements effected or contemplated by this Agreement or any of the Finance Documents to which such Borrower is a party, it is acting for its own account and that the foregoing will not involve or lead to a contravention of any law, official requirement or other regulatory measure or procedure which has been implemented to combat “*money laundering*” (as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Community).
- 6.4 **Representations Correct.** At the time of entering into this Agreement all above representations and warranties or any other information given by the Borrowers and/or the Corporate Guarantor to the Lender are true and accurate.
- 6.5 **Repetition of Representations and Warranties.** The representations and warranties in this Clause 6 (*Representations and warranties*) shall be deemed to be repeated by the Borrowers on the Drawdown Date and on each Interest Payment Date throughout the Security Period as if made with reference to the facts and circumstances existing on each such day.

7. CONDITIONS PRECEDENT

- 7.1 **Conditions precedent to the execution of this Agreement.** The obligation of the Lender to make the Commitment or any part thereof available shall be subject to the condition that the Lender shall have received, not later than two (2) Banking Days before the day on which the Drawdown Notice in respect of the Commitment or such part thereof is given, the following documents and evidence in form and substance satisfactory to the Lender:
- (a) Constitutional Documents: a duly certified true copy of the Articles of Incorporation and By-Laws or the Memorandum and Articles of Association, or of any other constitutional documents, as the case may be, of each corporate Security Party;

- (b) Certificates of incumbency: a recent certificate of incumbency of each corporate Security Party issued by the appropriate authority or, as appropriate, signed by the secretary or a director thereof, stating the officers and the directors of each of them;
- (c) Resolutions: minutes of separate meetings of the directors and (if required) shareholders of each corporate Security Party at which there was approved (inter alia) the entry into, execution, delivery and performance of this Agreement, the other Finance Documents and any other documents executed or to be executed pursuant hereto or thereto to which the relevant corporate Security Party is or is to be a party;
- (d) Powers of Attorney: the original of any power(s) of attorney and any further evidence of the due authority of any person signing this Agreement, the other Finance Documents, and any other documents executed or to be executed pursuant hereto or thereto on behalf of any corporate person;
- (e) Consents: evidence that all necessary licences, consents, permits and authorisations have been obtained by any Security Party for the execution, delivery, validity, enforceability, admissibility in evidence and the due performance of the respective obligations under or pursuant to this Agreement and the other Finance Documents;
- (f) DOC: a copy of the DOC applicable to the Technical Manager certified as true and in effect;
- (g) Other documents: any other documents or recent certificates or other evidence which would be required by the Lender in relation to any corporate Security Party evidencing that the relevant Security Party has been properly established, continues to exist validly and is in good standing;
- (h) Management Agreement-Existing Charterparties: a copy of each of the following documents certified as true and complete by the legal counsel of the Borrowers:
 - (i) the Management Agreement evidencing that the relevant Vessel is managed by the Management Companies on terms acceptable to the Lender; and
 - (ii) the Existing Charterparties;

- (i) Operating Accounts: evidence that the Operating Accounts have been duly opened and all mandate forms and other legal documents required for the opening of an account under any applicable law, as well as signature cards and properly adopted authorizations have been duly delivered to and have been accepted by the compliance department of the Lender;
- (j) Shareholders: in relation to each Borrower, the Corporate Guarantor and each Management Company a declaration or other document in form satisfactory to the Lender stating respectively the full names and addresses of the Shareholders.

7.2 **Conditions precedent to the making of the Commitment.** The obligation of the Lender to make available the Commitment (or any part thereof) is subject to the further condition that the Lender shall have received prior to drawdown or, where this is not possible, on the Drawdown Date of the Commitment or the relevant part thereof:

- (a) Drawdown Notice: the Drawdown Notice duly executed, issued and delivered to the Lender as provided in Clause 2.2;
- (b) Security Documents: each of the Security Documents duly executed and where appropriate duly registered with the Registry or any other competent authority (as required);
- (c) Title and no Encumbrances: evidence that, prior to or simultaneously with the drawdown, each Vessel is duly registered in the ownership of the Owner thereof with the relevant Registry and under the laws and flag of the relevant Flag State free from any Encumbrances save for those in favour of the Lender (and DB in case of the Hector Vessel which shall be discharged) and otherwise as contemplated herein;
- (d) Insurances: evidence in form and substance satisfactory to the Lender that each Vessel has been insured in accordance with the insurance requirements provided for in this Agreement and the other Security Documents (in amounts not less than such sum which is at least equal to the greater of (i) the full Market Value of the relevant Vessel and (ii) such sum which when aggregated with the amounts of such insurances of the other Mortgaged Vessels is at least equal to 120% of the amount of the Loan), to be followed by full copies of cover notes, policies, certificates of entry or other contracts of insurance and irrevocable authority is hereby given to the Lender at any time at its discretion to obtain copies of the policies, certificates of entry or other contracts of insurance from the insurers and/or obtain any information in relation to the Insurances relating to such Vessel;

- (e) Insurers' confirmations: all necessary confirmations from the insurers of each Vessel that they will issue letters of undertaking and endorse notice of assignment and loss payable clauses on the Insurances, in form and substance satisfactory to the Lender in its sole discretion and - in the event of fleet cover - accompanied by a waiver for liens for unpaid premium of other vessels managed by the Management Companies and which are not subject to any mortgage in favour of the Lender) and (if required by the Lender) an opinion signed by an independent firm of marine insurance brokers appointed and/or approved by the Lender at the expenses of the Borrowers confirming the adequacy of the Insurances maintained on the Vessels;
- (f) Mll and MAPI: the Mll and MAPI shall have been effected by the Lender, but at the expense of the Borrowers, as provided in Clause 10.7 (*Mll and MAPI costs*):
- (g) Trading certificates: copies of the trading certificates of each of the Vessels certified as true and complete by the legal counsel of the Borrowers evidencing the same to be valid and in force;
- (h) Class confirmation: evidence from the Classification Society that each Vessel is classed with the class notation (referred to in the Mortgage relative thereto), with the Classification Society or with another classification society of like standing to be specifically approved by the Lender and remains free from any overdue requirements or recommendations affecting her class;
- (i) Fees: evidence that the fees referred to in Clause 10.9 (*Fees*) have been paid in full;
- (j) DOC: copy of the DOC referred to in paragraph (a) in the definition of the ISM Code Documentation certified as true and complete by the legal counsel of the Borrowers;
- (k) ISM Code Documentation: copies of the ISM Code Documentation as the Lender may by written notice to the Borrowers have requested not later than two (2) Banking Days before the Drawdown Date certified as true and complete in all material respects by the Borrowers and the relevant Management Company;
- (l) ISPS Code: true and complete copy of the ISSC certificates issued pursuant to the ISPS Code;
- (m) ISPS Code compliance:
 - (i) evidence satisfactory to the Lender that each Vessel is subject to a ship security plan which complies with the ISPS Code (such as proof that a security plan has been submitted to the recognized organisation for approval); and

- (ii) a copy, certified as a true and complete copy of the ISSC for each Vessel issued pursuant to the ISPS Code;
- (n) Access to class records: due authorisation in form and substance satisfactory to the Lender authorising the Lender to have access and/or obtain any copies of class records or other information at its discretion from the classification society of each Vessel specified in the Mortgage relative thereto, provided, however, that the Lender shall not exercise such right unless and until an Event of Default has occurred and is continuing;
- (o) Insurance Letter: the Insurance Letter duly executed;
- (p) Notices of assignment: duly executed notices of assignment in the form prescribed by the Security Documents;
- (q) Mortgage registration: evidence that the relevant Mortgage on the Drawdown Date will be registered against each Vessel through the Registry under the laws and flag of the relevant Flag State.
- (r) Confirmations from process agents: confirmation from any agents nominated in this Agreement and elsewhere in the other Finance Documents for the acceptance of any notice or service of process, that they consent to such nomination;
- (s) Acknowledgement of Receipt: a receipt in writing in form and substance satisfactory to the Lender including an acknowledgement and admission of the Borrowers and/or any other Security Party to the effect that the Commitment or any relevant part thereof (as the case may be) was drawn by the Borrowers and a declaration that all conditions precedent have been fulfilled, that there is no Event of Default and that all the representations and warranties are true and correct;
- (t) Legal opinions: draft opinion from lawyers appointed by the Lender as to all the matters referred to in Clauses 6.1(a) (*Due Incoworation/Valid Existence*) and (b) (*Due Corporate Authority*) and all such aspects of law as the Lender shall deem relevant to this Agreement and the other Finance Documents and any other documents executed pursuant hereto or thereto and any further legal or other expert opinion as the Lender at its sole discretion may require;
- (u) Flag State opinion: draft opinion of legal advisers to the Lender on matters of the laws of the relevant Flag State of each Vessel;

- (v) DB release: a deed of release executed by DB of all the obligations of the Hector Borrower, the Corporate Guarantor and the Management Companies under the DB Indebtedness together with executed notices of re-assignment of Insurances and Earnings relating to the Hector Vessel; and
- (w) Equity commitment for the implementation of the Restructuring Plan: evidence satisfactory to the Lender that:
 - (i) out of the committed but uncalled equity under the Corporate Guarantor's L.L.C. Agreement an amount of \$ 5,000,000 (five million Dollars) shall have been called and injected to the Corporate Guarantor by the Shareholders no later than the date hereof;
 - (ii) no later than 31 December 2019 (aa) further equity in an amount of \$8,000,000 (eight million Dollars) (and when aggregated with the amount set out in sub para (i) above hereinafter called the "**Equity**") to be injected by the Corporate Guarantor in the Group (including the Borrowers and any Associated Fleet Vessel Owner) utilizing funds to be advanced to the Corporate Guarantor pursuant to the K&T Loan Agreement, which equity amount of \$8,000,000 (or any shortfall thereof) shall be guaranteed by the Shareholders and (bb) the Equity shall be applied for the payment of any cash flow shortfall in connection with the Vessels and the Associated Fleet Vessels, including, but not limited to, any operating expenses or any other cash flow shortfall in connection with their operation, trading and financing under any Associate Fleet Vessel Finance Agreement (including, this Agreement) entered into within the context of the Restructuring Plan (as necessary) (but not for the payment of any shortfall between the sale proceeds of an Associated Fleet Vessel and monies payable under an Associated Fleet Vessel Finance Agreement relative thereto, in case such sale is to be implemented before the end of the Deferral Period) and (cc) any Equity which has not been applied for the purpose under (bb) above shall remain property of the Corporate Guarantor and shall not be distributed to its Shareholders;

7.3 **No change of circumstances.** The obligation of the Lender to advance the Commitment or any part thereof is subject to the further condition that at the time of the giving of the Drawdown Notice and on the Drawdown Date:

- (a) Representations and warranties: the representations and warranties set out in Clause 6 (*Representations and warranties*) and in each of the other Finance Documents are true and correct on and as of each such time as if each was made with respect to the facts and circumstances existing at such time;
- (b) No Default: no Default shall have occurred and be continuing or would result from the drawdown; and

- (c) **No change:** the Lender shall be satisfied that there has been no change in the ownership, management, operations and/or material adverse change in the financial condition of any Security Party which (change) might, in the reasonable opinion of the Lender, be detrimental to the interests of the Lender; and
- (d) **No Market Disruption Event:** none of the circumstances contemplated by Clause 3.6 (*Market disruption – Non Availability*) has occurred and is continuing.
- 7.4 **Know your customer and money laundering compliance.** The obligation of the Lender to advance the Commitment or any part thereof is subject to the further condition that the Lender, prior to or simultaneously with the drawdown, shall have received, to the extent required by any change in applicable laws and regulations or any changes in the Lender's own internal guidelines since the date on which the applicable documents and evidence were delivered to the Lender pursuant to Clause 8.12 (*Know your customer and money laundering compliance*), such further documents and evidence as the Lender shall require to identify the Borrowers and the other Security Parties and any other persons involved or affected by the transaction(s) contemplated by this Agreement.
- 7.5 **Further documents.** Without prejudice to the provisions of this Clause 7 the Borrowers hereby undertake with the Lender to make or procure to be made such amendments and/or additions to any of the documents delivered to the Lender in accordance with this Clause 7 and to execute and/or deliver to the Lender or procure to be executed and/or delivered to the Lender such further documents as the Lender and its legal advisors may reasonably require to satisfy themselves that all the terms and requirements of this Agreement have been complied with.
- 7.6 **Waiver of conditions precedent.** The conditions specified in this Clause 7 are inserted solely for the benefit of the Lender and may be waived by the Lender in whole or in part and with or without conditions. Without prejudice to any of the other provisions of this Agreement, in the event that the Lender, in its sole and absolute discretion, makes the Commitment available to the Borrowers prior to the satisfaction of all or any of the conditions referred to in Clause 7.1 (*Conditions precedent to the execution of this Agreement*), Clause 7.2 (*Conditions precedent to the making of the Commitment*) and Clause 7.3 (*No change of circumstances*), the Borrowers hereby covenant and undertake to satisfy or procure the satisfaction of such condition or conditions by no later than fourteen (14) days after the Drawdown Date or within such longer period as the Lender may, in its sole and absolute discretion, agree to or specify.

8. COVENANTS

- 8.1 **General.** The Borrowers jointly and severally undertake towards the Lender that, from the date of this Agreement and so long as any moneys are owing under the Finance Documents (or any of them) and until the full and complete payment and discharge of the Outstanding Indebtedness, each of them will:
- (a) **Notice on adverse change or Default:** immediately inform the Lender upon becoming aware of any occurrence which might adversely affect the ability of any Security Party to perform its obligations under any of the Finance Documents and, without limiting the generality of the foregoing, will inform the Lender of any Default forthwith upon becoming aware thereof and will from time to time, if so requested by the Lender, confirm to the Lender in writing that, save as otherwise stated in such confirmation, no Default has occurred and is continuing;
 - (b) **Consents and licenses:** without prejudice to Clause 6 (*Representations and warranties*) and Clause 7 (*Conditions precedent*), obtain or cause to be obtained, maintain in full force and effect and comply in all material respects with the conditions and restrictions (if any) imposed in, or in connection with, every consent, authorisation, license or approval of governmental or public bodies or authorities or courts and do or cause to be done, all other acts and things which may from time to time be necessary or desirable under applicable law for the continued due performance of all the obligations of the Security Parties under each of the Finance Documents (to which each is a party);
 - (c) **Use of Loan proceeds:** use the Loan exclusively for the purposes specified in Clause 1.1 (*Amount and Purpose*);
 - (d) **Pari passu:** ensure that its obligations under this Agreement shall, without prejudice to the provisions of this Clause 8.1, at all times rank at least pari passu with all its other present and future unsecured and unsubordinated Financial Indebtedness with the exception of any obligations which are mandatorily preferred by law and not by contract;
 - (e) **Financial statements:** furnish (or procure that it is furnished to) the Lender with annual audited consolidated and semi annual unaudited financial statements of the Corporate Guarantor prepared in accordance with internationally accepted accounting principles and practices consistently applied in respect of each Financial Year as soon as practicable but not later than 180 days-in the case of the audited statements and 90 days-in the case of unaudited statements after the end of the financial period to which they relate, such obligation to commence with the financial year ending 31st December, 2016;

- (f) Provision of financial and other information: promptly, when requested, provide the Lender with such financial and other information and accounts relating to the business, undertaking, assets, liabilities, revenues, financial condition, commitments, operations or affairs of each Borrower and the Corporate Guarantor as well as the Management Companies to the extent related to the management of the Vessels and such other further general information (including information regarding the classification records of the Vessels or their insurances) relating to each Borrower and the Corporate Guarantor, as applicable, as the Lender from time to time may reasonably require;
- (g) Information on the employment of the Vessels: provide the Lender from time to time as the Lender may request with information on the employment of the Vessels, as well as on the terms and conditions of any charterparty, contract of affreightment, agreement or related document in respect of the employment of the Vessels, such information to be certified by a senior officer of the Borrowers as to their correctness;
- (h) Banking operations: ensure that all banking operations in connection with the Vessels are carried out through the Operating Accounts;
- (i) Financial Covenants of the Corporate Guarantor: ensure that throughout the Security Period (save as otherwise provided in subpara (i) (aa), (bb) and (dd) hereof):
 - (i) the financial condition of the Corporate Guarantor on a consolidated basis and as evidenced by the most recent financial statements produced in accordance with sub-clause 8.1(e), shall be such that:
 - (aa) the Book Leverage Ratio will not from the Drawdown Date and i) at any time thereafter until 31st December 2018 exceed 85% and ii) from 1 January 2019 onwards and until the end of the Security Period, exceed 75%;
 - (bb) the minimum Net Worth shall not be less than \$50,000,000 (except for the duration of the Deferral Period);
 - (cc) the Consolidated Liquidity is equal to the higher of (i) Dollars Twelve Million Five Hundred Thousand (\$12,500,000) and (ii) an average of Dollars Three Hundred Thousand (\$300,000) per trading Fleet Vessel owned by the Corporate Guarantor at any relevant time; For the avoidance of doubt such Consolidated Liquidity shall apply throughout the Security Period and not only at the time of submission of the financial statements produced in accordance with sub-clause 8.1(e) or, as the case may be, the Compliance Certificate; and

- (dd) the Value Adjusted Leverage Ratio shall not exceed 75% (except for the duration of the Deferral Period);
- (ii) ensure that the Compliance Certificate for each Accounting Period is delivered along with the financial statements produced in accordance with sub-clause 8.1(e), substantially in the form set out in Schedule 2 executed by the authorized signatories of the Corporate Guarantor and duly completed and supported by the relevant calculations made in such Compliance Certificate;

The expressions used in this Clause 8.1 shall be construed in accordance with the accounting principles internationally accepted as used in the most recent financial statements produced in accordance with sub-clause 8.1(e), and for the purposes of this Agreement:

“Accounting Period” means each consecutive period of six (6) months falling on each of 30 June and 31st December of each financial year during the Security Period for which the financial statements are required to be delivered pursuant to sub-clause 8.1(e);

“Book Leverage Ratio” means, in respect of each Accounting Period and on a consolidated basis of the Corporate Guarantor, the ratio of Total Borrowings divided by the Total Assets during such period, as shown in the applicable financial statements of the Corporate Guarantor and as determined in accordance with IFRS.

“Consolidated Liquidity” in relation to the Corporate Guarantor means, in respect of an Accounting Period, the aggregate amount of free, unencumbered cash held by the Corporate Guarantor, including cash equivalents, and/or committed but not called-in equity **provided however that** such cash and/or cash equivalents shall not be less than the relevant aggregate (as same may be standing from time to time) Minimum Liquidity commitments of the Fleet Vessels following their respective loan restructuring and **further provided that** the minimum liquidity commitment per Fleet Vessel (and for the purposes hereof, Fleet Vessel shall mean each of the Associated Fleet Vessels and the Vessels) shall not be lower than the ones shown per Fleet Vessel in the table below (and for as long as each such Fleet Vessel is ultimately owned by the Corporate Guarantor).

For the purposes of defining Consolidated Liquidity, minimum liquidity (after Fleet Vessels’ respective loan restructuring) means:

- i. \$300,000 in relation to m/v **“MAIRA»;**
- ii. \$300,000 in relation to m/v **“NIKOLAS»;**
- iii. \$300,000 in relation to m/v **«NEW YORKER»;**

- iv. \$500,000 in relation to m/v “**CC ORCA**”;
- v. \$350,000 in relation to the Hephaestus Vessel;
- vi. \$350,000 in relation to the Pericles Vessel;
- vii. \$350,000 in relation to m/v “**AGIOS DIMITRIOS**”;
- viii. \$350,000 in relation to m/v “**MARY**”;
- ix. \$350,000 in relation to the Hector Vessel;
- x. \$500,000 in relation to m/v “**KATHERINE**”;
- xi. \$500,000 in relation to m/v “**TASMAN**”;
- xii. \$500,000 in relation to m/v “**DIMITRIS Y**”;
- xiii. \$500,000 in relation to m/v “**IAN H**”; and

TOTAL LIQUIDITY: \$5,150,000

“**Net Worth**” means equity payments already advanced in respect of the Fleet Vessels less accumulated dividends plus retained earnings of the Fleet Vessels as such term is defined in the applicable financial statements of the Corporate Guarantor determined in accordance with IFRS;

“**Total Assets**” means, in respect of each Accounting Period, the total assets of the Corporate Guarantor as stated in the most recent financial statements produced in accordance with sub-clause 8.1 (e);

“**Total Borrowings**” means at any relevant time the total long-term borrowings, inclusive of current portion of long-term borrowings as stated in the most recent financial statements produced in accordance with sub-clause 8.1(e);

“**Total Interest Bearing Debt**” means, in respect of the Corporate Guarantor, the amount of total liabilities of the Corporate Guarantor (as such term is defined in the most recent financial statements of the Corporate Guarantor produced in accordance with sub-clause 8.1 (e)) at any time on a consolidated basis which would be included in such most recent financial statements produced as total interest bearing debt in accordance with IFRS including the current portion of interest bearing debt (as such term is defined in the most recent financial statements of the Corporate Guarantor produced in accordance with sub-clause 8.1 (e)) but excluding any cash which is credited as collateral in favour of the Lender and is intended for the purposes of repaying such debt;

“Value Adjusted Leverage Ratio” means at any time the ratio (expressed as a percentage) of:

- i) the Total Interest Bearing Debt divided by
- ii) the Value Adjusted Total Assets;

“Value Adjusted Total Assets” means the Total Assets of the Corporate Guarantor adjusted (upwards or downwards) in each case for the difference of the book value of all Fleet Vessels (as evidenced in the most recent financial statements produced in accordance with sub-clause 8.1 (e)) and the aggregate Market Value of all Fleet Vessels;

- (j) **Sale of the Hephaestus Vessel:** ensure that upon expiry or termination of the Hephaestus Charterparty and in case such Vessel is not in a position to secure employment at rates sufficient to meet its obligations over the following six months (after expiry or termination of the Hephaestus Charterparty) in terms of Operating Expenses and interest payments, (and provided that (1) the cash injection of \$5,000,000 set out in 7.2 (w) (i) and (2) any relevant part of the equity of \$8,000,000 so injected as set out in 7.2 (w) (ii) respectively, are not sufficient at the time to cover the relevant interest payments - then the Hephaestus Borrower and the Lender shall enter into discussions in order to reach a common agreement on the sale of the Hephaestus Vessel. If no such agreement has been reached during a period of three (3) months, the Hephaestus Borrower shall, on the Lender’s request, sell the Hephaestus Vessel at arms’ length at a sale price of no less than her Market Value and on terms acceptable to the Lender in which event the provisions of sub para (b) of Clause 4.3 (*Compulsory Prepayment in case of Total Loss or sale of a Mortgaged Vessel*) shall not apply;
- (k) **Surplus Cash Income:** ensure that within forty five (45) days after the end of each Surplus Cash Income Calculation Period, the Lender is provided with the Mortgaged Vessels’ updated and sufficiently detailed financial and operational information and cash flow statements accompanied by the Surplus Cash Income Certificate for the Surplus Cash Income Calculation Period on the basis of which the Surplus Cash Income has been assessed (for the avoidance of doubt the required aggregate Borrowers’ minimum liquidity amount being held in the Borrowers’ Operating Accounts in respect of the Mortgaged Vessels (as per Clause 8.1 (1)) does not form part of Surplus Cash Income available for repayment of the Deferred Amounts). Upon confirmation of the Lender of its agreement on the Surplus Cash Income so assessed, such amount shall be transferred to the Retention Account and shall be applied by the Lender (and each of the Borrowers hereby irrevocably authorises and instructs the Lender so to do) on the next Interest Payment Date towards

repayment of the Deferred Amounts in the manner the Lender shall elect. If the Borrowers fail to deliver a Surplus Cash Income Certificate as above provided or if the Lender substantially disagrees with the Borrowers' calculations of the Surplus Cash Income as evidenced in the relevant Surplus Cash Income Certificate in respect to the relevant Surplus Cash Income Calculation Period, the Lender may assess at its discretion the amount of such Surplus Cash Income on the basis of financial information furnished by the Borrowers to the Lender pursuant to Clause 8.1(e). If the aggregate of the Surplus Cash Income applied in prepayment of the Loan pursuant to this Clause 8.1 (k) is less than \$1,100,000 (the "**Shortfall Amount**") for the duration of the period commencing on 1 January 2019 until the Surplus Cash Income Period ending on 31 December 2019, the Corporate Guarantor shall procure that part of the Equity is injected, and the Borrowers shall be obliged to utilise such equity to repay the Shortfall Amount to the Lender on the next Repayment Date falling due after receipt of the Surplus Cash Income Certificate relevant to that Surplus Cash Income Calculation Period. Such Shortfall Amount shall be applied in or towards prepayment of the then outstanding Repayment Instalments and Balloon Instalments in order of maturity.

- (l) Minimum Liquidity: ensure that throughout the Security Period each Borrower will maintain in its respective Operating Account minimum liquidity of Three hundred fifty thousand Dollars (\$350,000) or in the aggregate One million fifty thousand Dollars (\$1,050,000) in all Operating Accounts;
- (m) Most Favoured Nation: each Borrower and the Corporate Guarantor undertake to procure that, (i) during the Deferral Period in respect of items listed in sub-paragraphs (bb), (dd) and (ff) and (ii) throughout the duration of the Security Period in respect of items listed in sub-paragraphs (aa), (cc) and (ee), the Lender shall receive no less favourable treatment under this Agreement than that provided or to be provided under any Associated Fleet Vessel Finance Agreement (by way of amendment or supplement to, or refinancing of, that Associated Fleet Vessel Finance Agreement) in relation to:
 - (aa) any amendment to a maturity date under any such Associated Fleet Vessel Finance Agreement as a result of which the maturity date will fall before 31 December 2020 (save for the part of the loan made available under the ABN Facility Agreement which expires in June 2018);
 - (bb) the existence of any amortization of debt or any principal repayment until 31 December 2019 (inclusive);

- (cc) the provisions relevant to the calculation of the Surplus Cash Income and generally the cash sweep mechanism;
- (dd) the waiver of the security cover ratio (*Asset Cover Ratio*) at the Borrowers' level;
- (ee) the financial covenants relevant to the Value Adjusted Leverage Ratio, Book Leverage Ratio and minimum Net Worth of the Corporate Guarantor;
- (ff) any increase to the aggregate of any amounts to be paid in respect of interest solely related to margin (howsoever defined) for the duration of the Deferral Period (calculated as at the date of that Associated Fleet Vessel Finance Agreement).

Accordingly, should any member of the Group or the Corporate Guarantor provide to any other creditor more favourable treatment in relation to (aa) to (ff) above (and, in relation to subparagraphs (bb), (dd) and (ff) for the duration of the Deferral Period) than those which the Lender has been provided with under this Agreement or any other Finance Document, each Borrower and the Corporate Guarantor shall promptly advise the Lender of those arrangements and covenants and shall, upon the Lender's request, enter into such documentation supplemental to the Finance Documents as the Lender may require in order to achieve parity with the creditors under such relevant Associated Fleet Vessel Finance Agreement.

- (n) Subordination: ensure that i) all Financial Indebtedness of each respective Borrower to its shareholders, or to any of its Related Companies and ii) all Financial Indebtedness of the Corporate Guarantor under the K&T Loan Agreement is fully subordinated to the rights of the Lender under the Finance Documents, all in a form acceptable to the Lender ;
- (o) Obligations under Finance Documents: duly and punctually perform each of the obligations expressed to be assumed by it under the Finance Documents;
- (p) Payment on demand: pay to the Lender on demand any sum of money which is payable by the Borrowers to the Lender under this Agreement but in respect of which it is not specified in any other Clause when it is due and payable; and
- (q) Compliance with Laws and Regulations: comply, or procure compliance with all laws or regulations relating to the Borrowers and/or the Vessels, its ownership, operation and management or to the business of the Borrowers and cause this Agreement and the other Finance Documents to comply with

and satisfy all the requirements and formalities established by the applicable laws to perfect this Agreement and the other Finance Documents as valid and enforceable Finance Documents;

- (r) Compliance with ISM Code: procure that the Technical Manager and any Operator:
 - (i) will comply with and ensure that each of the Vessels and any Operator by no later than the Drawdown Date complies 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;
 - (ii) immediately inform the Lender if there is any threatened or actual withdrawal of the Borrowers', the Technical Manager's or an Operator's DOC or the SMC in respect of each of the Vessels; and
 - (iii) promptly inform the Lender upon the issue to the Borrowers, the Technical Manager or any Operator of a DOC and to each of the Vessels of an SMC or the receipt by the Borrowers, the Technical Manager or any Operator of notification that its application for the same has been realised;
- (s) Compliance with ISPS Code: procure that the Technical Manager or any Operator will:
 - (i) maintain at all times a valid and current ISSC in respect of each of the Vessels;
 - (ii) immediately notify the Lender in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC in respect of each of the Vessels; and
 - (iii) procure that each of the Vessels will comply at all times with the ISPS Code;
- (t) Maintenance of Encumbrances:
 - (i) at its own cost, do all that it reasonably can to ensure that any Finance Document validly creates the obligations and the Encumbrances which it purports to create; and
 - (ii) without limiting the generality of paragraph (t) (i) above, at its own cost, promptly register, file, record or enrol any Finance Document with any court or authority in all Relevant Jurisdictions, pay any stamp, registration or similar tax in all Relevant Jurisdictions in

respect of any Finance Document, give any notice or take any other step which may be 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 Encumbrance which it creates;

- (u) Inspections/Surveys: at any time that the Lender might consider to be necessary or useful, have each of the Vessels inspected and/or surveyed at the expense of the Borrowers by surveyors and/or inspectors appointed by the Lender and the Borrowers hereby duly authorise the Lender to review the insurance and operating records of the Borrowers provided that (i) the Borrowers will bear the cost of only one inspection or survey per year (unless an Event of Default has occurred, in which case the cost of all inspections and surveys are for the account of the Borrowers, for as long as an Event of Default has occurred and is continuing) and (ii) that all such inspections and surveys will not interfere with the smooth operation and trading schedule of the Vessels;
- (v) Notification of litigation: provide the Lender with details of any legal or administrative action involving the Borrowers (or any of them), any Security Party, the Vessels (or any of them), the Earnings or the Insurances as soon as such action is instituted or it becomes apparent to the Borrowers that it is likely to be instituted, unless it is clear that the legal or administrative action cannot be considered material in the context of any Finance Document.
- (w) Principal place of business: maintain its place of business, and keep its corporate documents and records, at the address referred to in Clause 17.1 (Notices); and will not establish, or do anything as a result of which it would be deemed to have, a place of business in the United Kingdom or the United States of America; and
- (x) Compliance with Covenants: duly and punctually perform all obligations under this Agreement and the other Finance Documents (to which it is a party).

8.2 **Negative undertakings.** Each of the Borrowers, jointly and severally with the other Borrowers, undertakes with the Lender that, from the date of this Agreement and until the full and complete payment and discharge of the Outstanding Indebtedness, it will not, without the prior written consent of the Lender:

- (a) Negative pledge:
 - (i) cease to hold the legal title to its Vessel, its Insurances and Earnings, free from all Encumbrances and other interests and rights of every kind, except for those created by the Finance Documents and the effect of the assignments contained in the General Assignment and any other Finance Documents; and

- (ii) permit any Encumbrance (other than a Permitted Encumbrance) to subsist, arise or be created or extended over all or any part of its present or future undertakings, assets, rights or revenues to secure or prefer any present or future Financial Indebtedness or other liability or obligation of the Borrowers or any other person;
- (b) No further Financial Indebtedness: incur no further Financial Indebtedness nor authorise or accept any capital commitments (other than that normally associated with the day to day operations and management of its Vessel) nor enter into any agreement for payment on deferred terms or hire agreement;
- (c) No merger: merge or consolidate with any other person;
- (d) No disposals:
 - (i) sell, transfer, abandon, lend, lease or otherwise dispose of or cease to exercise direct control over any part (being either alone or when aggregated with all other disposals falling to be taken into account pursuant to this Clause 8.2(d) (*Disposals*) material in the opinion of the Lender in relation to its undertakings, assets, rights and revenues) of its present or future undertaking, assets, rights or revenues (otherwise than by transfers, sales or disposals for full consideration in the ordinary course of trading) whether by one or a series of transactions related or not;
 - (ii) transfer, lease or otherwise dispose of 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;
- (e) No other business: undertake any type of business other than the ownership and operation of its Vessel and the chartering of its Vessel to third parties;
- (f) No acquisitions: acquire any further assets other than its Vessel and rights arising under contracts entered into by or on behalf of the other Borrower in the ordinary course of its business of owning, operating and chartering its Vessel;
- (g) No other obligations: incur any liability or obligations except liabilities and obligations arising under the Finance Documents or contracts entered into in the ordinary course of its business of owning, operating, managing and chartering its Vessel (and for the purposes of this Clause 8.2(g) (*No other obligations*) fees to be paid pursuant to the Management Agreement in respect of its Vessel shall be considered as permitted obligations under the Finance Documents);

- (h) No borrowing: incur any Borrowed Money except for Borrowed Money pursuant to the Finance Documents;
- (i) No repayment of borrowings: repay the principal of, or pay interest on or any other sum in connection with, any of its Borrowed Money except for Borrowed Money pursuant to the Finance Documents;
- (j) No Payments: unless otherwise provided in this Agreement and the other Finance Documents (and then only to the extent expressly permitted by the same) pay out any funds (whether out of the Earnings or out of moneys collected under the General Assignment and/or the other Finance Documents or not) to any person except in connection with the administration of such Borrower and the operation, trading, management and/or repair of its Vessel;
- (k) No guarantees: issue any guarantees or indemnities or otherwise become directly or contingently liable for the obligations of any person, firm, or corporation except pursuant to the Finance Documents and except for, guarantees or indemnities from time to time required, in the ordinary course of its business of trading, chartering and operating the Vessel owned by it, by any protection and indemnity or war risks association with which its Vessel is entered, guarantees required to procure the release of its Vessel from any arrest, detention, attachment or levy or guarantees or undertakings required for the salvage of its Vessel;
- (l) No Loans: make any loans or advances to, or any investments in any person, firm, corporation, joint venture or other entity including (without limitation) any loan or advance or grant any credit (save for normal trade credit in the ordinary course of business) to any officer, director, stockholder or employee or any other company managed by the Management Companies directly or through the managers of the Vessels or agree to do so;
- (m) No securities: permit any Financial Indebtedness of the Borrowers to any person (other than the Lender) to be guaranteed by any person (save, in the case of the Borrowers, for guarantees or indemnities from time to time required in the ordinary course by any protection and indemnity or war risks association with which each of the Vessels is entered, guarantees required to procure the release of any of the Vessels from any arrest, detention, attachment or levy or guarantees or undertakings required for the salvage of any of the Vessels);

- (n) No dividends - No disposal of assets:
purchase or otherwise acquire for value any shares of its capital or declare or pay any dividends or other distribution upon any of the issued shares or otherwise dispose of any assets to the Corporate Guarantor or its Shareholders unless and until (i) the Deferred Amounts have been fully repaid (ii) there is no breach of covenants under any Finance Document and (iii) the Asset Cover Ratio is at least 150%. Subject to compliance with (i), (ii) and (iii) above, the Borrowers may declare and distribute dividends once in the year under consideration, provided there is adequate predictability and visibility on the cash flow of the Vessels over the next 12 months; provided however that the Borrowers may freely declare or pay accrued dividends out of prior years' retained earnings; and
- (o) Change of Control permit that Mr. George Giouroukos ceases to be the chief executive officer of the Corporate Guarantor without the prior written consent of the Lender (which the Lender shall be at liberty to withhold) whereupon Borrowers shall be under obligation to prepay the Loan within a period of 90 days from the Lender's request to this effect;
- (p) No Subsidiaries: form or acquire any Subsidiaries;
- (q) Maintenance of Business Structure: change the nature, organisation and conduct of the business of such Borrower as owner of its Vessel or carry on any business other than the business carried on at the date of this Agreement;
- (r) Maintenance of Legal Structure: permit that any of the documents defining the constitution of the Borrowers and the Corporate Guarantor shall be materially (in the Lender's opinion) altered in any manner whatsoever;
- (s) No Encumbrance on Assets: allow any part of its undertaking, property, assets or rights, whether present or future, to be mortgaged, charged, pledged, used as a lien or otherwise encumbered without the prior written consent of the Lender;
- (t) Control: allow any change to be made directly or indirectly in the ownership, beneficial ownership, control or management of the Borrowers (or any of them) and/or the Corporate Guarantor or any share therein from that disclosed to the Lender at the negotiation of this Agreement or of the Vessels (or any of them); and

8.3 **Undertakings concerning the Vessels.** Each of the Borrowers, jointly and severally with the other Borrowers, undertakes with the Lender that, from the date of this Agreement and throughout the Security Period, it will:

- (a) Chartering: save for the Existing Charterparties, not without the prior written consent of the Lender (and then only subject to such conditions as the Lender may agree to) let or agree to let its Vessel:
 - (i) on demise charter for any period; or

- (ii) by any time or consecutive voyage charter for a term which exceeds or which by virtue of any optional extensions therein contained may exceed twelve (12) months' duration, such Lender's consent, in this case, not be unreasonably withheld; or
- (iii) on terms whereby more than two months' hire (or the equivalent) is payable in advance; or
- (iv) other than on an arm's length basis;
- (b) Management Companies: not without the prior written consent of the Lender, appoint a manager of its Vessel other than the Management Companies;
- (c) Ownership/Management/Control: ensure that its Vessel remains registered on the Drawdown Date in the ownership of its Owner under the laws of the relevant Flag State and thereafter ensure that its Vessel will maintain her present registration, ownership, management, control and beneficial ownership;
- (d) Class: ensure that its Vessel will remain in class free of overdue recommendations or average damage affecting class except as permitted by the Classification Society and provide the Lender on demand with copies of all class and trading certificates of its Vessel;
- (e) Insurances: ensure that all Insurances (as defined in the relevant Mortgage/General Assignment) of its Vessel are maintained and comply with all insurance requirements specified in this Agreement and in the relevant Mortgage/General Assignment and in case of failure to maintain its Vessel so insured, authorise the Lender (and such authorisation is hereby expressly given to the Lender) to have the right but not the obligation to effect such Insurances on behalf of its Owner (and in case that its Vessel remains in port for an extended period) to effect port risks insurances at the cost of the Borrowers which, if paid by the Lender, shall be Expenses; the Lender shall be entitled to obtain whenever a change of insurance placement occurs or an event of Default has occurred, an opinion from insurance consultants (appointed by the Lender at the Borrowers' expense) as to the adequacy of the insurances effected or to be effected in respect of each Vessel;
- (f) Transfer/Encumbrances: not without the prior written consent of the Lender sell or otherwise dispose of its Vessel or any share therein or create or agree to create or permit to subsist any Encumbrance over its Vessel (or any share or interest therein) other than Permitted Encumbrances;

- (g) Not imperil Flag, Ownership, Insurances: ensure that its Vessel is maintained and trades in conformity with the laws of the relevant Flag State, of its owning company or of the nationality of the officers onboard, the requirements of the Insurances and nothing is done or permitted to be done which could endanger the registration with the relevant Registry and Flag State of its Vessel or its unencumbered (other than Encumbrances in favour of the Lender under this Agreement and Permitted Encumbrances) ownership or its Insurances;
- (h) Mortgage Covenants: always comply with all the covenants provided for in the Mortgage relevant to its Vessel;
- (i) Assignment of Earnings: not assign or agree to assign otherwise than to the Lender the Earnings in respect of its Vessel or any part thereof.
- (j) Sharing of Earnings:
 - (i) not enter into any agreement or arrangement for the sharing of any Earnings;
 - (ii) not 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 Borrowers to any Earnings; and
 - (iii) not enter into any agreement or arrangement for the release of, or adverse alteration to, any guarantee or Encumbrance relating to any Earnings;
- (k) Chartering: ensure and procure that in the event of its Vessel being employed under a Charterparty of a duration longer than 12 months, the Owner of such Vessel shall execute and deliver to the Lender within fifteen (15) days of signing thereof a specific Charterparty Assignment in favour of the Lender of the benefit of such Charterparty and a notice of any such assignment addressed to the relevant charterer and use its best endeavors to provide an acknowledgement of receipt by the relevant charterer, all in form and substance satisfactory to the Lender;
- (l) No freight derivatives: not enter into or agree to enter into any freight derivatives or any other instruments which have the effect of hedging forward exposures to freight derivatives without the Lender's consent;

- (m) Vessels' inspection: permit the Lender by surveyors or other persons appointed by it on its behalf to board each Vessel at all reasonable times (but in any event without interfering with the ordinary trading of such Vessel, not more than once in any calendar year and always in accordance with Clause 8.1(v) hereof) for the purpose of inspecting her condition or for the purpose of satisfying itself with regard to proposed or executed repairs and to afford all proper facilities for such inspections and the costs (as supported by vouchers) of any and all such inspections shall be borne by the Borrowers; Provided that if an Event of Default occurs which is continuing the Lender may, by surveyors or other persons appointed by it, board the Ship and carry out such inspection at all times as it deems fit at the Borrowers' cost;
- (n) Compliance with Environmental Laws: comply with, and procure that all Environmental Affiliates of any Relevant Party (as appropriate or applicable) comply with, all Environmental Laws including without limitation, requirements relating to manning and establishment of financial responsibility and to obtain and comply with, and procure that all Environmental Affiliates of such Relevant Party (as appropriate or applicable) obtain and comply with, all Environmental Approvals and to notify the Lender forthwith:
 - (i) of any Environmental Claim for an amount or amounts made against the Vessels (or any of them);, and
 - (ii) upon becoming aware of any incident which may give rise to an Environmental Claim and to keep the Lender advised in writing of the Borrowers' response to such Environmental Claim on such regular basis and in such detail as the Lender shall require;
- (o) War Risk Insurance cover: in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit its Vessel to enter or trade to any zone which is declared a war zone by any government or by such Vessel's war risks insurers unless the prior written consent of the Vessel's insurers has been given and the Owner thereof has (at its expense) effected any special, additional or modified insurance cover which the Vessel's insurers may approve or require.

8.4 **Validity of Securities - Earnings - Taxes etc.** Each of the Borrowers, jointly and severally with the other Borrowers, undertakes with the Lender that, from the date of this Agreement and throughout the Security Period, it will:

- (a) Validity: ensure and procure that all governmental or other consents required by law and/or any other steps required for the validity, enforceability and legality of this Agreement and the other Finance Documents are maintained in full force and effect and/or appropriately taken;

- (b) Earnings: ensure and procure that, unless and until directed by the Lender otherwise (i) all the Earnings of its Vessel shall be paid to the relevant Operating Account and (ii) the persons from whom the Earnings are from time to time due are irrevocably instructed to pay them to the said Operating Account or to such account in the name of the relevant Borrower as shall be from time to time determined by the Lender in accordance with the provisions of this Agreement and/or the relevant Security Documents;
- (c) Taxes: pay all Taxes, assessments and other governmental charges when the same fall due, except to the extent that the same are being contested in good faith by appropriate proceedings and the Lender deems that adequate reserves have been set aside for their payment if such proceedings fail; and
- (d) Additional Documents: from time to time at the request of the Lender execute and deliver to the Lender or procure the execution and delivery to the Lender of all such documents as shall be deemed desirable at the discretion of the Lender for giving full effect to this Agreement, and for perfecting, protecting the value of or enforcing any rights or securities granted to the Lender under one or more of this Agreement, the other Finance Documents and any other documents executed pursuant hereto or thereto.

8.5 **Provision of additional security cover; prepayment of Loan.** Clause 8.5 applies if the Lender notifies the Borrowers that at any specific date or period referred to in the definition of “Relevant Percentage” below, the Asset Cover Ratio is below the “Relevant Percentage”:

In this Clause 8.5 (Provision of additional security cover; prepayment of Loan), “Relevant Percentage” means:

- (i) during the Deferral Period, the Asset Cover Ratio shall not be tested and shall not be applicable; and
- (ii) after the end of the Deferral Period and until the end of the Security Period, one hundred and thirty percent (130%).

(a) Security Shortfall- Additional Security: If at any time during the Security Period (other than during the Deferral Period), the Asset Cover Ratio shall be less than the Relevant Percentage, the Lender may give notice to the Borrowers requiring that such shortfall be remedied and then the Borrowers shall (unless the sole cause of such shortfall is the Total Loss of the relevant Vessel and the Owner thereof is in full compliance with its obligations, as per the provisions of this Agreement, in relation to such Total Loss) either;

- (i) prepay in accordance with Clause 4 (*Repayment and Prepayment*) within a period of thirty (30) days of the date of receipt by the Borrowers of the Lender’s said notice part (at least) of the Loan as will eliminate the shortfall ; or

- (ii) within thirty (30) days of the date of receipt by the Borrowers of the Lender's said notice constitute to the satisfaction of the Lender such further security for the Loan which in the opinion of the Lender has a net realisable value at least equal to the shortfall . Such additional security shall be constituted by:
 - a) additional pledged cash deposits in favor of the Lender in an amount equal to such shortfall with the Lender and in an account and manner to be determined by the Lender; and/or
 - b) any other security acceptable to the Lender at its absolute discretion to be provided in a manner determined by the Lender (including any additional security to be provided by a third party, as ensured by the Borrowers and accepted by the Lender).

Any such additional security provided to the Lender shall be released to the Borrowers (or any third party having provided such additional security as per 8.5 (a) (ii), b) above), by the Lender once the Asset Cover Ratio has been restored to 130% and remains restored over a period of 90 days. The provisions of Clause 4.3 (*Compulsory Prepayment in case of Total Loss or sale of a Vessel*) and Clause 4.4 (*Amounts payable on prepayment*) shall apply to prepayments under Clause 8.5(a)(i) save in case the Hephaestus Vessel is sold pursuant to the provisions of Clause 8.1 (j) (*Sale of Hephaestus Vessel*)

- (b) Valuation of Vessels: Each of the Vessels shall, for the purposes of this Clause 8.5 be valued in Dollars (at least once a year but not more than twice per year, unless there is an Event of Default in which case there will be no restriction as to the number of valuations of such Vessel may be obtained by the Lender at the Borrowers' cost, so long as an Event of Default is continuing) as and when the Lender shall reasonably require by two Approved Shipbrokers one appointed by the Lender in its sole discretion and one appointed by the Borrowers (such valuations to be made without, unless required by the Lender, physical inspection, and on the basis of a sale for prompt delivery for cash at arms length on normal commercial terms as between a willing buyer and a willing seller, without taking into account the benefit of any Charterparty or other engagement concerning the relevant Vessel). The Lender and the Borrowers agree to accept the arithmetic means of such valuations made by the Approved Shipbrokers appointed as aforesaid as conclusive evidence of the Market Value of each of the Vessels at the date of such valuations and the arithmetic mean of such two (2) valuations shall constitute the Market Value of such Vessel for the purposes of this Clause 8.5.

The value of each Vessel determined in accordance with the provisions of this Clause 8.5 shall be binding upon the Borrowers and the Lender until such time as any further such valuations shall be obtained.

- (c) Information: The Borrowers undertake to the Lender to supply to the Lender and to the relevant Approved Shipbrokers such information concerning each of the Vessels and its condition as the relevant Approved Shipbrokers may reasonably require for the purpose of making any such valuation.
- (d) Costs: All costs in connection with the Lender obtaining a valuation of each of the Vessels in the manner referred to in Clause 8.5(b) (Valuation of Vessels) and any and all valuations obtained after an Event of Default having occurred and being continuing, and any valuation of any additional security for the purposes of ascertaining the Security Value at any time as necessitated by the Borrowers electing to constitute additional security pursuant to Clause 8.5(a)(ii), b), and all legal and other expenses reasonably incurred by the Lender in connection with any matter arising out of this Clause 8.5 shall be borne by the Borrowers.
- (e) Valuation of additional security: For the purpose of this Clause 8.5, the market value of any additional security provided or to be provided to the Lender shall be determined by the Lender in its absolute discretion without any necessity for the Lender assigning any reason thereto and if such security consists of a Vessel, the market value shall be that shown by a valuation complying with the requirements of Clause 8.5(b) (Valuation of Vessels) (whereas the costs shall be borne by the Borrowers in accordance with Clause 8.5(d) (Costs)) or if the additional security is in the form of a cash deposit full credit shall be given for such cash deposit on a Dollar for Dollar basis.
- (f) Documents and evidence: In connection with any additional security provided in accordance with this Clause 8.5, the Lender shall be entitled to receive such evidence and documents of the kind referred to in Clause 7.1 (Conditions precedent to the execution of this Agreement) as may in the Lender's opinion be appropriate and such favourable legal opinions as the Lender shall in its absolute discretion require.

8.6 **Sanctions.:**

- (a) Without limiting Clause 8.11, each Borrower shall procure that:
 - (i) none of the Vessels will be used by or for the benefit of a Sanctions Restricted Person contrary to Sanctions;

- (ii) none of the Vessels will be used in trading in any Sanctions Restricted Jurisdiction or in any manner contrary to Sanctions;
 - (iii) none of the Vessels will be traded in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances.
- (b) Each Borrower shall:
- (i) not directly or to its knowledge (after reasonable enquiry) indirectly use or permit to be used all or any part of the proceeds of the Loan, or lend, contribute or otherwise make available such proceeds directly or to its knowledge (after reasonable enquiry) indirectly, to any person or entity (i) to finance or facilitate any activity or transaction of or with any Sanctions Restricted Person contrary to Sanctions or in any Sanctions Restricted Country, or (ii) in any other manner that would result in a violation of any Sanctions by any Party;
 - (ii) shall not fund all or part of any repayment or payment under the Loan out of proceeds derived directly or to its knowledge (after reasonable enquiry) indirectly from any activity or transaction with a Sanctions Restricted Person contrary to Sanctions or in a Sanctions Restricted Jurisdiction or which would otherwise cause any party to be in breach of any Sanctions; and
 - (iii) procure that no proceeds to its knowledge (after reasonable enquiry) from activities or business with a Sanctions Restricted Person contrary to Sanctions or in a Sanctions Restricted Jurisdiction are credited to its Operating Account.

8.7 **Covenants for the Securities Parties.** The Borrowers hereby, jointly and severally, undertake with the Lender that, from the date of this Agreement and so long as any moneys are owing under the Finance Documents and while all or any part of the Commitment remains outstanding, they will ensure and procure that all other Security Parties, and each of them duly and punctually comply, with the covenants in Clause 8.1 (*General*), Clause 8.3 (*Undertakings concerning the Vessels*), Clause 8.4 (*Validity of Securities - Earnings - Taxes etc.*), and Clause 8.6 (*Sanctions*) which are applicable to them mutatis mutandis.

8.8 **No security or lien from other person.** None of the Borrowers has taken or received, and the Borrowers hereby, jointly and severally, undertake that until all moneys, obligations and liabilities due, owing or incurred by the Borrowers under this Agreement and the Security Documents have been paid in full, it will not take or receive, any security or lien from any other person liable or for any liability whatsoever.

- 8.9 **Stock-holding.** Each of the Borrowers shall ensure that throughout the Security Period 100% of the shares of such Borrower shall be directly or indirectly held by the Corporate Guarantor.
- 8.10 **Application of FATCA.** The Borrowers shall procure that, unless otherwise agreed by the Lender, no Security Party shall become a US Tax Obligor.
- 8.11 **Compliance with laws etc.** Each Borrower shall:
- (a) comply, or procure compliance with all laws or regulations:
 - (i) relating to its respective business generally; and
 - (ii) relating to its Vessel, its ownership, employment, operation, management and registration including, but not limited to, the ISM Code, the ISPS Code, all Environmental Laws and the laws of the Flag State; and
 - (iii) all Sanctions;
 - (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals; and
 - (c) without limiting paragraph (a) above, not employ its Vessel nor allow its employment, operation or management in any manner contrary to any law or regulation including, but not limited to, the ISM Code, the ISPS Code and all Environmental Laws which has or is likely to have a material adverse effect on the business, position, profitability, assets or the financial condition of any of the Security Parties.
- 8.12 **Know your customer and money laundering compliance.** The Borrowers hereby, jointly and severally, undertake with the Lender that, from the date of this Agreement and so long as any moneys are owing under the Finance Documents and while all or any part of the Commitment remains outstanding, they will provide the Lender, or procure the provision of, such documentation and other evidence as the Lender shall from time to time require, based on applicable laws and regulations from time to time and the Lender's own internal guidelines from time to time to identify the Borrowers and the Corporate Guarantor, including the disclosure in writing of the ultimate legal and beneficial owner or owners of such entities, and any other persons involved or affected by the transaction(s) contemplated by this Agreement in order for the Lender to carry out and be satisfied it has complied with all necessary "*know your customer*" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

9. EVENTS OF DEFAULT

9.1 **Events.** There shall be an Event of Default if:

- (a) Non-payment: any Security Party fails to pay any sum payable by it under any of the Finance Documents at the time, in the currency and in the manner stipulated in the Finance Documents (and so that, for this purpose, sums payable on demand shall be treated as having been paid at the stipulated time if paid within five (5) Banking Days of demand and other sums due shall be treated as having been paid at the stipulated time if paid within two (2) Banking Days of their due due); or
- (b) Breach of Insurance and certain other obligations: any of the Borrowers fails to obtain and/or maintain the Insurances (as defined in, and in accordance with the requirements of, the Finance Documents) or if any insurer in respect of such Insurances cancels the Insurances or disclaims liability by reason, in either case, of mis-statement in any proposal for the Insurances or for any other failure or default on the part of the Borrowers (or any of them) or any other person or any of the Borrowers commits any breach of or omits to observe any of the obligations or undertakings expressed to be assumed by it under Clause 8 (*Covenants*); or
- (c) 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 Finance Documents (other than those referred to in Clauses 9.1(a) (*Non-payment*) and, in the case of the Borrowers only, 9.1(b) (*Breach of Insurance and certain other obligations*) above) and, in respect of any such breach or omission which in the opinion of the Lender is capable of remedy, such action as the Lender may require shall not have been taken within fifteen (15) days of the Lender notifying in writing the relevant Security Party of such default and of such required action; or
- (d) 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 Finance Documents or in any notice, certificate or statement referred to in or delivered under any of the Finance Documents is or proves to have been incorrect or misleading in any material respect; or
- (e) Cross-default: any Financial Indebtedness of any of the Borrowers and the Corporate Guarantor is not paid when due (unless contested in good faith) or any Financial Indebtedness of any of the Borrowers and the Corporate Guarantor becomes (as a result of an event of default, whether by declaration or automatically always 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 such

Security Party of a voluntary right of prepayment), or the lender of any of the Borrowers and the Corporate Guarantor declares any such Financial Indebtedness due and payable (in accordance with the provisions of the relevant facility agreement) or any facility or commitment available to any of the Borrowers and the Corporate Guarantor relating to Financial Indebtedness is withdrawn, suspended or cancelled by reason of any default (however described) of the person concerned unless the relevant Security Party shall have satisfied the Lender that such withdrawal, suspension or cancellation will not affect or prejudice in any way the relevant Security Party's ability to pay its debts as they fall due, or any guarantee given by any of the Borrowers and the Corporate Guarantor in respect of Financial Indebtedness is not honoured when due and called upon; or

(f) Legal process: any judgment or order made or commenced in good faith by a person against any of the Borrowers and the Corporate Guarantor is not stayed or complied with within sixty (60) days or a good faith creditor attaches or takes possession of, or a distress, execution, sequestration or other *bonafide* process is levied or enforced upon or sued out against, any of the undertakings, assets, rights or revenues of any of the Borrowers and the Corporate Guarantor and is not discharged within thirty (30) days (or any such longer time period as the Borrowers or the Corporate Guarantor may request and the Lender may approve); or

(g) Insolvency: Any Security Party:

(i) is unable or admits inability to pay its debts as they fall due;

(ii) is declared to be unable to pay its debts under applicable law;

(iii) suspends making payments on any of its debts; or

(iv) obtains or receives a deferral or suspension of payments, a rescheduling or re-organisation of debt (or certain debt) or an arrangement with all or a substantial proportion (by number or value) of creditors or of any class of them in respect of such deferral, suspension, rescheduling or re-organisation, strictly by court order or by the filing of documents with a court; or

Provided however that should such Security Party, by any reason, including without limitation, any actual or anticipated financial difficulties, commences, with prior written notice to the Lender, negotiations with one or more of its creditors (including the Lender in its capacity as such) with a view to rescheduling, deferring, re-organising or suspending, any of its indebtedness, the existence of such negotiations or the entering, as a result of such

negotiations, into any agreement or contract with one or more of its creditors (including the Lender in its capacity as such) setting the terms of any rescheduling, deferral, re-organization or suspension of its indebtedness shall not in itself constitute an Event of Default; and

further provided that and in the case of a Management Company this event shall be deemed as an Event of Default in case the Borrowers fail to appoint another Management Company within three (3) Banking Days from the Lender notifying in writing the relevant Security Party of such default;

- (h) Winding up: any petition is presented or other step is taken for the purpose of winding up any Security Party (other than the Management Companies) or an order is made or resolution passed for the winding up of any Security Party (other than the Management Companies) or a notice is issued convening a meeting for the purpose of passing any such resolution; or
- (i) Administration: any petition is presented or other step is taken for the purpose of the appointment of an administrator of any Security Party (other than the Management Companies) or the Lender believes that any such petition or other step is imminent or an administration order is made in relation to any Security Party (other than the Management Companies); or
- (j) Appointment of receivers and managers: any administrative or other receiver is appointed of any Security Party (other than the Management Companies) 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 (other than the Management Companies); or
- (k) Analogous proceedings: there occurs, in relation to any Security Party (other than the Management Companies), 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 opinion of the Lender, appears in that country or territory to correspond with, or have an effect equivalent or similar to, any of those mentioned in Clauses 9.1(f) (Legal process), 9.1(g), 9.1(i), 9.1(j), or any Security Party (other than the Management Companies) otherwise becomes subject, in any such country or territory, to the operation of any law relating to insolvency, bankruptcy or liquidation; or
- (l) Cessation of business: any Security Party suspends or ceases or threatens to suspend or cease to carry on its business and in the case of a Management Company this event shall constitute an Event of Default in case of failure of the Borrowers to appoint another Management Company (which shall be of the Lender's prior approval) within two (2) Banking Days from the Lender notifying in writing the relevant Security Party of such default; or

- (m) **Seizure:** all or a material part of the undertaking, assets, rights or revenues of, or shares or other ownership interests in, any Security Party (other than the Management Companies) are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any government, unless such Security Party provides satisfactory evidence to the Lender that all legal actions or proceedings necessary to contest such seizure and procure the release of such Security Party's assets, rights or revenues of, or shares or other ownership interests have been initiated and are still pending before a court or tribunal; or
- (n) **Invalidity:** any of the Finance 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 Finance 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
- (o) **Unlawfulness:** 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 Finance Documents or for the Lender to exercise the rights or any of them vested in it under any of the Finance Documents or otherwise; or
- (p) **Repudiation:** any Security Party repudiates any of the Finance Documents or does or causes or permits to be done any act or thing evidencing an intention to repudiate any of the Finance Documents; or
- (q) **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 Finance Documents becomes enforceable; or
- (r) **Material adverse change:** there occurs, in the opinion of the Lender, a material adverse change in the financial condition of any of the Borrowers and the Corporate Guarantor as described by the Borrowers or the Corporate Guarantor to the Lender in the negotiation of this Agreement, which might, in the opinion of the Lender, materially impair the ability of the above Security Parties (or any of them) to perform their respective obligations under this Agreement and the Finance Documents to which is or is to be a party; or
- (s) **Arrest:** any of the Vessels 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 such Owner shall fail to procure the release of such Vessel within a period of thirty (30) days thereafter (or within such longer time period the Borrowers may request and the Lender at its sole and absolute discretion may approve such approval not to be unreasonably withheld); or

- (t) Registration: the registration of any of the Vessels under the laws and flag of the relevant Flag State is cancelled or terminated without the prior written consent of the Lender or, if any of the Vessels is only provisionally registered on the Drawdown Date and is not permanently registered under the laws and flag of the relevant Flag State at least thirty (30) days prior to the deadline for completing such permanent registration; or
- (u) Unrest: the Flag State of any of the Vessels becomes involved in hostilities or civil war or there is a seizure of power in such Flag State by unconstitutional means if, in any such case, such event could in the opinion of the Lender reasonably be expected to have a material adverse effect on the security constituted by any of the Finance Documents, unless the relevant Vessel is reregistered within 10 days from the occurrence of such event on a Flag State which is not affected by hostilities or civil war or a seizure of power by unconstitutional means; or
- (v) Shareholdings: there is any change in the legal and/or ultimate beneficial ownership of the shares in any of the Borrowers and/or the Corporate Guarantor from that existing on the date of this Agreement as specified in Clause 6.1 (aa) without the prior written consent of the Lender; or
- (w) Operating Accounts: any moneys are withdrawn from the Operating Accounts (or any of them) other than in accordance with Clause 13 (Operating Accounts); or
- (x) Environment: any Relevant Party and/or the Technical Manager and/or any of their respective Environmental Affiliates fails to comply with any Environmental Law or any Environmental Approval or any of the Vessels or any Relevant Ship in excess of \$1,000,000 is involved in any incident which gives rise or which may give rise to any Environmental Claim, if in any such case, such non compliance or incident or the consequences thereof has a material adverse effect on the business assets, operations, property or financial condition of the Borrowers or any other Security Party or on the security created by any of the Finance Documents; or
- (y) P&I: any Borrower fails or omits to comply with any requirements of the protection and indemnity association or other insurer with which any of the Vessels is entered for insurance or insured against protection and indemnity risks (including oil pollution risks) to the effect that any cover in relation to such Vessel (including without limitation, liability for Environmental Claims arising in jurisdictions where such Vessel operates or trades) is liable to cancellation, qualification or exclusion at any time and the relevant Borrower does not effect within five (5) Banking Days any similar insurance cover to Lender's approval; or

- (z) **Change of Management:** any of the Vessels ceases to be managed by the Management Companies (for any reason other than the reason of a Total Loss or sale of such Vessel) without the approval of the Lender and the Owner of such Vessel fails to appoint another Management Company prior to the termination of the mandate with the previous Management Company; or
- (aa) **Deviation of Earnings:** any Earnings of any of the Vessels are not paid to the relevant Operating Account for any reason whatsoever (other than with the Lender's prior written consent or instruction); or
- (bb) **ISM Code and ISPS Code:** (without prejudice to the generality of Clause 9.1(c) (*Breach of other obligations*)) for any reason whatsoever the provisions of Clause 8.1 (r) (*Compliance with ISM Code*) and Clause 8.1(t) (*Compliance with ISPS Code*) are not complied with and the relevant Vessel ceases to comply with the ISM Code or, as the case may be, the ISPS Code; or
- (cc) **Material events:** any other event or events (whether related or not) occur(s) or circumstance arises which constitutes a material (in the opinion of the Lender) adverse change, from the position applicable as at the date of this Agreement, in the business, affairs or condition (financial or otherwise) of any Security Party (other than the Management Companies) (including any such material adverse change resulting from an Environmental Incident) the effect of which is likely, in the opinion of the Lender, to impair, delay or prevent the due fulfilment by any Security Party (other than the Management Companies) of any of its respective obligations or undertakings contained in this Agreement or any of the other Finance Documents and/or materially and adversely to affect the security created by any of the Finance Documents; or
- (dd) **Finance Documents:** any event of default (howsoever described or defined therein) occurs under the Finance Documents (or any of them).

9.2 **Consequences of Default - Acceleration.** The Lender may without prejudice to any other rights of the Lender (which will continue to be in force concurrently with the following), at any time after the happening of an Event of Default, which is continuing:

- (a) by notice to the Borrowers declare that the obligation of the Lender to make the Commitment (or any part thereof) available shall be terminated, whereupon the Commitment shall be reduced to zero forthwith; and/or
- (b) by notice to the Borrowers declare that the Loan and all interest accrued and all other sums payable under the Finance Documents have become due and payable, whereupon the same shall, immediately or in accordance with the terms of such notice, become due and payable without any further diligence, presentment, demand of payment, protest or notice or any other procedure from the Lender which are expressly waived by the Borrowers; and/or

- (c) put into force and exercise all or any of the rights, powers and remedies possessed by the Lender under this Agreement and/or under any other Finance Document and/or as mortgagee of each of the Vessels, mortgagee, chargee or assignee or as the beneficiary of any other property right or any other security (as the case may be) of the assets charged or assigned to it under the Finance Documents or otherwise (whether at law, by virtue of any of the Finance Documents or otherwise).

- 9.3 **Multiple notices; action without notice.** The Lender may serve notices under sub- Clauses (a) and (b) of Clause 9.2 (*Consequences of Default - Acceleration*), simultaneously or on different dates and it may take any action referred to in that Clause if no such notice is served or simultaneously with or at any time after service of both or either of such notices, it being understood and agreed that the non-service of a notice in respect of an Event of Default hereunder, or under any of the Finance Documents (whether known to the Lender or not), shall not be construed to mean that the Event of Default shall cease to exist and bring about its lawful consequences.
- 9.4 **Demand basis.** If, pursuant to Clause 9.2(b), the Lender declares the Loan to be due and payable on demand, the Lender may by written notice to the Borrowers (a) call for repayment of the Loan on such date as may be specified whereupon 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.
- 9.5 **Proof of Default.** It is agreed that (i) the non-payment of any sum of money in time will be proved conclusively by mere passage of time and (ii) the occurrence of this (non payment) shall be proved conclusively by a mere written statement of the Lender (save for manifest error).
- 9.6 **Exclusion of Lender's liability.** Neither the Lender nor any receiver or manager appointed by the Lender, shall have any liability to the Borrowers or a Security Party:
- (a) for any loss caused by an exercise of rights under, or enforcement of an Encumbrance created by, a Finance Document or by any failure or delay to exercise such a right or to enforce such an Encumbrance; 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 an Encumbrance or for any reduction (however caused) in the value of such an asset,
- except that this does not exempt the Lender or a receiver or manager from liability for losses shown to have been caused by the wilful misconduct of the Lender's own officers and employees or (as the case may be) such receiver's or manager's own partners or employees.

10. INDEMNITIES - EXPENSES – FEES

10.1 **Miscellaneous indemnities.** The Borrowers shall on demand (and it is hereby expressly undertaken by the Borrowers to) indemnify the Lender, without prejudice to any of the other rights of the Lender under any of the Finance Documents, against any loss (including loss of the Applicable Margin and any Break Costs) or expense which the Lender shall certify as sustained or incurred as a consequence of:

- (a) any default in payment by any of the Security Parties of any sum under any of the Finance Documents when due;
- (b) the occurrence of any Event of Default which is continuing;
- (c) any prepayment of the Loan or part thereof being made under Clause 4.2 (*Voluntary Prepayment*), Clause 4.3 (*Compulsory Prepayment in case of Total Loss or sale of a Vessel*), Clause 8.5(a) (*Security Shortfall-Additional security*) or Clause 12 (*Unlawfulness, Increased Costs*) or any other repayment 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; or
- (d) the Commitment or a Tranche not being advanced for any reason (excluding any default by the Lender) after the Drawdown Notice has been given, including, in any such case, but not limited to, any loss or expense sustained or incurred in maintaining or funding the Loan or any part thereof or in liquidating or re-employing deposits from third parties acquired to effect or maintain the Loan or any part thereof.

Without prejudice to its generality, this Clause 10.1 covers any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code, the ISPS Code, any Environmental Law and any Sanctions.

10.2 **Expenses.** The Borrowers shall (and it is hereby expressly undertaken by the Borrowers to) pay to the Lender on demand:

- (a) Initial and Amendment expenses: all expenses (including legal, printing and out-of-pocket expenses) reasonably incurred by the Lender in connection with the negotiation, preparation and execution of this Agreement and the other Finance Documents and of any amendment or extension of or the granting of any waiver or consent under this Agreement and/or any of the Finance Documents and/or in connection with any proposal by the Borrowers to constitute additional security pursuant to Clause 8.5(a) (*Security Shortfall- Additional Security*), whether any such security shall in fact be constituted or not;
- (b) Enforcement expenses: all expenses (including legal and out-of-pocket expenses) incurred by the Lender in contemplation of, or otherwise in

connection with, the enforcement of, or preservation of any rights under, this Agreement and/or any of the other Finance Documents, or otherwise in respect of the moneys owing under this Agreement and/or any of the other Finance Documents or the contemplation or preparation of the above, whether they have been effected or not;

- (c) Legal costs: the legal costs of the Lender's appointed lawyers, in respect of the preparation of this Agreement and the other Finance Documents as well as the legal costs of the foreign lawyers (if these are available) in respect of the registration of the Finance Documents or any search or opinion given to the Lender in respect of the Security Parties or the Vessels or the Finance Documents. The said legal costs shall be due and payable fifteen days from the date of issue of the relevant invoice (s); and

Other expenses: any and all other Expenses. **All expenses payable pursuant to this Clause 10.2** (*Expenses*) shall be paid together with value added tax (if any) thereon.

- 10.3 **Stamp duty.** The Borrowers shall pay any and all stamp, registration and similar taxes or charges (including those payable by the Lender) imposed by governmental authorities in relation to this Agreement and any of the other Finance Documents, and shall indemnify the Lender against any and all liabilities with respect to, or resulting from delay or omission on the part of the Borrowers to pay such stamp taxes or charges.
- 10.4 **Environmental Indemnity.** The Borrowers shall indemnify the Lender on demand and hold the Lender harmless from and against all costs, expenses, payments, charges, losses, demands, liabilities, actions, proceedings (whether civil or criminal) penalties, fines, damages, judgements, orders, sanctions or other outgoings of whatever nature which may be suffered, incurred or paid by, or made or asserted against the Lender at any time, whether before or after the repayment in full of principal and interest under this Agreement, relating to, or arising directly or indirectly in any manner or for any cause or reason out of an Environmental Claim made or asserted against the Lender if such Environmental Claim would not have been, or been capable of being, made or asserted against the Lender if it had not entered into any of the Finance Documents and/or exercised any of its rights, powers and discretions thereby conferred and/or performed any of its obligations thereunder and/or been involved in any of the transactions contemplated by the Finance Documents.
- 10.5 **Currency Indemnity.** If any sum due from the Borrowers under any of the Finance Documents or any order or judgement given or made in relation hereto has to be converted from the currency (the "**first currency**") in which the same is payable under the relevant Finance Document or under such order or judgement into another currency (the "**second currency**") for the purpose of (i) making or filing a claim or proof against the Borrowers or any other Security Party, as the case may be or (ii)

obtaining an order or judgement in any court or other tribunal or (iii) enforcing any order or judgement given or made in relation to any of the Finance Documents, the Borrowers shall (and it is hereby expressly undertaken by the Borrowers to) indemnify and hold harmless the Lender from and against any loss suffered as a result of any difference 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, judgement, claim or proof. 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.

- 10.6 **Maintenance of the Indemnities.** The indemnities contained in this Clause 10 shall apply irrespective of any indulgence granted to the Borrowers or any other party from time to time and shall continue to be in full force and effect notwithstanding any payment in favour of the Lender and any sum due from the Borrowers under this Clause 10 will be due as a separate debt and shall not be affected by judgement being obtained for any other sums due under any one or more of this Agreement, the other Finance Documents and any other documents executed pursuant hereto or thereto.
- 10.7 **MII and MAPI costs.** The Borrowers shall reimburse the Lender on demand for any and all costs incurred by the Lender (as conclusively certified by the Lender) in effecting and keeping effected a Mortgagee’s Interest Insurance (herein “*MI*”) and a mortgagee’s interest additional perils (pollution) insurance policy (herein “*MAPI*”), each of which the Lender shall effect for an amount not exceeding 110% of the Loan upon such terms and with such insurers as the Lender shall in its absolute discretion appoint and instruct in respect of any such MII and MAPI policy and provided that in the event that the Lender effects any such Insurance on the basis of any mortgagee’s open cover, the Borrowers shall pay on demand to the Lender its proportion of premium due in respect of the Vessel(s) for which such insurance cover has been effected by the Lender, and any certificate of the Lender in respect of any such premium due by the Borrowers shall (save for manifest error) be conclusive and binding upon the Borrowers.
- 10.8 **Communications Indemnity.** It is hereby agreed in connection with communications that:
- (a) Express authority is hereby given by the Borrowers to the Lender to accept all tested or untested communications given by facsimile, cable or otherwise, regarding any or all of the notices, requests, instructions or other communications under this Agreement, subject to any restrictions imposed by the Lender relating to such communications including, without limitation (if so required by the Lender), the obligation to confirm such communications by letter.

- (b) The Borrowers shall recognise any and all of the said notices, requests, instructions or other communications as legal, valid and binding, when these notices, requests, instructions or communications come from the fax number mentioned in Clause 17.1 (*Notices*) or any other fax usually used by it or its managing company and are duly signed or in case of emails are duly sent by the person appearing to be sending such notice, request, instruction or other communication.
- (c) The Borrowers hereby assume full responsibility for the execution of the said notices, requests, instructions or communications and promises and recognises that the Lender shall not be held responsible for any loss, liability or expense that may result from such notices, requests, instructions or other communications. It is hereby undertaken by the Borrowers to indemnify in full the Lender from and against all actions, proceedings, damages, costs, claims, demands, expenses and any and all direct and/or indirect losses which the Lender may suffer, incur or sustain by reason of the Lender following such notices, requests, instructions or communications.
- (d) With regard to notices, requests, instructions or communications issued by electronic and/or mechanical processes (e.g. by facsimile), the risk of equipment malfunction, including, without limitation, paper shortage, transmission errors, omissions and distortions is assumed fully and accepted by the Borrowers, save in case of Lender's gross misconduct.
- (e) The risks of misunderstandings and errors resulting from notices, requests, instructions or communications being given as mentioned above, are for the Borrowers and the Lender will be indemnified in full pursuant to this Clause save in case of Lender's gross misconduct.
- (f) The Lender shall have the right to ask the Borrowers to furnish any information the Lender may require to establish the authority of any person purporting to act on behalf of the Borrowers for these notices, requests, instructions or communications but it is expressly agreed that there is no obligation for the Lender to do so. The Lender shall be fully protected in, and the Lender shall incur no liability to the Borrowers for acting upon the said notices, requests, instructions or communications which were believed by the Lender in good faith to have been given by the Borrowers or by any of its authorised representative(s).
- (g) It is undertaken by the Borrowers to use their best endeavours to safeguard the function and the security of the electronic and mechanical appliance(s)

such as fax(es) etc., as well as the code word list, if any, and to take adequate precautions to protect such code word list from loss and to prevent its terms becoming known to any persons not directly concerned with its use. The Borrowers shall hold the Lender harmless and indemnified from all claims, losses, damages and expenses which the Lender may incur by reason of the failure of the Borrowers to comply with the obligations under this Clause.

10.9 **Fees.** The Borrowers shall pay to the Lender (a) a management fee in an amount of Seventy five thousand Dollars (\$75,000) and (b) an arrangement fee in an amount of Two hundred fifty seven thousand five hundred Dollars (\$257,500) both such fees being payable on the date hereof. The fees referred to in this Clause 10.9 shall be payable by the Borrowers to the Bank whether or not any part of the Commitment is ever advanced (unless the Commitment is not advanced to the Borrowers by default of the Lender).

10.10 **Gross-up in the event of a FATCA Deduction – Borrowers**

- (a) If a Borrower is required to make a FATCA Deduction, such Borrower shall make that FATCA Deduction and any payment required in connection with that FATCA Deduction within the time allowed and in the minimum amount required by FATCA.
- (b) If a FATCA Deduction is required to be made by a Borrower, the amount of the payment due from such Borrower shall be increased to an amount which (after making any FATCA Deduction) leaves an amount equal to the payment which would have been due if no FATCA Deduction had been required.
- (c) The Borrowers shall promptly upon becoming aware that they/it must make a FATCA Deduction (or that there is any change in the rate or the basis of a FATCA Deduction) notify the Lender accordingly.
- (d) Within thirty days of making either a FATCA Deduction or any payment required in connection with that FATCA Deduction, the Borrowers shall deliver to the Lender evidence reasonably satisfactory to the Lender that the FATCA Deduction has been made or (as applicable) any appropriate payment paid to the relevant governmental or taxation authority.

10.11 **FATCA status**

- (a) Subject to Clause 10.11(c) below, each party shall, within ten Banking Days of a reasonable request by another party:
 - (i) confirm to that other party whether it is:
 - (aa) a FATCA Exempt Party; or

- (bb) not a FATCA Exempt Party; and
 - (ii) supply to that other party such forms, documentation and other information relating to its status under FATCA (including its applicable passthru percentage or other information required under the Treasury Regulations or other official guidance including intergovernmental agreements) as that other party reasonably requests for the purposes of that other party's compliance with FATCA.
- (b) If a party confirms to another party pursuant to Clause 10.11(a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that party shall notify that other party reasonably promptly.
- (c) Clause 10.11(a)(i) above shall not oblige the Lender to do anything which would or might in its opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any policy of the Lender;
 - (iii) any fiduciary duty; or
 - (iv) any duty of confidentiality.
- (d) If a party fails to confirm its status or to supply forms, documentation or other information requested in accordance with Clause 10.11(a) above (including, for the avoidance of doubt, where Clause 10.11(c) above applies), then:
 - (i) if that party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
 - (ii) if that party failed to confirm its applicable passthru percentage then such party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable passthru percentage is 100%,until (in each case) such time as the party in question provides the requested confirmation, forms, documentation or other information.

11. SECURITY, APPLICATION, AND SET-OFF

- 11.1 **Securities.** As security for the due and punctual repayment of the Loan and payment of interest thereon as provided in this Agreement and of all other Outstanding Indebtedness the Borrowers shall ensure and procure that the Security Documents are duly executed and, where required, registered in favour of the Lender in form and substance satisfactory to the Lender, at the time specified herein or otherwise as required by the Lender and ensure that such security consists, on the Drawdown Date, of the Security Documents relative thereto as provided in Clause 7.2 (*Conditions precedent to the making of the Commitment*).
- 11.2 **Maintenance of Securities.** It is hereby undertaken by the Borrowers that the Finance Documents shall both at the date of execution and delivery thereof and so long as any moneys are owing and/or due under this Agreement and/or under the other Finance Documents be valid and binding obligations of the respective Security Parties thereto and rights of the Lender enforceable in accordance with their respective terms and that they will, at the expense of the Borrowers, execute, sign, perfect and do any and every such further assurance, document, act, omission or thing as in the opinion of the Lender may be necessary or desirable for perfecting the security contemplated or constituted by the Finance Documents.
- 11.3 **Application of funds.**

Upon the occurrence of an Event of Default:

- (a) **Order of application:** All moneys received by the Lender under or pursuant to any of the Finance Documents and expressed to be applicable in accordance with this Clause 11.3 shall be applied by the Lender in the following manner:
- (i) **Firstly**, in or towards payment of Expenses and all sums (including any Break Costs) other than principal or interest which may be due to the Lender under this Agreement and the other Finance Documents or any of them at the time of application;
 - (ii) **Secondly**, in or towards payment of any default interest
 - (iii) **Thirdly**, in or towards payment of any arrears of interest (other than default interest) due in respect of the Loan or any part thereof;
 - (iv) **Fourthly**, in or towards repayment of the Loan whether the same is due and payable or not; and ;
 - (v) **Fifthly** the surplus (if any) after the full and complete payment of the Outstanding Indebtedness shall be released and paid to the Borrowers or to whomsoever else shall be entitled to receive such surplus
- (b) **Variation of order of application:** The Lender may, without prior notice to the Borrowers and the Security Parties, provide, at its sole discretion, for a different order of

application from that set out in Clause 11.3(a) (*Order of application*) either as regards a specified sum or sums or as regards sums in a specified category or categories, without affecting the obligations of the Borrowers to the Lender.

- (c) Insufficient balance: For the avoidance of doubt, in the event that moneys so received are insufficient to pay in full the whole of the Outstanding Indebtedness, the Lender shall be entitled to collect the shortfall from the Borrowers or any other person liable therefor.
- (d) Appropriation rights overridden: This Clause 11.3 shall override any right of appropriation possessed, and any appropriation made, by the Borrowers or any other Security Party.

11.4 **Set off**

- (a) Express authority is hereby given by the Borrowers to the Lender without prejudice to any of the rights of the Lender at law, contractually or otherwise, at any time after a Default has occurred and without prior notice to the Borrowers:
 - (i) to apply any credit balance standing upon any account of the Borrowers with any branch of the Lender (including, without limitation, the Operating Accounts and the Retention Account and in whatever currency in or towards satisfaction of any sum due to the Lender from the Borrowers under this Agreement, the General Assignment and/or any of the other Finance Documents; and/or
 - (ii) in the name of each of the Borrowers and/or the Lender to do all such acts and execute all such documents as may be necessary or expedient to effect such application; and/or
 - (iii) to combine and/or consolidate all or any accounts in the name of the Borrowers with the Lender.

For all or any of the above purposes authority is hereby given to the Lender to purchase with the moneys standing to the credit of any such account or accounts such other currencies as may be necessary to effect such application. The Lender shall not be obliged to exercise any right given by this Clause 11.4; 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 the Lender is entitled (whether under the general law or any document). The Lender shall notify the Borrowers forthwith upon the exercise of any right of set-off giving full details in relation thereto.

12. **UNLAWFULNESS, INCREASED COSTS AND BAIL IN**

- 12.1 **Unlawfulness.** If any change in, or introduction of, any law, regulation or regulatory requirement or any request of any central bank, monetary, regulatory or other authority or any order of any court renders it unlawful or contrary to any such regulation, requirement, request or order for the Lender to advance the Commitment or the relevant part thereof (as the case may be) or to maintain or fund the Loan, notice shall be given promptly by the Lender to the Borrowers whereupon the Commitment shall be reduced to zero and the Borrowers shall be obliged to prepay the Loan in accordance with such notice, together with accrued interest thereon to the date of prepayment and all other sums payable by the Borrowers under this Agreement.
- 12.2 **Change of circumstances.** If any change in or in the interpretation of any applicable law or regulation, by any government or governmental authority or agency, makes it unlawful for the Lender to maintain or give effect to its obligations or to claim or receive any amount payable to the Lender under this Agreement, then the Lender may serve written notice on the Borrowers declaring its obligations under this Agreement terminated in whole or in part, whereupon the same shall terminate forthwith and the Borrowers will immediately repay the Loan and accrued interest to the date of prepayment together with all other Outstanding Indebtedness to the Lender pursuant to the terms of the notice.
- 12.3 **Increased Cost.** If, as a result of (a) 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 the 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 or other banking or monetary controls or requirements which affects the manner in which the Lender allocates capital resources to its obligations hereunder and those (including, but not limited to, “*Basel III*”) which shall replace, amend and/or supplement the provisions set out in the statement (as in effect as of the date of this Agreement) of the Basle II committee on banking supervision dated July 1988 and entitled “*international convergence of capital measurement and capital structures*” as implemented by the European Union by the Capital Requirements Directive (2006/48/EC and 2006/49/EC) or any amendatory or substitute agreement thereof, or (b) compliance by the Lender with any request from any applicable fiscal or monetary authority (whether or not having the force of law but, if not having the force of law, with which the Lender habitually complies) or (c) any other set of circumstances affecting the Lender:
- (a) the cost to the Lender of making the Commitment or any part thereof or maintaining or funding the Loan is increased or an additional cost on the Lender is imposed; and/or

- (b) subject the Lender to Taxes or the basis of Taxation (other than Taxes or Taxation on the overall net income of the Lender) in respect of any payments to the Lender under this Agreement or any of the other Finance Documents is changed; and/or
- (c) the amount payable or the effective return to the Lender under any of the Finance Documents is reduced; and/or
- (d) the Lender'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 Lender's obligations under any of the Finance Document is reduced; and/or
- (e) the Lender is required to make a payment or forgo a return on or calculated by references to any amount received or receivable by it under any of the Finance Documents is required; and/or
- (f) the Lender is required to incur or sustain a loss 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 case (subject to Clause 12.7 (*Exception*)) the Borrowers shall pay to the Lender, from time to time, upon demand, such additional moneys as shall indemnify the Lender for any increased or additional cost, reduction, payment, or direct loss whatsoever.

- 12.4 **Claim for increased cost.** The Lender will promptly notify the Borrowers of any intention to claim indemnification pursuant to Clause 12.3 (*Increased Cost*) and such notification will be a conclusive and full evidence binding on the Borrowers as to the amount of any increased cost or reduction and the method of calculating the same and the Borrowers shall be allowed to rebut such evidence by any means of evidence save for witness. A claim under Clause 12.3 (*Increased Cost*) may be made at any time and must be discharged by the Borrowers within seven (7) days of demand. It shall not be a defence to a claim by the Lender under this Clause 12.4 that any increased cost or reduction could have been avoided by the Lender. Any amount due from the Borrowers under Clause 12.3 (*Increased Cost*) shall be due as a separate debt and shall not be affected by judgement being obtained for any other sums due under or in respect of this Agreement.
- 12.5 **Central Bank or European Central Bank reserve requirements indemnity.** The Borrowers shall on demand promptly indemnify the Lender against any cost incurred or loss suffered by the Lender as a result of its complying with the minimum reserve requirements of the European Central Bank and/or with respect to maintaining required reserves with the relevant national Central Bank to the extent that such compliance relates to the Commitment or deposits obtained by it to fund the whole or part of the Loan and to the extent such cost or loss is not recoverable by the Lender under Clause 12.3 (*Increased Cost*).

- 12.6 **Option to prepay.** If any additional amounts are required to be paid by the Borrowers to the Lender by virtue of Clause 12.3 (*Increased Cost*), and the Borrowers are not willing to continue to compensate the Lender for such increased costs by virtue of Clause 12.3, the Borrowers shall be entitled, on giving the Lender not less than fourteen (14) days prior notice in writing, to prepay (without premium or penalty) the Loan and accrued interest thereon, together with all other Outstanding Indebtedness, on the next Interest Payment Date. Any such notice, once given, shall be irrevocable.
- 12.7 **Exception.** Nothing in Clause 12.3 (*Increased Cost*) shall entitle the 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 subject of an additional payment under Clause 5.3 (*Gross Up*).
- 12.8 **Bail In.** Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:
- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
 - (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

13. **ACCOUNTS**

13.1 **General.** The Borrowers hereby, jointly and severally, undertake with the Lender that they will:

- (a) on or before the Drawdown Date open the Operating Accounts and the Retention Account;

- (b) procure that all moneys payable to the Borrowers in respect of the Earnings of their respective Vessels pursuant to the General Assignment shall, unless and until the Lender directs to the contrary, be paid to the respective Operating Accounts, free from Encumbrances and rights of set off other than those created by or under the Finance Documents and, shall be held there on trust for the Lender and shall be applied as provided in Clause 13.2 (*Application of Earnings*); and
- (c) procure that all Operating Expenses of each Vessel are paid from the respective Operating Account of the Owner thereof;

13.2 **Application of Earnings. Retention requirements** Subject to the terms and conditions of the Accounts Pledge Agreement, no monies shall be withdrawn from the Operating Account save as hereinafter provided.

- (a) Unless and until a Default shall occur (whereupon the provisions of Clause 11.3 (*Application of funds*) shall be applicable), all monies paid to the Operating Accounts (whether being Earnings or not) after discharging the costs (if any) incurred by the Lender, in collecting such monies, shall be applied by the Lender as follows:
 - (i) first: in payment of any and all sums whatsoever (other than in respect of principal of the Loan and interest thereon) due and payable to the Lender hereunder (such sums to be paid in such order as the Lender may in its sole discretion elect);
 - (ii) second: during each month of the Security Period, the Borrowers shall cause to be transferred from the Operating Accounts to the Retention Account out of the aggregate amount of the Earnings of the Vessels received in the Operating Accounts during the preceding month (and each of the Borrowers hereby irrevocably authorises and instructs the Lender so to do):
 - (aa) one third (1/3rd) of the amount of each Repayment Instalments specified in Clause 4.1 falling due for payment on the next following Repayment Date; and
 - (bb) the relevant fraction of the amount of interest on the Loan falling due on the next due date for payment of interest under this Agreement.

The expression “**relevant fraction**” in relation to an amount of interest on the Loan falling due for payment means a fraction (which shall be notified by the Lender to the Borrowers at the beginning of each Interest Period) where the numerator is always one and where the

denominator shall always be three (3) except in the case of an Interest Period of less than three (3) months, in which case the denominator shall be the number of months comprised in such Interest Period;

- (b) third: in payment of the Operating Expenses; and
- (c) fourth: any Surplus Cash Income shall be paid to the Retention Account in accordance with the provisions of Clause 8.1 (1);
- (d) fifth: any credit balance shall be available to the Borrowers to be used for any purpose not inconsistent with the Borrowers' other obligations under this Agreement.

- 13.3 **Drawings from Operating Account.** None of the Borrowers shall be entitled to draw from its Operating Account if an Event of Default has occurred and is continuing.
- 13.4 **Interest.** Any amounts for the time being standing to the credit of an Operating Account shall bear interest at the rate from time to time offered by the Lender to its customers for Dollar deposits of similar amounts and for periods similar to those for which such amounts are likely to remain standing to the credit of such Operating Account. Such interest shall, provided that (a) the foregoing provisions of this Clause 13.4 shall have been complied with and (b) no Event of Default [(or event which, with the giving of notice and/or lapse of time or other applicable condition, might constitute an Event of Default)] shall have occurred, be available to the Borrowers.
- 13.5 **Obligations unaffected.** The provisions of this Clause 13 do not affect:
- (a) the liability and absolute obligation of the Borrowers to repay the Loan and pay interest thereon on the due dates as provided in Clause 3 (*Interest*) and Clause 4 (*Repayment-Prepayment*) shall constitute or be construed as constituting a manner or postponement thereof; or
 - (b) any other liability or obligation of the Borrowers or any other Security Party under any Finance Document.
- 13.6 **Authorisation.** The Lender shall be entitled (but not obliged) at any time, and to this respect the Lender is hereby authorised by each of the Borrowers from time to time to debit the Operating Accounts (or any of them) without notice to the Borrowers in order to discharge any amount due and payable to the Lender under the terms of this Agreement and the Security Documents or otherwise howsoever in connection with the Loan, including, without limitation, any payment of which the Lender has become entitled to demand under Clause 10 (*Indemnities - Expenses - Fees*).

- 13.7 **Relocation of Operating Accounts.** The Borrowers will comply with any written requirement of the Lender from time to time as to the location or re-location of the Operating Accounts (or any of them) and will from time to time enter into such documentation as the Lender may require in order to create or maintain in favour of the Lender an Encumbrance in each Operating Account, all at the cost and expense of the Borrowers.
- 13.8 **Application on Event of Default.** Upon the occurrence of an Event of Default or at any time thereafter (whether or not notice of default has been given to the Borrowers) the Lender shall be entitled, but not bound, to set off and apply all sums standing to the credit of the Operating Accounts (or any of them) and accrued interest (if any) without notice to the Borrowers in the manner specified in Clause 11.3 (*Application of funds*) (and express and irrevocable authority is hereby given by the Borrowers to the Lender so to set off and apply the same, by debiting the Operating Account accordingly by the same, and the Lender shall be released to the extent of such set off and application).
- 13.9 **No Encumbrances.** The Borrowers hereby jointly and severally covenant with the Lender that none of the Operating Accounts and/or any moneys therein shall be charged, assigned, transferred or pledged nor shall there be granted by the Borrowers (or either of them) or suffered to arise any third party rights over or against the whole or any part of the Operating Accounts (or any of them) other than in favour of the Lender as covenanted herein and in the General Assignment.
- 13.10 **Operation of Operating Accounts.** Each of the Operating Accounts shall be operated by the relevant Borrower to the degree permitted by this Agreement and the General Assignment in accordance with the Lender's usual terms and conditions (full knowledge of which such Borrower hereby acknowledges) and subject to the Lender's usual charges levied on such accounts and/or transactions conducted on such accounts (as from time to time notified by the Lender to the Borrowers).
- 13.11 **Release.** Upon payment in full of the Outstanding Indebtedness, any balance then standing to the credit of the Operating Accounts (or any of them) shall be released to the Borrowers or to whomsoever is entitled to such funds.
- 13.13 **Manager's Account.** Technomar Shipping Inc. of Liberia, acting in its capacity as technical manager of the Vessels shall maintain (and the Lender fully agrees for such company so to maintain) an account opened in its name and held with the Lender and bearing Account Number: 00.201.736.041”

14. **ASSIGNMENT, TRANSFER, PARTICIPATION, LENDING OFFICE**

- 14.1 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Lender and the Borrowers and their respective successors and permitted assigns.

- 14.2 **No Assignment by the Borrowers and other Security Parties.** None of the Borrowers nor any other Security Parties may assign or transfer any of its rights and/or obligations under this Agreement or any of the other Finance Documents or any documents executed pursuant to this Agreement and/or the other Finance Documents other than as agreed with the Lender.
- 14.3 **Assignment by the Lender.** The Lender may at any time, without the consent of, but with prior consultation with the Borrowers and the other Security Parties, cause all or any part of its rights, benefits and/or obligations under this Agreement and the other Finance Documents to be assigned or transferred to:
- (i) another branch, Subsidiary or affiliate of, or company controlled by, the Lender, or
 - (ii) another first class bank or financial institution, or
 - (iii) any member of the European System of Central Banks, or
 - (iv) any insurance company, social security fund, pension fund, capital investment company, trust or capital investment company or
 - (v) after an Event of Default that is continuing passed its cure period, to any other person
- (in each case an “Assignee” or a “Transferee”);
- provided that the Assignee or Transferee, shall deliver to the Lender such undertakings as the Lender may approve, whereby it becomes bound by the terms of this Agreement and agrees to perform all or, as the case may be, part of the Lender’s obligations under this Agreement.
- 14.4 **Participation.** The Lender may sub-participate all or any part of its rights, benefits and/or obligations under this Agreement and the other Finance Documents without the consent of, or consultation with or notice to the Borrowers and the other Security Parties.
- 14.5 **Cost.** Any cost of such assignment or transfer or granting sub-participation shall be for the account of the Lender and/or the Assignee, Transferee or sub-participant unless any such assignment, transfer or sub-participation is undertaken at the request of the Borrowers, in which case any cost arising therefrom shall be for the account of the Borrowers.
- 14.6 **Documenting assignments and transfers.** If the Lender assigns, transfers or in any other manner grants participation in respect of all or any part of its rights or benefits or transfers all or any of its obligations as provided in Clause 14.4 (*Participation*) the Borrowers hereby jointly and severally undertake, immediately on being requested to do so by the Lender, to enter at the expense of the Lender or the Assignee, or the Transferee into and procure that each Security Party enters into such documents as may be necessary or desirable to transfer to the Assignee, Transferee or participant

all or the relevant part of the interest of the Lender in the Finance Documents and all relevant references in this Agreement to the Lender shall thereafter be construed as a reference to the Lender and/or Assignee, Transferee or participant of the Lender to the extent of their respective interests and, in the case of a transfer of all or part of the obligations of the Lender, the Borrowers shall thereafter look only to the Assignee, Transferee or participant in respect of that proportion of the obligations of the Lender under this Agreement assumed by such Assignee, Transferee or participant. The Borrowers hereby expressly consent to any subsequent transfer of the rights and obligations of the Lender and undertake that they shall join in and execute such supplemental or substitute agreements as may be necessary to enable the Lender to assign and/or transfer and/or grant participation in respect of its rights and obligations to another branch or to one or more banks or financial institutions in a syndicate or otherwise. The cost of any such assignment shall be borne by the Lender and/or the relevant Assignee or Transferee.

14.7 **Disclosure of information.** The Borrowers agree that the Lender may, without the consent of, but with prior consultation with and notice to the Borrowers and the other Security Parties, disclose to a prospective assignee, substitute or transferee or to any other person who may propose entering into contractual relations with the Lender in relation to this Agreement such information about the Borrowers as the Lender shall consider appropriate if the Lender first procures that the relevant prospective assignee, substitute or transferee or other person (such person together with any prospective assignee, substitute or transferee being hereinafter described as the “**Prospective Assignee**”) shall undertake in writing to the Borrowers to keep secret and confidential any of the information, reports or documents supplied by the Lender provided, however, that the Prospective Assignee shall be entitled to disclose such information, reports or documents in the following situations:

- (a) in relation to any proceedings arising out of this Agreement or the other Finance Documents to the extent considered necessary by the Prospective Assignee to protect its interest; or
- (b) pursuant to a court order relating to disclosure or otherwise; or
- (c) pursuant to any law or regulation or to any fiscal, monetary, tax, governmental or other competent authority; or
- (d) to its auditors, legal or other professional advisers.

In addition the Prospective Assignee shall be entitled to disclose or use any such information, reports or documents if the information contained therein shall have emanated in conditions free from confidentiality, bona fide from some person other than the Lender or the Borrowers.

14.8 **Changes in constitution or reorganisation of the Lender.** For the avoidance of doubt and without prejudice to the provisions of Clause 14.1 (*Binding Effect*), this

Agreement shall remain binding on the Borrowers and the other Security Parties notwithstanding any change in the constitution of the Lender or its absorption in, or amalgamation with, or the acquisition of all or part of its undertaking or assets by, any other person, or any reconstruction or reorganisation of any kind, to the intent that this Agreement shall remain valid and effective in all respects in favour of any Assignee, Transferee or other successor in title of the Lender in the same manner as if such Assignee, Transferee or other successor in title had been named in this Agreement as a party instead of, or in addition to, the Lender.

- 14.9 **Securitisation.** The Lender may include all or any part of the Loan in a securitisation (or similar transaction) without the consent of, or consultation with, but after giving 30-day notice to the Borrowers. The Borrowers will assist the Lender as necessary to achieve a successful securitisation (or similar transaction) provided that the Borrowers shall not be required to bear any third party costs related to any such securitisation (or similar transaction) and need only provide any such information which any third parties may reasonably require.
- 14.10 **Lending Office.** The Lender shall lend through its office at the address specified in the preamble of this Agreement or through any other office of the Lender selected from time to time by it through which the Lender wishes to lend for the purposes of this Agreement. If the office through which the Lender is lending is changed pursuant to this Clause 14.10, the Lender shall notify the Borrowers promptly of such change and upon notification of any such transfer, the word “Lender” in this Agreement and in the other Finance Documents shall mean the Lender, acting through such branch or branches and the terms and provisions of this Agreement and of the other Finance Documents shall be construed accordingly.

15. **MISCELLANEOUS**

- 15.1 **Time of essence.** Time shall be of the essence of this Agreement.
- 15.2 **No implied waivers.** No failure, delay or omission by the Lender to exercise any right, remedy or power vested in the Lender under this Agreement and/or the other Finance Documents or by law shall impair such right or power, or be construed as a waiver of, or as an acquiescence in any default by the Borrowers, nor shall any single or partial exercise by the Lender of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. In the event of the Lender on any occasion agreeing to waive any such right, remedy or power, or consenting to any departure from the strict application of the provisions of this Agreement or of any other Finance Document, such waiver shall not in any way prejudice or affect the powers conferred upon the Lender under this Agreement and the other Finance Documents or the right of the Lender thereafter to act strictly in accordance with the terms of this Agreement and the other Finance Documents.
- 15.3 **No modification, waiver etc. unless in writing.** No modification or waiver by the Lender of any provision of this Agreement or of any of the other Finance Documents

nor any consent by the Lender to any departure there- from by any Security Party shall be effective unless the same shall be in writing and then shall only be effective in the specific case and for the specific purpose for which it was given. No notice to or demand on any such party in any such case shall entitle such party to any other or further notice or demand in similar or other circumstances.

- 15.4 **Cumulative Remedies.** The rights and remedies of the Lender contained in this Agreement and the other Finance Documents are cumulative and neither exclusive of each other nor of any other rights or remedies conferred by law.
- 15.5 **Integration of Terms.** This Agreement contains the entire agreement of the parties and its provisions supersede the provisions of the Commitment Letter (save for the provisions thereof which relate to fees) and any and all other prior correspondence and oral negotiation by the parties in respect of the matters regulated by this Agreement.
- 15.6 **Amendments in writing.** This Agreement and any other Finance Documents shall not be amended or varied in their respective terms by any oral agreement or representation or in any other manner other than by an instrument in writing of even date herewith or subsequent hereto executed by or on behalf of the parties hereto or thereto.
- 15.7 **Invalidity of Terms.** In the event of any provision contained in one or more of this Agreement, the other Finance Documents and any other documents executed pursuant hereto or thereto being invalid, illegal or unenforceable in any respect under any applicable law in any jurisdiction whatsoever, such provision shall be ineffective as to that jurisdiction only without affecting the remaining provisions hereof or thereof. If, however, this event becomes known to the Lender prior to the drawdown of the Commitment or of any part thereof the Lender shall be entitled to refuse drawdown until this discrepancy is remedied. In case that the invalidity of a part results in the invalidity of the whole Agreement, it is hereby agreed that there will exist a separate obligation of the Borrowers for the prompt payment to the Lender of all the Outstanding Indebtedness. Where, however, the provisions of any such applicable law may be waived, they are hereby waived by the parties hereto to the full extent permitted by the law to the intent that this Agreement, the other Finance Documents and any other documents executed pursuant hereto or thereto shall be deemed to be valid binding and enforceable in accordance with their respective terms.
- 15.8 **Inconsistency of Terms.** In the event of any inconsistency between the provisions of this Agreement and the provisions of any other Finance Document the provisions of this Agreement shall prevail.

15.9 **Language and genuineness of documents**

- (a) Language: All certificates, instruments and other documents to be delivered under or supplied in connection with this Agreement or any of the other Finance Documents shall be in the English language (or such other language as the Lender shall agree) or shall be accompanied by a certified English translation upon which the Lender shall be entitled to rely.
- (b) Certification of documents: Any copies of documents delivered to the Lender shall be duly certified as true, complete and accurate copies by appropriate authorities or legal counsel practising in Greece or UK or otherwise as will be acceptable to the Lender at the sole discretion of the Lender.
- (c) Certification of signature: Signatures of Board or shareholder resolutions, Secretary's certificates and any other documents are, at the discretion of the Lender, to be verified for their genuineness by appropriate Consul or other competent authority.

15.10 **Recourse to other security.** The Lender shall not be obliged to make any claim or demand or to resort to any Finance Document or other means of payment now or hereafter held by or available to it for enforcing this Agreement or any of the Finance Documents against the Security Parties (or any of them) or any other person liable and no action taken or omitted by the Lender in connection with any such Finance Document or other means of payment will discharge, reduce, prejudice or affect the liability of any Security Party under this Agreement and the other Finance Documents to which it is, or is to be, a party.

15.11 **Conflicts.** In the event of any conflict between this Agreement and any of the other Finance Documents, the provisions of this Agreement shall prevail.

15.12 **Further assurances.** The Borrowers jointly and severally undertake that the Finance Documents shall both at the date of execution and delivery thereof and so long as any moneys are owing under any of the Finance Documents be valid and binding obligations of the respective parties thereto and enforceable in accordance with their respective terms and that they will, at their expense, execute, sign, perfect do and (if required) register, and will procure the execution, signing, perfecting, doing and (if required) registering by each of the other Security Parties of, any and every such further assurance, document, act or thing as in the opinion of the Lender may be necessary or desirable for perfecting the security contemplated or constituted by the Finance Documents.

15.13 **Confidentiality**

- (a) Save as provided in Clause 14.7 (*Disclosure of information*) each of the parties hereto agrees and undertakes to keep confidential any documentation and any confidential information concerning the business, affairs, directors or employees of the other which comes into its possession in connection with this Agreement and not to use any such documentation, information for any purpose other than for which it was provided.

- (b) The Borrowers acknowledge and accept that the Lender may be required by law, regulation or regulatory requirement or any request of any central bank or any court order to disclose information and deliver documentation relating to the Borrowers and the transactions and matters in relation to this Agreement and/or the other Finance Documents to governmental or regulatory agencies and authorities.
- (c) The Borrowers acknowledge and accept that in case of occurrence of any of the Events of Default as described in this Agreement, the Lender may disclose information and deliver documentation relating to the Borrowers and the transactions and matters in relation to this Agreement and/or the other Finance Documents to third parties to the extent that this is necessary for the enforcement or the contemplation of enforcement of the Lender's rights or for any other purpose for which in the opinion of the Lender, such disclosure would be useful or appropriate for the interests of the Lender or otherwise and the Borrowers expressly authorise any such disclosure and delivery.
- (d) The Borrowers acknowledge and accept that the Lender may be prohibited from disclosing information to the Borrowers by reason of law or duties of confidentiality owed or to be owed to other persons.

16. JOINT AND SEVERAL LIABILITY OF THE BORROWERS

16.1 **Joint and several liability.** All liabilities and obligations of the Borrowers under this Agreement shall, whether expressed to be so or not, be joint and several.

16.2 **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 any other Borrower;
- (b) the Lender entering into any rescheduling, refinancing or other arrangement of any kind with any other Borrower;
- (c) the Lender releasing any other Borrower or any Encumbrance created by a Finance Document; or
- (d) any time, waiver or consent granted to, or composition with any other Borrower or other person;
- (e) the release of any other Borrower or any other person under the terms of any composition or arrangement with any creditor thereof;
- (f) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over

assets of, any other Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (g) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other Borrower or any other person;
- (h) any amendment, novation, supplement, extension, restatement (however fundamental, and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (i) any unenforceability, illegality or invalidity of any obligation or any person under any Finance Document or any other document or security;
- (j) any insolvency or similar proceedings; or
- (k) any combination of the foregoing.

16.3 **Principal debtor.** 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 none of the Borrowers shall in any circumstances be construed to be a surety for the obligations of the other Borrowers under this Agreement.

16.4 **Subordination.** Subject to Clause 16.5 (*Borrower's required action*), during the Security Period, none of the Borrowers shall:

- (a) claim any amount which may be due to it from any 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 any 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 any other Borrower; or
- (c) set off such an amount against any sum due from it to any other Borrower; or
- (d) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving any other Borrower or other Security Party; or

(e) exercise or assert any combination of the foregoing.

16.5 **Borrower's required action.** If during the Security Period, the Lender, by notice to a Borrower, requires it to take any action referred to in paragraphs (a) to (d) of Clause 16.4 (*Subordination*), in relation to any other Borrower, that Borrower shall take that action as soon as practicable after receiving the Lender's notice.

16.6 **Deferral of Borrowers' rights.** Until all amounts which may be or become payable by the Borrowers under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, no Borrower will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

(a) to be indemnified by any other Borrower; or

(b) to claim any contribution from any other Borrower in relation to any payment made by it under the Finance Documents.

17. **NOTICES AND COMMUNICATIONS**

17.1 **Notices.** Every notice, request, demand or other communication under this Agreement or, unless otherwise provided therein, under any of the other Finance Documents shall:

(a) be in writing delivered personally or by first-class prepaid letter (airmail if available), or shall be served through a process server or subject to Clause 10.8 (*Communications Indemnity*) by fax; by email subject to pdf copies of documents are attached thereto;

(b) be deemed to have been received, subject as otherwise provided in this Agreement or the relevant Finance Document, in the case of a fax, at the time of dispatch as per transmission report (provided, in either case, that if the date of despatch is not a business day in the country of the addressee or if the time of dispatch is after working hours in the country of the addressee it shall be deemed to have been received at the opening of business on the next such business day), and in the case of a letter when delivered or served personally or five (5) days after it has been put into the post; and

(c) be sent:

(i) if to be sent to any Security Party, to:

c/o Technomar Shipping Inc.,
3-5 Menandrou str.
145 61 Kifissia, Greece
Fax No.: +30 210 8084224
Attention: Mr. G. Youroukos

- (ii) in the case of the Lender at:
Crédit Agricole Corporate and Investment Bank,
12 place des Etats-Unis - CS 70052
92547 Montrouge Cedex France
Fax No.: +331 41892987
Attention: Mrs. Typhaine Hirgorom
E-mail address: typhaine.hirgorom@ca-cib.com

or to such other person, address or fax number as is notified by the relevant Security Party or the Lender (as the case may be) to the other parties to this Agreement and, in the case of any such change of address or fax number notified to the Lender, the same shall not become effective until notice of such change is actually received by the Lender and a copy of the notice of such change is signed by the Lender.

18. **LAW AND JURISDICTION**

18.1 **Law**

- (a) This Agreement and any non-contractual obligations arising out of or in relation to it shall be governed by, and construed in accordance with, English Law.
- (b) For the purposes of enforcement in Greece, it is hereby expressly agreed that English law as the governing law of the Loan Agreement will be proved by an affidavit of a solicitor from an English law firm to be appointed by the Lender and the said affidavit shall constitute full and conclusive evidence binding on the Borrowers but the Borrowers shall be allowed to rebut such evidence save for witness.

18.2 **Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement or any non-contractual obligations connected with it (including a dispute regarding the existence, validity or termination of this Agreement) (a ***“Dispute”***). The Borrowers irrevocably and unconditionally submits to the jurisdiction of such courts.
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary and waives any objections to the inconvenience of England as a forum.

- (c) This Clause 18.2 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.
- 18.3 **Process Agent for English Proceedings.** Without prejudice to any other mode of service allowed under any relevant law each of the Borrowers irrevocably designates, appoints and empowers Messrs. **SAVILLE & Co. (attention: Mr. Richard Saville)** at present of One Carey Lane, London, EC2V 8AE,) (hereinafter called the **“Process Agent for English Proceedings”**), to receive for it and on its behalf, service of process issued out of the English courts in relation to any proceedings before the English courts in connection with any Finance Document,
provided, however, that:
- (a) each of the Borrowers hereby agrees and undertakes to maintain a Process Agent for English Proceedings throughout the Security Period and hereby agrees that in the event that if any Process Agent for English Proceedings is unable for any reason to act as agent for service of process, the Borrowers must immediately (and in any event within ten (10) days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint for this purpose a substitute Process Agent for English Proceedings and the Lender is hereby irrevocably authorised to effect such appointment on Borrowers’ behalf. The appointment of such Process Agent for English Proceedings shall be valid and binding from the date notice of such appointment is given by the Lender to the Borrowers in accordance with Clause 17.1 (*Notices*); and
- (c) each of the Borrowers hereby agrees that failure by a Process Agent for English Proceedings to notify the Borrowers of the process will not invalidate the proceedings concerned.
- 18.4 **Proceedings in any other country.** If it is decided by the Lender that any such proceedings should be commenced in any other country, then any objections as to the jurisdiction or any claim as to the inconvenience of the forum is hereby waived by the Borrowers and it is agreed and undertaken by the Borrowers to instruct lawyers in that country to accept service of legal process and not to contest the validity of such proceedings as far as the jurisdiction of the court or courts involved is concerned and the Borrowers agrees that any judgment or order obtained in an English court shall be conclusive and binding on the Borrowers and shall be enforceable without review in the courts of any other jurisdiction.
- 18.5 **Process Agent for Greek Proceedings.** Mrs. Maria Danezi, an attorney-at-law, c/o Technomar Shipping Inc., 3-5 Menandrou street, 145 61 Kifissia, Greece (hereinafter called the **“Process Agent for Greek Proceedings”**) is hereby appointed by the

Borrowers as agent to accept service, upon whom any judicial process in respect of proceedings in Greece may be served and any process notice, judicial or extra- judicial request, demand for payment, payment order, foreclosure proceedings, notarial announcement of claim, notice, request, demand or other communication under this Agreement or any of the Finance Documents. In the event that the Process Agent for Greek Proceedings (or any substitute process agent notified to the Lender in accordance with the foregoing) cannot be found at the address specified above (or, as the case may be, notified to the Lender), which will be conclusively proved by a deed of a process server to the effect that the Process Agent for Greek Proceedings was not found at such address, any process notice, judicial or extra-judicial request, demand for payment, payment order, foreclosure proceedings, notarial announcement of claim or other communication to be sent to any Security Party may be validly served/notified in accordance with the relevant provisions of the Hellenic Code on Civil Procedure.

18.6 **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.

18.7 **Meaning of “proceedings”.** In this Clause 18 “*proceedings*” means proceedings of any kind, including an application for a provisional or protective measure.

[INTENTIONALLY LEFT BLANK]

SCHEDULE 1

FORM OF DRAWDOWN NOTICE

(referred to in Clause 2.2)

To: **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK,**
12, place des Etats-Unis,
CS 70052, 92547
Montrouge Cedex, France,

(the “**Lender**”)

Dated: [●]

Re: USS 55,650,000 Loan Agreement dated [●] August, 2017 made between (A) **HECTOR MARINE LLC, HEPHAESTUS MARINE LLC** and **PERICLES MARINE LLC** (the “**Borrowers**”) and (B) the Lender (the “**Loan Agreement**”)

We refer to the Loan Agreement and hereby give you notice that we wish to draw in respect of the Commitment the amount of (\$[●]) (Dollars [●] million) on [●] and we select a first Interest Period in respect of the Loan of [●] months/terminating on [●]. The funds should be credited/remitted to ([●][●] [*name and number of account*] [●]) with [●], New York, USA.

We confirm that:

- (a) no event or circumstance has occurred and is continuing which constitutes a Default;
- (b) the representations and warranties contained in Clause 6 of the Loan Agreement and the representations and warranties contained in each of the other Security Documents 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 drawing of the said amount in respect of the Commitment 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) to be exceeded; and
- (d) there has been no material adverse change in our financial position or in the combined financial position of ourselves from that described by us or any other Security Party to the Lender in the negotiation of the Loan Agreement.

Words and expressions defined in the Loan Agreement shall have the same meanings when used herein.

SIGNED by)
Mrs Filanthi Katsafadou)
for and on behalf of)

HECTOR MARINE LLC,)
of Marshall Islands, in the presence of:)

SIGNED)
for and on behalf)
of **HEPHAESTUS MARINE LLC**)
by Mrs Filanthi Katsafadou)
its duly appointed attorney-in-fact)
in the presence of)

/s/ Filanthi Katsafadou
Attorney-in-fact

SIGNED by)
Mrs Filanthi Katsafadou)
for and on behalf of)
PERICLES MARINE LLC)
of Marshall Islands, in the presence of:)

Witness to all the above signatures:

Name:
Address:

Occupation: Attorney-at-Law

FORM OF COMPLIANCE CERTIFICATE
(referred to in Clause 8.1(j))

Part A (apply till December 31, 2019)

To: CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK

From: **POSEIDON CONTAINERS HOLDINGS LLC**

c/o 3-5 Menandrou Street

145 61 Kifisia

Athens, Greece

[●], 201

Re: Up to US\$ 55,650,000 Loan Agreement dated [●] July, 2017 made between (A) **HECTOR MARINE LLC, HEPHAESTUS MARINE LLC** and **PERICLES MARINE LLC** (the "**Borrowers**") and (B) the Lender (the "**Loan Agreement**")

Terms defined in the Loan Agreement shall have the same meaning when used herein.

I [●] being the Chief Financial Officer of the Corporate Guarantor, refer to Clause 8.2 of the Loan Agreement and hereby certify that, as at [insert date of accounts];

1. Financial Covenants:

(a) the Corporate Guarantor's Leverage Ratio in at 31.. [●], is [●];

(b) the Corporate Guarantor's Consolidated Liquidity is, in relation to the said financial period and at all times during such period, in excess of USD [●](say United States Dollars [●])

2. We confirm that no Default is continuing

Signed: _____

Chief Financial Officer

Part B (apply after January 1, 2020)
FORM OF COMPLIANCE CERTIFICATE
(referred to in Clause 8.1 (j))

To: CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK

From: **POSEIDON CONTAINERS HOLDINGS LLC**
c/o 3-5 Menandrou Street
145 61 Kifisia
Athens, Greece

[●], 201

Re: Up to US\$ 55,650,000 Loan Agreement dated [●] July, 2017 made between (A) **HECTOR MARINE LLC, HEPHAESTUS MARINE LLC** and **PERICLES MARINE LLC** (the “**Borrowers**”) and (B) the Lender (the “**Loan Agreement**”)

Terms defined in the Loan Agreement shall have the same meaning when used herein.

I [●] being the Chief Financial Officer of the Corporate Guarantor, refer to Clause 8.2 of the Loan Agreement and hereby certify that, as at [insert date of accounts];

2. Financial Covenants:

- (a) the Corporate Guarantor’s Leverage Ratio at 31.. [●], is [●];
- (b) the Value Adjusted Leverage Ratio at 31.. [●], is [●];
- (c) the minimum Net Worth at 31.. [●], is [●];
- (d) the Corporate Guarantor’s Consolidated Liquidity is, in relation to the said financial period and at all times during such period, in excess of USD [●] (say United States Dollars [●])

2. Asset Cover Ratio

[No Default in respect of the Asset Cover Ratio provided in a loan agreement entered into by any Subsidiary and a bank or financial institution has occurred and is continuing]

or

[The following Default has occurred and is continuing: [provide details of Default].

[The following steps are being taken to remedy it: [provide details of steps being taken to remedy Default]].

3. We confirm that no Default is continuing

Signed: _____
Chief Financial Officer

SCHEDULE 3

FORM OF SURPLUS CASH INCOME CERTIFICATE

To: **Credit Agricole Corporate and Investment Bank**

From: **Hephaestus Marine LLC**
Hector Marine LLC
Pericles Marine LLC

Dated:

Re: US\$ 55,650,000 Loan Agreement dated [●] August, 2017 made between (A) **HECTOR MARINE LLC, HEPHAESTUS MARINE LLC** and **PERICLES MARINE LLC** (the **“Borrowers”**) and (B) the Lender (the **“Loan Agreement”**).

Dear Sirs

We refer to the Agreement.

This is a Surplus Cash Income Certificate.

Terms defined in the Agreement have the same meaning when used in this Surplus Cash Income Certificate unless given a different meaning in this Excess Cash Certificate.

We confirm that in respect of []/[]/[]/[]/[]:

- 1 Total Revenue = []
- 2 Operating Expenses = []
- 3 Debt Service = []
- 4 Surplus Cash Income = []
- 5 Remaining Deferred Amount after repayment of Surplus Cash Income = []

We confirm that no Default has occurred and is continuing.

Signed: _____

Chief Financial Officer

THE BORROWERS

SIGNED by)
Mr Constantinos Emmanuel) /s/ Constantinos Emmanuel
for and on behalf of)
HECTOR MARINE LLC,)
of Marshall Islands, in the presence of:)

SIGNED)
for and on behalf)
of **HEPHAESTUS MARINE LLC**)
by Mr. Constantinos Emmanuel)
its duly appointed attorney-in-fact) /s/ Constantinos Emmanuel
in the presence of) Attorney-in-fact

SIGNED by)
Mr Constantinos Emmanuel) /s/ Constantinos Emmanuel
for and on behalf of)
PERICLES MARINE LLC)
of Marshall Islands, in the presence of:)

Witness to all signatures: /s/ Panagiota Sdrolia
Name: Panagiota Sdrolia
Address: 13 Defteras Merarchias Str.,
Piraeus, Greece
Occupation: Attorney-at-Law

THE LENDER

SIGNED by)
Mrs. Angeliki Arkadi)
for and on behalf of)
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK) /s/ Angeliki Arkadi
in the presence of:) Attorney-in-fact

Witness: /s/ Panagiota Sdrolia
Name: Panagiota Sdrolia
Address: 13 Defteras Merarchias Str.,
Piraeus, Greece
Occupation: Attorney-at-Law

Dated 24 October 2018

HECTOR MARINE LLC
HEPHAESTUS MARINE LLC and
PERICLES MARINE LLC
as joint and several Borrowers

and

POSEIDON CONTAINERS HOLDINGS LLC
as Corporate Guarantor

and

ODYSSEUS MARINE LLC
as Share Pledgor

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK
as Lender

FIRST SUPPLEMENTAL AGREEMENT

relating to a loan agreement dated 11 August 2017 in respect of a secured floating interest rate loan facility of (originally) US\$55,650,000 to refinance certain existing indebtedness and secured on m.v.s. "KRISTINA", "ATHENA" and "DOLPHIN II"

WATSON FARLEY
&
WILLIAMS

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PARTIES

- (1) **HECTOR MARINE LLC, HEPHAESTUS MARINE LLC and PERICLES MARINE LLC**, each a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (each a **“Borrower”** and, together, the **“Borrowers”**);
- (2) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (the **“Corporate Guarantor”**);
- (3) **ODYSSEUS MARINE LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (the **“Share Pledgor”**); and
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme, incorporated under the laws of France having its registered office at 12, place des Etats-Unis, CS70052, 92547 Montrouge Cedex, France registered under the SIREN No. 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre (the **“Lender”**).

BACKGROUND

- (A) By a loan agreement dated 11 August 2017 (the **“Loan Agreement”**) and made between (i) the Borrowers as joint and several borrowers and (ii) the Lender as lender, the Lender has made available to the Borrowers a loan facility in an amount of (originally) US\$55,650,000.
- (B) By a corporate guarantee dated 11 August 2017 (the **“Corporate Guarantee”**) and made between (i) the Corporate Guarantor and (ii) the Lender, the Corporate Guarantor has guaranteed the obligations of the Borrowers under the Loan Agreement.
- (C) The Borrowers and the Corporate Guarantor have requested that the Lender consents and agrees to:
 - (i) the reverse triangular merger involving the Corporate Guarantor and the New Holding Company, as a result of which (a) the Corporate Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (b) the Poseidon Shareholders would receive shares of the New Holding Company;
 - (ii) the shares and voting rights attaching to the shares in respect of the New Holding Company being in turn, legally and beneficially owned by, amongst others, the Poseidon Shareholders and the New Shareholders in accordance with the Merger Documents;
 - (iii) the change in the ultimate beneficial ownership of the equity interests in the Borrowers, the Share Pledgor and the Corporate Guarantor;
 - (iv) the cessation of Mr George Giouroukos from his position as Chief Executive Officer of the Corporate Guarantor; and
 - (v) the termination of the existing Management Agreements and their replacement by new Management Agreements to be entered into between the relevant Borrower or the Corporate Guarantor (as may be the case) and each Management Company on substantially similar terms to the existing Management Agreements,

together, the **“Request”**.

- (D) This First Supplemental Agreement sets out the terms and conditions on which the Lender agrees to the Request and the consequential amendments of the Loan Agreement and the other Finance Documents in connection with the Request.

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 First Supplemental Agreement unless the context otherwise requires.

1.2 Definitions

In this First Supplemental Agreement, unless the contrary intention appears:

“Effective Date” means the date on which the Lender notifies the Borrowers in writing in the form set out in Schedule 3 that the conditions precedent in Clause 3.2 have been satisfied which confirmation the Lender shall be under no obligation to give if an Event of Default shall have occurred;

“Merger” means a reverse triangular merger involving the Corporate Guarantor and the New Holding Company, as a result of which (a) the Corporate Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (b) the Poseidon Shareholders would receive shares of the New Holding Company;

“Merger Documents” means the ancillary agreements entered into by the Poseidon Shareholders and New Shareholders in connection with the definitive agreement in respect of the Merger;

“New Holding Company” means the corporation under the name Global Ship Lease Inc. (as may be renamed following the Merger), incorporated in the Republic of the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, P.O. Box 1405, Majuro, Marshall Islands MH96960 and whose shares are publically listed on the New York Stock Exchange;

“New Shareholder” means each of:

- (a) Mr Michael Gross (either directly or indirectly through one or more Subsidiaries); and
- (b) CMA CGM S.A., a company incorporated in France;

“Poseidon Shareholders” means, together:

- (a) KEP VI (Newco Marine), Ltd, a company incorporated in the Cayman Islands;
- (b) KIA VIII (Newco Marine), Ltd, a company incorporated in the Cayman Islands;
- (c) MAAS Capital Investments B.V., a company incorporated in the Netherlands; and
- (d) Management Investor Co, a corporation incorporated in the Marshall Islands; and

“Relevant Shareholding” means, in respect of the New Holding Company, the percentage of ownership of shares and voting power being held by each of the Poseidon Shareholders and

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the New Shareholders, as such percentage shall be set out in the Merger Documents and disclosed in writing to the Lender on the date of the Merger.

1.3 Application of construction and interpretation provisions of Loan Agreement

Clauses 1.3 to 1.7 of the Loan Agreement apply, with any necessary modifications, to this First Supplemental Agreement.

2 AGREEMENT OF THE LENDER

2.1 Agreement of the Lender

The Lender consents and agrees, subject to and upon the terms and conditions of this First Supplemental Agreement, to the Request and all actions taken in connection therewith.

2.2 Further Agreement of the Lender

The Lender agrees, subject to and upon the terms and conditions of this First Supplemental Agreement, to the consequential amendments of the Loan Agreement and the other Finance Documents in connection with the matters referred to in Clause 2.1.

2.3 Effective Date

The agreement of the Lender contained in Clause **Error! Reference source not found.** (*Error! Reference source not found.*) and 2.2 (*Further Agreement of the Lender*) shall have effect on and from the Effective Date.

2.4 Void First Supplemental Agreement

If for any reason whatsoever (including but not limited to the Merger not having taken place), the Borrowers fail to fulfil the conditions subsequent in Clause 3.3 by 31 December 2018 (or such later date as may be agreed by the Lender), this First Supplemental Agreement shall be rendered void ab initio.

3 CONDITIONS PRECEDENT AND CONDITIONS SUBSEQUENT

3.1 General

The agreement of the Lender contained in Clauses 2.1 and 2.2 is subject to the fulfilment of the conditions precedent in Clause 3.2.

3.2 Conditions precedent

- (a) The conditions referred to in Clause 3.1 are that the Lender shall have received the documents referred to in Schedule 1 in all respects in form and substance satisfactory to the Lender and its lawyers on the Effective Date of this First Supplemental Agreement (or such later date as may be applicable pursuant to Clause 3.4).
- (b) Upon receipt of the documents and evidence referred to above, the Lender shall promptly deliver to the Borrowers a written confirmation in the form set out in Schedule 3.

3.3 Conditions Subsequent

The Borrowers further undertake to provide the Lender with the documents and evidence referred to in Schedule 2 in all respects in form and substance satisfactory to the Lender and

its lawyers on the date falling three (3) Banking Days following the date of the Merger (or such later date as may be agreed between the Borrowers and the Lender) evidencing:

- (a) that the Merger has taken place; and
- (b) that, immediately after the Merger, each Poseidon Shareholder and each New Shareholder is, or will be, the legal and beneficial owner of its respective Relevant Shareholding.

3.4 Waiver of conditions precedent

If the Lender, in its discretion, confirms that the Effective Date has taken place before certain of the conditions referred to in Clause 3.2 are satisfied, the Borrowers shall, in each case, ensure that those conditions are satisfied within a maximum of 5 Banking Days after the date of the Effective Date.

4 REPRESENTATIONS AND WARRANTIES

4.1 Repetition of Loan Agreement representations and warranties

Each Borrower represents and warrants to the Lender that the representations and warranties in clause 6 (*Representations and warranties*) of the Loan Agreement, as amended as a result of the transactions contemplated in the Request and as amended by this First Supplemental Agreement and updated with appropriate modifications to refer to this First Supplemental Agreement and, where appropriate, each other Finance Document which is being amended by this First Supplemental Agreement and the transactions contemplated in the Request, remain true and not misleading if repeated on the date of this First Supplemental Agreement with reference to the circumstances now existing.

4.2 Repetition of Finance Document representations and warranties

Each Borrower and each of the other Security Parties represent and warrant to the Lender that the representations and warranties in the Finance Documents (other than the Loan Agreement) to which each is a party, as amended as a result of the transactions contemplated in the Request and as amended and supplemented by this First Supplemental Agreement and updated with appropriate modifications to refer to this First Supplemental Agreement and the transactions contemplated in the Request, remain true and not misleading if repeated on the date of this First Supplemental Agreement with reference to the circumstances now existing.

5 AMENDMENT OF LOAN AGREEMENT AND OTHER FINANCE DOCUMENTS

5.1 Amendments to Loan Agreement

With effect on and from the Effective Date, the Loan Agreement shall be, and shall be deemed by this First Supplemental Agreement to be, amended as follows:

- (a) by adding the following definitions in clause 1.2 thereof as follows in the requisite alphabetical order:

“**First Supplemental Agreement**” means the supplemental agreement dated 24 October 2018 and made between (*inter alios*) (i) the Borrowers, (ii) the Corporate Guarantor, (iii) Odysseus as a Share Pledgor and (iv) the Lender, setting out the terms and conditions pursuant to which this Agreement is amended and supplemented;”;

“**GAAP**” means generally acceptable accounting principles in the United States of America, including IFRS;”;

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“**Merger**” means a reverse triangular merger involving the Corporate Guarantor and the New Holding Company, as a result of which (a) the Corporate Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (b) the Poseidon Shareholders would receive shares of the New Holding Company;”;

“**Merger Documents**” means the ancillary agreements entered into by the Poseidon Shareholders and New Shareholders in connection with the definitive agreement in respect of the Merger;”;

“**New Holding Company**” means the corporation under the name Global Ship Lease Inc. (as may be renamed following the Merger), incorporated in the Republic of the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, P.O. Box 1405, Majuro, Marshall Islands MH96960 and whose shares are publically listed on the New York Stock Exchange;”;

“**New Shareholder**” means each of:

- (a) Mr Michael Gross (either directly or indirectly through one or more Subsidiaries); and
- (b) CMA CGM S.A., a company incorporated in France;”;

“**Odysseus**” means Odysseus Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;”;

“**Poseidon Shareholders**” means, together:

- (a) KEP VI (Newco Marine), Ltd, a company incorporated in the Cayman Islands;
- (b) KIA VIII (Newco Marine), Ltd, a company incorporated in the Cayman Islands;
- (c) MAAS Capital Investments B.V., a company incorporated in the Netherlands; and
- (d) Management Investor Co, a corporation incorporated in the Marshall Islands;”;

“**Related Company**” means any company which is under the ultimate control, direct or indirect, of any individual who has ultimate control, whether alone or with others, of the Borrowers or other entity of which such company is a Subsidiary and any Subsidiary of any such company or entity, provided that any such company is a direct or indirect, present or future Subsidiary of the Corporate Guarantor; and

“**Relevant Shareholding**” means, in respect of the New Holding Company, the percentage of ownership of shares and voting power being held by each of the Poseidon Shareholders and the New Shareholders, as such percentage shall be set out in the Merger Documents and disclosed in writing to the Lender on the date of the Merger”;

- (b) by deleting the following definitions in clause 1.2 thereof and replacing it with the following new definitions:

“**Associated Fleet Vessel Finance Agreement**” means any finance agreement made or to be made between an owner or owners of an Associated Fleet Vessel or Associated Fleet Vessels, as borrower(s) (or collateral owners) and a bank or financial institution, as lender providing finance secured by, inter alia, an Associated Fleet Vessel or Associated Fleet Vessels, as appropriate;”;

“**Management Agreement**” means each of the following:

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- (a) the agreement entered or to be entered into between the Corporate Guarantor and the Commercial Manager regarding the commercial management of the Fleet Vessels; and
- (b) the agreement entered or to be entered into between each Borrower and the Technical Manager regarding the technical management of the Vessel owned by such Borrower,
- in each case, as amended and/or supplemented from time to time (together, the “**Management Agreements**”);”;
- (c) by deleting the definition of “**Shareholder(s)**” in clause 1.2 thereof in its entirety and replacing it with the following definition:
““**Shareholder(s)**” means:
- (a) in respect of the Corporate Guarantor, a wholly-owned indirect subsidiary of the New Holding Company;
- (b) in respect of the Hephaestus Borrower and the Pericles Borrower, the Corporate Guarantor; and
- (c) in respect of the Hector Borrower, Odysseus;”;
- (d) by deleting all references to “IFRS” therein and replacing the same with reference to “GAAP”;
- (e) by deleting clause 6.1(aa) thereof in its entirety and replacing it with the following :
“(aa) Shareholding: (i) all the limited liability company interests (and the voting rights attaching to such limited liability company interests) in the Hephaestus Borrower and the Pericles Borrower are directly legally and beneficially owned by the Corporate Guarantor, (ii) all the limited liability company interests (and the voting rights attaching to such limited liability company interests) in the Hector Borrower are directly legally and beneficially owned by Odysseus, (iii) all the limited liability company interests (and the voting rights attaching to such limited liability company interests) in Odysseus are directly legally and beneficially owned by the Corporate Guarantor and (iv) all the limited liability company interests (and the voting rights attaching to such limited liability company interests) in the Corporate Guarantor are indirectly legally and beneficially owned by the New Holding Company;”;
- (f) by deleting the references to “Shareholder(s)” or, as the case may be, “the Shareholder(s)” in the definition of “Restructuring Plan” in clause 1.2 thereof and in 7.2(w)(i) and 7.2(w)(ii)(aa) thereof and replacing the same with reference to “the Poseidon Shareholder(s)”;
- (g) by deleting clause 8.1(e) thereof in its entirety and replacing it with the following:
“(e) Financial statements: furnish (or procure that it is furnished to) the Lender with (a) publicly available annual financial statements of the New Holding Company prepared in accordance with NYSE rules (as shown and available in the website of the New Holding Company) and (b) semi-annual unaudited financial statements of each of the Corporate Guarantor and the Borrowers prepared in accordance with GAAP in respect of each Financial Year as soon as practicable but not later than 90 days after the end of the financial period to which they relate, such obligation to commence with the financial year ending 31st December, 2018;”;
- (h) by deleting clause 8.2(o) thereof in its entirety and replacing it with the following :
“(o) Change of Control: permit that:

- (i) at any time during the six month period following the date of the Merger, the owners that hold voting rights in the New Holding Company (as disclosed to the Facility Agent) immediately following such merger cease to own (either directly or through one or more of their Affiliates) collectively an amount that is more than 50% of the voting rights of the New Holding Company (or its successor); and/or
- (ii) Mr George Giouroukos ceases to be the Executive Chairman (or ceases to hold any other equivalent executive officer position) in the New Holding Company, other than by reason of death or other incapacity in managing his affairs,
without the prior written consent of the Lender (which the Lender shall be at liberty to withhold) whereupon the Borrowers shall be under obligation to prepay the Loan within a period of 90 days from the Lender's request to this effect;";
- (i) by adding the words "save as required in connection with the Merger in respect of the constitutional documents of the Corporate Guarantor," at the beginning of clause 8.2(r) thereof;
- (j) by deleting clause 8.2(t) thereof in its entirety and replacing it with the following :
“(t) Control: save as required in connection with the Merger, allow any change to be made in the direct legal ownership, control or management of the Borrowers (or any of them) and/or Odysseus and/or the Corporate Guarantor or any share therein from that disclosed to the Lender as of the Effective Date (as defined therein) of the First Supplemental Agreement or of the Vessels (or any of them), without the prior written consent of the Lender (which the Lender shall be at liberty to withhold) whereupon Borrowers shall be under obligation to prepay the Loan within a period of 90 days from the Lender's request to this effect”;
- (k) by deleting clause 9.1(v) thereof in its entirety and replacing it with the following:
“(v) Shareholdings: save as required in connection with the Merger, there is any change in the direct legal ownership of the equity interests in any of the Borrowers, Odysseus and/or the Corporate Guarantor from that existing on the Effective Date (as defined therein) of the First Supplemental Agreement as specified in Clause 6.1(aa) or the Corporate Guarantor ceases to be a direct or indirect wholly owned Subsidiary of the New Holding Company, in each case, without the prior written consent of the Lender;”
- (l) by construing the definition of, and references throughout the Loan Agreement to, each Finance Document as if the same referred to that Finance Document as amended and supplemented by this First Supplemental Agreement; and
- (m) by construing references throughout the Loan Agreement to “this Agreement”, “hereunder” and other like expressions as if the same referred to the Loan Agreement as amended and supplemented by this First Supplemental Agreement.

5.2 Amendments to Shares Pledge Agreements

With effect on and from (and subject to the occurrence of) the Effective Date, each of the Shares Pledge Agreements shall be, and shall be deemed by this First Supplemental Agreement to be, amended as follows:

- (a) the reference to clause 8.3(c) of the Loan Agreement in clause 4.1(a) of each such Shares Pledge Agreement shall be deleted and replaced by reference to clause 8.2(n) of the Loan Agreement;

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- (b) by construing the definition of, and references throughout each Shares Pledge Agreement to the Loan Agreement and each Finance Document as if the same referred to the Loan Agreement and that Finance Document as amended by this First Supplemental Agreement; and
- (c) by construing references throughout each Shares Pledge Agreement to “this Shares Pledge”, “this Agreement”, “hereunder” and other like expressions as if the same referred to that Shares Pledge Agreement as amended and supplemented by this First Supplemental Agreement.

5.3 Amendments to Corporate Guarantee

With effect on and from (and subject to the occurrence of) the Effective Date, the Lender consents and agrees to the Merger and that the Corporate Guarantee shall be, and shall be deemed by this First Supplemental Agreement to be, amended as follows:

- (a) by deleting clause 5.2(b) thereof in its entirety and replacing it with the following:

“No merger: enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction (save for the Merger), without the prior consultation and written consent from the Lender **Provided that** prior consent of the Lender is not required in the case of a merger, amalgamation, demerger, consolidation or corporate reconstruction of the New Holding Company where the New Holding Company remains the surviving entity of that merger and so long as (i) no Event of Default has occurred and is continuing at any relevant time and (ii) such merger, amalgamation, demerger, consolidation or corporate reconstruction will not have (in the reasonable opinion of the Lender) a material adverse effect on the business assets, operations, property or financial condition of the New Holding Company or on the ability of the Guarantor to perform its obligations under this Guarantee.”;

- (b) the words “Save in connection with the Merger,” shall be incorporated at the beginning of clause 5.2(k) thereof;

- (c) by deleting clause 5.2(l) thereof in its entirety and replacing it with the following:

“(l) No Change of control: permit that:

- (i) at any time during the six month period following the date of the Merger, the owners that hold voting rights in the New Holding Company (as disclosed to the Facility Agent) immediately following such merger cease to own (either directly or through one or more of their Affiliates) collectively an amount that is more than 50% of the voting rights of the New Holding Company (or its successor); or
- (ii) Mr. George Giouroukos ceases to be the Executive Chairman (or ceases to hold any other equivalent position) in the New Holding Company, other than by reason of death or other incapacity in managing his affairs,

without the prior written consent of the Lender (which the Lender shall be at liberty to withhold) whereupon Borrowers shall be under obligation to prepay the Loan within a period of 90 days from the Lender’s request to this effect.”;

- (d) by construing the definition of, and references throughout the Corporate Guarantee to the Loan Agreement and each Finance Document as if the same referred to the Loan Agreement and that Finance Document as amended by this First Supplemental Agreement; and

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- (e) by construing references throughout the Corporate Guarantee to “this Guarantee”, “this Agreement”, “hereunder” and other like expressions as if the same referred to the Corporate Guarantee as amended and supplemented by this First Supplemental Agreement.

5.4 Amendments to Finance Documents

With effect on and from (and subject to the occurrence of) the Effective Date each of the Finance Documents (other than the Loan Agreement, the Shares Pledge Agreements, the Corporate Guarantee and the Management Companies’ Undertakings) shall be, and shall be deemed by this First Supplemental Agreement to be, amended as follows:

- (a) the definition of, and references throughout each such Finance Documents to, the Loan Agreement, the Corporate Guarantee and to any of the Shares Pledge Agreements shall be construed as if the same referred to the Loan Agreement, the Corporate Guarantee and those Shares Pledge Agreements as amended by this First Supplemental Agreement; and
- (b) the references throughout each such Finance Document to “this Agreement”, “this Deed”, “hereunder” and other like expressions shall be construed as if the same referred to such Finance Documents as amended and supplemented by this First Supplemental Agreement.

5.5 The Finance Documents to remain in full force and effect

The Finance Documents shall remain in full force and effect, as amended by:

- (a) the amendments contained or referred to in Clauses 5.1 through 5.4 (inclusive); and
- (b) such further or consequential modifications as may be necessary to give full effect to the terms of this First Supplemental Agreement.

6 FURTHER ASSURANCES

6.1 Borrowers’ and each Security Party’s obligations to execute further documents etc.

Each Borrower and each Security Party shall:

- (a) execute and deliver to the Lender (or as it may direct) any assignment, mortgage, power of attorney, proxy or other document, governed by the laws of England or such other country as the Lender may, in any particular case, specify; and
- (b) effect any registration or notarisation, give any notice or take any other step,
which the Lender may, by notice to the Borrowers or that Security Party 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 Encumbrance or right of any kind which the Lender intended should be created by or pursuant to the Loan Agreement or any other Finance Document, each as amended or supplemented by this First Supplemental Agreement; and
- (b) to implement the terms and provisions of this First Supplemental Agreement.

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6.3 Terms of further assurances

The Lender may specify the terms of any document to be executed by the Borrowers or, as the case may be, the Security Parties, under Clause 6.1, and those terms may include any covenants, powers and provisions which the Lender considers appropriate to protect its interests.

6.4 Obligation to comply with notice

The Borrowers and each Security Party shall comply with a notice under Clause 6.1 by the date specified in the notice.

6.5 Limited liability company action

At the same time as the Borrowers and the Security Parties or any of them deliver to the Lender any document executed under Clause 6.1(a), the Borrowers shall also deliver to the Lender a certificate signed by an officer of each Borrower or, as the case may be, each relevant Security Party, which shall:

- (a) set out the text of a resolution of that Borrower's or, as the case may be, that Security Party's applicable governing body specifically authorising the execution of the document specified by the Lender unless the execution of the relevant document is authorised by the existing resolutions and general power of attorney of that Borrower or, as the case may be, the relevant Security Party; and
- (b) state that either the resolution was duly passed by the member or board of directors, as applicable, validly convened and held throughout and is valid under that Borrower's or, as the case may be, that Security Party's limited liability company agreement or other constitutional documents.

7 EXPENSES

7.1 Reimbursement of expenses

The Borrowers shall reimburse the Lender on demand for all reasonable costs, fees and expenses (including, but not limited to, any legal fees and expenses) and taxes thereon incurred by the Lender in connection with the negotiation, preparation and execution of this First Supplemental Agreement and any other documents required thereunder.

8 NOTICES

8.1 General

The provisions of clause 17 (*Notices and Communications*) of the Loan Agreement, as amended by this First Supplemental Agreement, shall apply to this First Supplemental Agreement as if they were expressly incorporated in this First Supplemental Agreement with any necessary modifications.

9 SUPPLEMENTAL

9.1 Counterparts

This First Supplemental Agreement may be executed in any number of counterparts.

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9.2 Third party rights

No person who is not a party to this First Supplemental Agreement has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this First Supplemental Agreement.

10 LAW AND JURISDICTION

10.1 Governing law

This First 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.

10.2 Incorporation of the Loan Agreement provisions

The provisions of clause 18 (*Law and Jurisdiction*) of the Loan Agreement, as amended by this First Supplemental Agreement, shall apply to this First Supplemental Agreement as if they were expressly incorporated in this First Supplemental Agreement with any necessary modifications.

This First Supplemental Agreement has been duly executed as a Deed on the date stated at the beginning of this First Supplemental Agreement.

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SCHEDULE 1

CONDITIONS PRECEDENT DOCUMENTS

The following are the documents referred to in Clause 3.2:

- 1 Documents of the kind specified in paragraphs (a) to (e) of clause 7.1 of the Loan Agreement in connection with the Borrowers and the Corporate Guarantor with appropriate modifications to refer to this First Supplemental Agreement (as applicable).
- 2 Duly executed originals of this First Supplemental Agreement by the parties thereto and any documents required pursuant thereto.
- 3 Such documents and other evidence in such form as is requested by the Lender in order for the Lender to comply with all necessary “know your customer” or “client acceptance” or other similar identification procedures (including, but not limited to, specimen signatures of all the members or directors, as the case may be, and other officers of the Borrowers and the Corporate Guarantor) in relation to the transactions contemplated in the Finance Documents.
- 4 Documentary evidence that the agent for service of process named in clause 18.3 of the Loan Agreement has accepted its appointment in respect of this First Supplemental Agreement.
- 5 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 First Supplemental Agreement (including without limitation) all necessary governmental and other official approvals and consents in such pertinent jurisdictions as the Lender deems appropriate.
- 6 Favourable legal opinions from lawyers appointed by the Lender on such matters concerning the laws of Marshall Islands and such other relevant jurisdictions as the Lender may require.
- 7 Any further opinions, consents, agreements and documents in connection with this First Supplemental Agreement and any other Finance Documents which the Lender may request by notice to the Borrowers prior to the Effective Date.

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SCHEDULE 2

CONDITIONS SUBSEQUENT DOCUMENTS

The following are the documents referred to in Clause 3.3:

- 1 Such documents and other evidence in such form as is requested by the Lender in order for the Lender to comply with all necessary “know your customer” or “client acceptance” or other similar identification procedures (including, but not limited to, specimen signatures of all the members or directors, as the case may be, and other officers of the New Holding Company) in relation to the transactions contemplated in the Finance Documents.
- 2 A certified true copy of the amended and restated limited liability company agreement and the certificate of limited liability company interest in respect of the Corporate Guarantor specifying the members/holders of the membership interests in the Corporate Guarantor.
- 3 A certified true copy of the Articles of Association and the Bylaws of the New Holding Company, as amended following the Merger.
- 4 A certified true copy of each of the duly executed Merger Documents.
- 5 A certificate of the Borrowers stating the percentage of ownership of shares and common (voting power) being held by each of the Poseidon Shareholders and the New Shareholders in the New Holding Company.
- 6 Evidence of the change of the name of the New Holding Company (if applicable).
- 7 Certified copies of the new Management Agreements together with such documentation as may be required by the Lender in respect of any amendments to the existing Management Companies’ Undertakings.

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SCHEDULE 3

FORM OF EFFECTIVE DATE NOTICE

To: **HECTOR MARINE LLC**
HEPHAESTUS MARINE LLC and
PERICLES MARINE LLC
c/o Technomar Shipping Inc.
3-5 Menandrou Street
145 61 Kifisia
Athens, Greece
Fax: +30 210 8084224

[●]

Dear Sirs

We refer to the first supplemental agreement (the “**First Supplemental Agreement**”) dated [●] 2018 made between (*inter alios*) (i) yourselves as Borrowers, (ii) the Corporate Guarantor and (iii) ourselves as the Lender.

Words and expressions defined in the First Supplemental Agreement shall have the same meaning when used in this letter.

We write to confirm that the conditions precedent in Schedule 1 of the First Supplemental Agreement [(other than those conditions precedent set out in clauses [●], in respect of which we have provided a waiver for the same to be received within [●] Business Days of the Effective Date)] have been fulfilled and that accordingly the Effective Date is [●].

Yours faithfully

for and on behalf of

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK

EUROPE/62652848v15

LENDER

EXECUTED as a DEED
by CRÉDIT AGRICOLE CORPORATE
AND INVESTMENT BANK
acting by Anthi Kekatou
its duly authorised
attorney-in-fact
in the presence of:

)
)
)
)
)
)
)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

BORROWERS

EXECUTED as a DEED
by HECTOR MARINE LLC
acting by Aikaterini Emmanouil
its duly authorised
attorney-in-fact
in the presence of:

)
)
)
)
)
)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

EXECUTED as a DEED
by **HEPHAESTUS MARINE LLC**
acting by Aikaterini Emmanouil
its duly authorised
attorney-in-fact
in the presence of:

)
)
)
)
)
)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

EXECUTED as a DEED
by **PERICLES MARINE LLC**
acting by Aikaterini Emmanouil
its duly authorised
attorney-in-fact
in the presence of:

)
)
)
)
)
)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

CORPORATE GUARANTOR

EXECUTED as a DEED

by **POSEIDON CONTAINERS HOLDINGS LLC**
acting by Aikaterini Emmanouil
its duly authorised
attorney-in-fact
in the presence of:

)
)
)
)
)
)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SHARE PLEDGOR

EXECUTED as a DEED

by **ODYSSEUS MARINE LLC**
acting by Aikaterini Emmanouil
its duly authorised
attorney-in-fact
in the presence of:

)
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)
)
)
)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

COUNTERSIGNED this 24th day of October 2018 for and on behalf of the below companies each of which, by its execution hereof, confirms and acknowledges that it has read and understood the terms and conditions of this First 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 and the other Finance Documents.

MANAGERS

/s/ George Youroukos

George Youroukos

President

for and on behalf of

TECHNOMAR SHIPPING INC.

/s/ Dimitrios Tsiaklagkanos

Dimitrios Tsiaklagkanos

President

for and on behalf of

CONCHART COMMERCIAL INC.

EUROPE/62652848v15

Dated 11 August 2017

US\$19,500,000

TERM LOAN FACILITY

LEONIDAS MARINE LLC

as Borrower

and

POSEIDON CONTAINERS HOLDINGS LLC

as Guarantor

and

WILMINGTON TRUST, NATIONAL ASSOCIATION

as Facility Agent

and

WILMINGTON TRUST, NATIONAL ASSOCIATION

as Security Agent

FACILITY AGREEMENT

relating to
the refinancing certain existing indebtedness
secured on m.v. "AGIOS DIMITRIOS"

WATSON FARLEY

&

WILLIAMS

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THIS AGREEMENT is made on 11 August 2017

PARTIES

- (1) **LEONIDAS MARINE LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands as borrower (the **“Borrower”**)
- (2) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands as guarantor (the **“Guarantor”**)
- (3) **THE FINANCIAL INSTITUTIONS** listed in Part B of Schedule 1 (*The Parties*) as lenders (the **“Original Lenders”**)
- (4) **WILMINGTON TRUST, NATIONAL ASSOCIATION** as agent of the other Finance Parties (the **“Facility Agent”**)
- (5) **WILMINGTON TRUST, NATIONAL ASSOCIATION** as security agent for the Secured Parties (the **“Security Agent”**)

BACKGROUND

The Lenders have agreed to make available to the Borrower a facility of US\$19,500,000 for the purpose of refinancing part of the Existing Indebtedness in respect of the Ship.

OPERATIVE PROVISIONS

SECTION 1

INTERPRETATION

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“ABN Facility Agreement” means the loan or credit facility agreement entered or to be entered into by any member of the Group with, inter alia, ABN Amro Bank N.V. to refinance the Existing ABN Amro Facility Agreement on the relevant Refinancing Date.

“Account Bank” means Joh. Berenberg, Gossler & Co. KG acting through its office at Neuer Jungfernstieg 20, 20354 Hamburg, Germany or any replacement bank or other financial institution as may be approved by the Facility Agent acting with the authorisation of the Majority Lenders.

“Account Security” means a document creating Security over the Earnings Account in agreed form.

“Affiliate” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“Approved Brokers” means any firm or firms of insurance brokers approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders.

“Approved Classification” means I X HULL X MACH, Container ship, Unrestricted navigation, X VeriSTAR-HULL, X AUT-UMS, X SYS-NEQ, INWATERSURVEY with the Approved Classification Society or the equivalent classification with another Approved Classification Society.

“Approved Classification Society” means Bureau Veritas or any other classification society approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

“Approved Commercial Manager” means, Conchart Commercial Inc., a corporation incorporated in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands, or any other person approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders as the commercial manager of the Ship.

“Approved Flag” means the flag of the Republic of Liberia, Marshall Islands, Panama or such other flag approved in writing by the Facility Agent acting with the authorisation of the Lenders.

“Approved Manager” means the Approved Commercial Manager or the Approved Technical Manager.

“Approved Technical Manager” means Technomar Shipping Inc., a corporation incorporated in the Republic of Liberia whose registered office is at 80 Broad Street, Monrovia, Liberia and with management office at 3-5 Menandrou Street, Kifissia 145 61, Athens, Greece or any other person approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders as the technical manager of the Ship.

“Approved Valuer” means Clarksons-Platou, Barry Rogliano Salles, Kontiki Marine and Howe Robinson and any other firm or firms of independent sale and purchase shipbrokers approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders.

“Assignment Agreement” means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor, assignee and the Facility Agent (acting with the authorisation of the Majority Lenders).

“Authorisation” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, legalisation or registration.

“Availability Period” means the period from and including the date of this Agreement to and including 18 August 2017.

“Available Commitment” means a Lender’s Commitment minus:

- (a) the amount of its participation in the outstanding Loan; and
- (b) in relation to any proposed Utilisation, the amount of its participation in the Loan that is due to be made on or before the proposed Utilisation Date.

“Available Facility” means the aggregate for the time being of each Lender’s Available Commitment.

“Bail-In Action” means the exercise of any Write-down and Conversion Powers.

“Bail-In Legislation” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“Break Costs” means the amount (if any) by which:

- (a) the interest which a Lender should have received pursuant to the terms of this Agreement for the period from the date of receipt of all or any part of its participation in the Loan or an Unpaid Sum to the last day of the current Interest Period in relation to the Loan, the relevant part of the Loan or that Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period,
exceeds
- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Frankfurt, Hamburg, New York and Athens.

“Cash Sweep End Date” means the date falling on the earlier of (i) the date on which the aggregate amount of the Loan prepaid pursuant to Clause 7.7 (*Excess Cash Flow*) and/or Clause 7.3 (*Voluntary prepayment of Loan*) is at least \$6,500,000 and (ii) 31 December 2020;

“**Cash Sweep Period**” has the meaning given to it in Clause 7.7 (*Excess Cash Flow*);

“**Charter**” means any charter relating to the Ship, or other contract for its employment, whether or not already in existence.

“**Charter Assignment**” means the assignment creating Security over any Charter which is for a term which exceeds 12 months (including any optional extensions and any redelivery allowance) and any Charter Guarantee in agreed form.

“**Charter Guarantee**” means, when applicable, any guarantee, bond, letter of credit or other instrument (whether or not already issued) supporting a Charter, the form of which shall not be subject to the Facility Agent’s prior approval.

“**Charterer**” means any person who, as charterer, is a party to a Charter.

“**Code**” means the US Internal Revenue Code of 1986.

“**Commercial Management Agreement**” means the agreement entered into between the Guarantor and the Approved Commercial Manager regarding the commercial management of the Ship.

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “Commitment” in Part B of Schedule 1 (*The Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

“**Compliance Certificate**” means a certificate in the form set out in Schedule 6 (*Form of Compliance Certificate*) or in any other form agreed between the Guarantor and the Facility Agent (acting on the instructions of the Majority Lenders).

“**Confidential Information**” means all information relating to any Transaction Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 43 (*Confidential Information*); or
 - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or

(C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and

(ii) any Funding Rate or Reference Bank Quotation.

“Confidentiality Undertaking” means a confidentiality undertaking in substantially the appropriate form recommended by the LMA from time to time or in any other agreed form.

“Corresponding Debt” means any amount, other than any Parallel Debt, which an Obligor owes to a Secured Party under or in connection with the Finance Documents.

“Debt Service” has the meaning given to it in Clause 7.7 (*Excess Cash Flow*).

“Deed of Release” means a deed releasing the Existing Security in a form acceptable to the Facility Agent (acting on the instructions of the Majority Lenders) and, in the plural, means both of them.

“Default” means an Event of Default or a Potential Event of Default.

“Delegate” means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

“Dispute” has the meaning given to it in Clause 47.1 (*Jurisdiction*).

“Disruption Event” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties or, if applicable, any Transaction Obligor; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party or, if applicable, any Transaction Obligor preventing that, or any other, Party or, if applicable, any Transaction Obligor:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties or, if applicable, any Transaction Obligor in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party or, if applicable, any Transaction Obligor whose operations are disrupted.

“Document of Compliance” has the meaning given to it in the ISM Code.

“dollars” and **“\$”** mean the lawful currency, for the time being, of the United States of America.

“Earnings” means all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower or the Security Agent and which arise out of or in connection with or relate to the use or operation of the Ship, including (but not limited to):

- (a) the following, save to the extent that any of them is, with the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders), (such consent not to be unreasonably withheld by the Majority Lenders) pooled or shared with any other person:
 - (i) all freight, hire and passage moneys including, without limitation, all moneys payable under, arising out of or in connection with a Charter or a Charter Guarantee;
 - (ii) the proceeds of the exercise of any lien on sub-freights;
 - (iii) compensation payable to the Borrower or the Security Agent in the event of requisition of the Ship for hire or use;
 - (iv) remuneration for salvage and towage services;
 - (v) demurrage and detention moneys;
 - (vi) without prejudice to the generality of sub-paragraph (i) above, damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of the Ship;
 - (vii) all monies which are at any time payable to the Borrower in relation to general average contribution; and
- (b) if and whenever the Ship is employed on terms whereby any moneys falling within sub-paragraphs (i) to (vii) of paragraph (a) 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 the Ship.

“Earnings Account” means:

- (a) an account in the name of the Borrower with the Account Bank designated “Leonidas Marine LLC - Earnings Account”; or
- (b) any other account in the name of the Borrower with the Account Bank which may, with the prior written consent of the Facility Agent, be opened in the place of the account referred to in paragraph (a) above, irrespective of the number or designation of such replacement account; or
- (c) any sub-account of any account referred to in paragraphs (a) or (b) above.

“EEA Member Country” means any member state of the European Union, Iceland, Liechtenstein and Norway.

“Environmental Approval” means any present or future permit, ruling, variance or other Authorisation required under Environmental Laws.

“Environmental Claim” means any claim by any governmental, judicial or regulatory authority or any other person which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any Environmental Law and, for this purpose, **“claim”** includes a claim for damages, compensation, contribution, injury, fines, losses and penalties or any other payment of any kind, including in relation to clean-up and removal, 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:

- (a) any release, emission, spill or discharge of Environmentally Sensitive Material whether within a Ship or from a Ship into any other vessel or into or upon the air, sea, land or soils (including the seabed) or surface water; or
- (b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water from a vessel other than the Ship and which involves a collision between the Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which the Ship is actually or potentially liable to be arrested, attached, detained or enjoined and/or the Ship and/or any Transaction Obligor and/or any operator or manager of the 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, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water otherwise than from the Ship and in connection with which the Ship is actually or potentially liable to be arrested and/or where any Transaction Obligor and/or any operator or manager of the Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action, other than in accordance with an Environmental Approval.

“Environmental Law” means any present or future law relating to pollution or protection of human health or the environment, to conditions in the workplace, to the carriage, generation, handling, storage, use, release or spillage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material.

“Environmentally Sensitive Material” means and includes all contaminants, oil, oil products, toxic substances 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.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor thereto.

“ERISA Affiliate” means each person (and defined in Section 3(9) of ERISA) which together with the Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“EU Bail-In Legislation Schedule” means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

“Event of Default” means any event or circumstance specified as such in Clause 26 (*Events of Default*).

“Excess Cash Flow” has the meaning given to it in Clause 7.7 (*Excess Cash Flow*).

“Excess Cash Flow Date” has the meaning given to it in Clause 7.7 (*Excess Cash Flow*).

“Excess Cash Flow Notice” has the meaning given to it in Clause 7.7 (*Excess Cash Flow*).

“Excess Cash Flow Period” has the meaning given to it in Clause 7.7 (*Excess Cash Flow*).

“Executive Order” means an executive order issued by the President of the United States of America.

“Existing ABN Amro Facility Agreement” means the facility agreement dated 14 November 2016 entered into by, inter alia, ABN Amro Bank N.V. (as a lender, agent, arranger, swap

bank and security trustee) and Zeus One Marine LLC, Ikaros Marine LLC, Tasman Marine LLC, Hudson Marine LLC and Drake Marine LLC (as joint and several borrowers) as amended and supplemented from time to time.

“Existing Facility Agreement” means each of the Existing First Facility Agreement and the Existing Second Facility Agreement and, in the plural, means both of them.

“Existing First Facility Agreement” means the facility agreement dated 16 February 2011 (as amended and supplemented from time to time) and entered into between, amongst others, the Borrower as borrower and Unicredit Bank AG as arranger, agent and security agent, account bank, bank and swap provider to finance the acquisition of the Ship.

“Existing Fleet Vessel” means any vessel (including the Ship) from time to time wholly owned by the Guarantor (directly or indirectly) at any point during the Refinancing Period.

“Existing Group Facility Agreement” means:

- (a) the Existing ABN Amro Facility Agreement; and
- (b) the Existing Facility Agreements;

and in the plural means all of them.

“Existing Indebtedness” means, at any date, the outstanding Financial Indebtedness of the Obligors on that date under the Existing Facility Agreements.

“Existing Lender” has the meaning given to it in Clause 27.1 (*Assignments and transfers by the Lenders*).

“Existing Second Facility Agreement” means the facility agreement dated 4 May 2011 (as amended and supplemented from time to time) and entered into between Hephaestus Marine LLC and Pericles Marine LLC as joint and several borrowers and Credit Agricole Corporate and Investment Bank as lender.

“Existing Security” means any Security created to secure the Existing Indebtedness.

“Facility” means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

“Facility Office” means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than 5 Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.

“FATCA” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

“FATCA Application Date” means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

“FATCA Deduction” means a deduction or withholding from a payment under a Finance Document required by FATCA.

“FATCA Exempt Party” means a Party that is entitled to receive payments free from any FATCA Deduction.

“Fee Letter” means any letter or letters dated on or about the date of this Agreement between any of the Facility Agent and the Security Agent and any Obligor setting out any of the fees referred to in Clause 11 (*Fees*).

“Finance Document” means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) the Utilisation Request;
- (d) any Security Document;
- (e) any Subordination Agreement;
- (f) any other document which is executed for the purpose of establishing any priority or subordination arrangement in relation to the Secured Liabilities; or
- (g) any other document designated as such by the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrower.

“Finance Party” means the Facility Agent, the Security Agent or a Lender.

“Financial Indebtedness” means any indebtedness for or in relation to:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;

- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“Funding Rate” means any individual rate notified in writing by a Lender to the Facility Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause 10.4 (*Cost of funds*).

“GAAP” means generally accepted accounting principles in the United States of America including IFRS.

“General Assignment” means the general assignment creating Security over the Earnings, the Insurances and any Requisition Compensation in agreed form.

“Group” means the Guarantor and its Subsidiaries from time to time.

“Group Facility Agreements” means:

- (a) the ABN Facility Agreement; and
- (b) any other loan or credit facility agreement entered or to be entered into by any member of the Group with any other bank or financial institution or other creditor party refinancing any of the Existing Group Facility Agreements on the relevant Refinancing Date and being secured by, inter alia, any Existing Fleet Vessel.

“Holding Company” means, in relation to a person, any other person in relation to which it is a Subsidiary.

“IFRS” means International Financial Reporting Standards promulgated by the International Accounting Standards Board, as amended from time to time, together with its pronouncements thereon from time to time.

“Indemnified Person” means:

- (a) for the purposes of Clause 14.2 (*Other indemnities*), each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate;
- (b) for the purposes of Clause 14.4 (*Indemnity to the Facility Agent*), the Facility Agent, each Affiliate of the Facility Agent and each director, officer and employee; and
- (c) for the purposes of Clause 14.5 (*Indemnity to the Security Agent*), the Security Agent and every Receiver and Delegate, each Affiliate of the Security Agent, Receiver and Delegate and each director, officer and employee.

“Insurances” means, in relation to the Ship:

- (a) all policies and contracts of insurance, including entries of the Ship in any protection and indemnity or war risks association, effected for the account of the Borrower in relation to the Ship, the Earnings or otherwise in relation to the Ship whether before, on or after the date of this Agreement; and
- (b) all rights and other assets relating to, or derived from, any of such policies, contracts or entries, including any rights to a return of premium and any rights in relation to any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement.

“Interest Payment Date” has the meaning given to it in paragraph (a) of Clause 8.2 (*Payment of interest*).

“Interest Period” means, in relation to the Loan or any part of the Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

“Interpolated Screen Rate” means, in relation to the Loan or any part of the Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of the Loan or that part of the Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of the Loan or that part of the Loan,

each as of the Specified Time for dollars.

“IPO” means the initial public offering of part or all of the share capital of the Guarantor and the subsequent listing of such share capital at a stock exchange acceptable to the Facility Agent (acting on the instructions of the Majority Lenders).

“ISM Code” means the International Safety Management Code for the Safe Operation of Ship and for Pollution Prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time.

“ISPS Code” means the International Ship and Port Facility Security (ISPS) Code as adopted by the International Maritime Organization’s (IMO) Diplomatic Conference of December 2002, as the same may be amended or supplemented from time to time.

“ISSC” means an International Ship Security Certificate issued under the ISPS Code.

“K&T Marine” means K&T Marine LLC, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands.

“K&T Loan Agreement” means the loan facility agreement dated 4 May 2016 (as amended and supplemented from time to time) between K&T Marine and the Guarantor relating to a loan facility of up to \$12,211,552.74 in agreed form.

“Legal Reservations” means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the legal opinions delivered as conditions precedent to the funding of the Loan.

“Lender” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 27 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with this Agreement.

“LIBOR” means, in relation to the Loan or any part of the Loan:

- (a) the applicable Screen Rate as of the Specified Time for dollars and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

“LLC Shares”, in respect of the Borrower, shall have the meaning ascribed thereto in the Borrower’s limited liability company agreement.

“LMA” means the Loan Market Association.

“Loan” means the loan to be made available under the Facility or the aggregate principal amount outstanding for the time being of that loan under the Facility and a **“part of the Loan”** means any part of the Loan as the context may require.

“Major Casualty” means any casualty to the Ship in relation to 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) if the Loan has not yet been advanced, a Lender or Lenders whose Commitments aggregate more than 66% per cent. of the Total Commitments; or
- (b) at any other time, a Lender or Lenders whose participations in the Loan aggregate more than 66% per cent. of the amount of the Loan then outstanding or, if the Loan has been repaid or prepaid in full, a Lender or Lenders whose participations in the Loan immediately before repayment or prepayment in full aggregate more than 66% per cent. of the Loan immediately before such repayment or prepayment.

“Management Agreement” means the Technical Management Agreement or the Commercial Management Agreement.

“Manager’s Undertaking” means, in respect of each Management Agreement, each letter of undertaking from the Approved Technical Manager and the Approved Commercial Manager subordinating the rights of the Approved Technical Manager and the Approved Commercial Manager respectively against the Ship and the Borrower to the rights of the Finance Parties in agreed form.

“Margin” means 4 per cent. per annum.

“Market Value” means, in relation to the Ship or any other vessel:

- (a) at any time prior to the occurrence of an Event of Default which is continuing, an amount determined by the Borrower and agreed to by the Majority Lenders in writing and subsequently notified to the Facility Agent; and
- (b) at any time after the occurrence of an Event of Default which is continuing, an amount determined by the Majority Lenders and notified to the Facility Agent,
as being an amount equal to the market value of the Ship or vessel shown by the average of two valuations at the cost of the Borrower each prepared:
 - (i) as at a date not more than 30 days previously;
 - (ii) by two Approved Valuers (one of which is appointed by the Facility Agent (acting on the instructions of the Majority Lenders) and the other which is appointed by the Borrower and if the Borrower fails to appoint one, both of which are appointed by the Facility Agent acting on the instructions of the Majority Lenders);
 - (iii) with or without physical inspection of the Ship or vessel (as the Facility Agent may require, acting on the instructions of the Majority Lenders); and
 - (iv) on the basis of a sale for prompt delivery for cash on normal arm’s length commercial terms as between a willing seller and a willing buyer, free of any Charter,

Provided that:

- (A) If one such valuation in respect of the Ship obtained pursuant to sub-paragraph (ii) above differs by at least 10 per cent. from the lower valuation, then a third valuation for the Ship shall be obtained from an Approved Valuer, selected by the Borrower and appointed by the Facility Agent (acting on the instructions of the Majority Lenders) and such valuation shall be addressed to the Facility Agent and the Market Value of the Ship shall be the arithmetic average of all three such valuations; and
- (B) for the purpose of determining the compliance with the financial covenants set out in Clause 20 (*Financial Covenants*) the market value of a vessel owned by a member of the Group (other than the Borrower) shall be determined in accordance with the relevant provisions of the credit facility agreement financing such vessel,

and for the avoidance of doubt, the Facility Agent shall not be required to verify that any valuation is prepared on the criteria set out in sub-paragraphs (i) to (iv) above and shall be entitled to rely on any notification referred to in sub-paragraphs (a) and (b) above.

“Material Adverse Effect” means in the reasonable opinion of the Majority Lenders a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of any Obligor; or
- (b) the ability of any Obligor to perform its obligations under any Finance Document; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or intended to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

“Minimum Liquidity Amount” has the meaning given to it in Clause 20.1 (*Borrower’s minimum liquidity*).

“Month” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

“Mortgage” means the first priority or preferred (as applicable) ship mortgage on the Ship and, if applicable, the deed of covenant collateral thereto, in agreed form.

“New Lender” has the meaning given to it in Clause 27.1 (*Assignments and transfers by the Lenders*).

“Obligor” means the Borrower or the Guarantor.

“OFAC” means the Office of Foreign Assets Control of the US Department of Treasury.

“Operating Expenses” means the appropriately and properly incurred costs and expenses of operating the Ship including expenses for crewing, victualling, insuring, maintenance, accrued monthly dry-docking expenses (initiating one year before the next dry-docking of the Ship and actual dry-docking costs incurred and paid by the Borrower in relation to the Ship minus the total accrued monthly dry-docking cost for the Ship and the total cost of any intermediate or special survey incurred and paid by the Borrower for the Ship and any repairs necessary for the seaworthiness and safe operation of the Ship), spares, management, operation and voyage (if payable by the Borrower) of the Ship.

“Original Financial Statements” means:

- (a) in relation to the Guarantor, the audited consolidated financial statements of the Group for its financial year ended 31 December 2016; and
- (b) in relation to the Borrower, its unaudited financial statements for its financial year ended 31 December 2016.

“Original Jurisdiction” means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement.

“Overseas Regulations” means the Overseas Companies Regulations 2009 (SI 2009/1801).

“Parallel Debt” means any amount which an Obligor owes to the Security Agent under Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or under that clause as incorporated by reference or in full in any other Finance Document.

“Participating Member State” means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“Party” means a party to this Agreement.

“PATRIOT Act” means the United States Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Improvement and Reauthorization Act of 2005 (H.R. 3199).

“Permitted Charter” means a Charter:

- (a) which is a time, voyage or consecutive voyage charter;
- (b) the duration of which does not exceed and is not capable of exceeding, by virtue of any optional extensions, 12 months plus a redelivery allowance of not more than 30 days;
- (c) which is entered into on *bona fide* arm’s length terms at the time at which the Ship is fixed; and
- (d) in relation to which not more than two months’ hire is payable in advance,

and any other Charter which is approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

“Permitted Financial Indebtedness” means:

- (a) any Financial Indebtedness incurred under the Finance Documents;
- (b) until (and including) the Utilisation Date, the Existing Indebtedness; and
- (c) any Financial Indebtedness that is subordinated to all Financial Indebtedness incurred under the Finance Documents pursuant to the Subordination Agreement or otherwise and which is, in the case of any such Financial Indebtedness of the Borrower, the subject of Subordinated Debt Security.

“Permitted Security” means:

- (a) until the Utilisation Date, any Security created securing the Existing Indebtedness;
- (b) Security created by the Finance Documents;
- (c) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (d) liens for unpaid master’s and crew’s wages in accordance with first class ship ownership and management practice;

- (e) liens for salvage;
- (f) liens for master's disbursements incurred in the ordinary course of trading; and
- (g) any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of the Ship and not as a result of any default or omission by the Borrower and subject, in the case of liens for repair or maintenance, to Clause 23.15 (*Restrictions on chartering, appointment of managers etc.*).

"Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA that is subject to Title IV of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed to by any Obligor or any of their respective ERISA Affiliates.

"Potential Event of Default" means any event or circumstance specified in Clause 26 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Prohibited Person" means any person (whether designated by name or by reason of being included in a class of persons) against whom Sanctions are imposed.

"Protected Party" has the meaning given to it in Clause 12.1 (*Definitions*).

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market in which case the Quotation Day will be determined by the Facility Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

"Reference Bank Quotation" means any quotation supplied to the Facility Agent by a Reference Bank.

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent (acting on the instructions of the Majority Lenders) at its request by the Reference Banks and:

- (a) if:
 - (i) the Reference Bank is a contributor to the Screen Rate; and
 - (ii) it consists of a single figure,as the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the Screen Rate are asked to submit to the relevant administrator; or
- (b) in any other case, as the rate at which the relevant Reference Bank could fund itself in dollars for the relevant period with reference to the unsecured wholesale funding market.

"Reference Banks" means any banks or other entities as may be appointed by the Facility Agent in consultation with the Borrower.

“Refinancing Date” means, in relation to any Existing Group Facility Agreement, the date on which that Existing Group Facility Agreement is refinanced by the creditor(s) under the relevant Group Facility Agreement.

“Refinancing Period” means the period commencing on the date of this Agreement and ending on the earlier of (i) 31 August 2017 (or such later date agreed by the Facility Agent acting on the instructions of the Majority Lenders) and (ii) on the occurrence of a Termination Event.

“Related Fund” in relation to a fund (the **“first fund”**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

“Relevant Interbank Market” means the London interbank market.

“Relevant Jurisdiction” means, in relation to a Transaction Obligor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to any of the Transaction Security created, or intended to be created, by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

“Relevant Period” means the period commencing on the date of this Agreement and ending on 31 December 2019.

“Repayment Date” means each date on which a Repayment Instalment is required to be paid under Clause 6.1 (*Repayment of Loan*).

“Repayment Instalment” has the meaning given to it in Clause 6.1 (*Repayment of Loan*).

“Repeating Representation” means each of the representations set out in Clause 18 (*Representations*) except Clause 18.10 (*Insolvency*), Clause 18.11 (*No filing or stamp taxes*) and Clause 18.12 (*Deduction of Tax*) and Clause 18.26 (*Financial Indebtedness*) and any representation of any Transaction Obligor made in any other Finance Document that is expressed to be a “Repeating Representation” or is otherwise expressed to be repeated.

“Representative” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

“Requisition” means:

- (a) any expropriation, confiscation, requisition (excluding a requisition for hire or use which does not involve a requisition for title) or acquisition of the Ship, whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration, which is effected (whether *de jure* or *de facto*) by any government or official authority or by any person or persons claiming to be or to represent a government or official authority unless it is within 30 days redelivered to the full control of the Borrower (or any other period as the Facility Agent (acting on the instructions of the Majority Lenders) may accept in writing); and

- (b) any capture or seizure of the Ship (including any hijacking or theft) by any person whatsoever, unless it is within 45 days redelivered to the full control of the Borrower (or any other period the Facility Agent may (acting on the instructions of the Majority Lenders) accept in writing).

“Requisition Compensation” includes all compensation or other moneys payable to the Borrower by reason of any Requisition or any arrest or detention of the Ship in the exercise or purported exercise of any lien or claim.

“Resolution Authority” means any body which has authority to exercise any Write-down and Conversion Powers.

“Safety Management Certificate” has the meaning given to it in the ISM Code.

“Safety Management System” has the meaning given to it in the ISM Code.

“Sanctions” means any sanctions, embargoes, freezing provisions, prohibitions or other restrictions relating to trading, doing business, investment, exporting, financing or making assets available (or other activities similar to or connected with any of the foregoing):

- (a) imposed by law or regulation of the United Kingdom, the Council of the European Union, the United Nations or its Security Council or the United States of America regardless of whether the same is or is not binding on any Transaction Obligor; or
- (b) otherwise imposed by any law or regulation binding on a Transaction Obligor or to which a Transaction Obligor is subject (which shall include without limitation, any extra territorial sanctions imposed by law or regulation of the United States of America).

“Screen Rate” means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for dollars for the relevant period displayed (before any correction, recalculation or republication by the administrator) on the Bloomberg BBAM (or any replacement Bloomberg page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Bloomberg. If such page or service ceases to be available, the Facility Agent may (acting on the instructions of the Majority Lenders) specify another page or service displaying the relevant rate after consultation with the Borrower.

“Secured Liabilities” means all present and future obligations and liabilities, (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under or in connection with each Finance Document.

“Secured Party” means each Finance Party from time to time party to this Agreement, a Receiver or any Delegate.

“Security” means a mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

“Security Assets” means those assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

“Security Document” means:

- (a) any Shares Security;
- (b) the Mortgage;

- (c) the General Assignment;
- (d) any Charter Assignment;
- (e) the Account Security;
- (f) any Manager's Undertaking;
- (g) any Subordinated Debt Security;
- (h) any other document (whether or not it creates Security) which is executed as security for the Secured Liabilities; or
- (i) any other document designated as such by the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrower.

"Security Period" means the period starting on the date of this Agreement and ending on the date on which the Facility Agent is satisfied (acting on the instructions of the Majority Lenders) that there is no outstanding Commitment in force and that the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full.

"Security Property" means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in relation to the Secured Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Security Agent as trustee for the Secured Parties;
- (c) the Security Agent's interest in any turnover trust created under the Finance Documents;
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties,

except:

- (i) rights intended for the sole benefit of the Security Agent; and
- (ii) any moneys or other assets which the Security Agent has transferred to the Facility Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement.

"Servicing Party" means the Facility Agent or the Security Agent.

"Shareholders" means, together:

- (a) KEP VI (Newco Marine), Ltd, a company incorporated in the Cayman Islands;
- (b) KIA VIII (Newco Marine), Ltd, a company incorporated in the Cayman Islands;
- (c) MAAS Capital Investments B.V., a company incorporate in the Netherlands; and
- (d) Management Investor Co, a corporation incorporated in the Marshall Islands.

“Shares Security” means a document creating Security over the LLC Shares in the Borrower in agreed form.

“Ship” means the 2011-built Post-Panamax container carrier type of vessel of 6,572 TEU, having IMO Number 9349605 and registered in the name of the Borrower under the Approved Flag with the name “AGIOS DIMITRIOS”.

“Shortfall Amount” means the positive amount (if any) which when aggregated with the excess Earnings applied towards prepayment of part of the Loan during the period commencing on 1 January 2019 and ending on 31 December 2019 pursuant to Clause 7.3 (*Voluntary prepayment of Loan*) and/or Clause 7.7 (*Excess Cash Flow*) is equal to \$400,000.

“Specified Time” means a day or time determined in accordance with Schedule 7 (*Timetables*).

“Subordinated Creditor” means:

- (a) an Obligor; or
- (b) K&T Marine; or
- (c) any other person who becomes a Subordinated Creditor in accordance with this Agreement.

“Subordinated Debt Security” means a Security over Subordinated Liabilities granted or to be granted by a Subordinated Creditor in favour of the Security Agent in an agreed form.

“Subordinated Finance Document” means:

- (a) a Subordinated Loan Agreement; and
- (b) any other document relating to or evidencing Subordinated Liabilities.

“Subordinated Liabilities” means all indebtedness owed or expressed to be owed by the Borrower to the Subordinated Creditor whether under the Subordinated Finance Documents or otherwise.

“Subordinated Loan Agreement” means:

- (a) a loan agreement to be made between (i) the Borrower and (ii) a Subordinated Creditor; or
- (b) the K&T Loan Agreement.

“Subordination Agreement” means a subordination agreement entered into or to be entered into by Subordinated Creditor and the Security Agent in agreed form.

“Subsidiary” means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

“Tax” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“Tax Credit” has the meaning given to it in Clause 12.1 (*Definitions*).

“Tax Deduction” has the meaning given to it in Clause 12.1 (*Definitions*).

“Tax Payment” has the meaning given to it in Clause 12.1 (*Definitions*).

“Technical Management Agreement” means the agreement entered into between the Borrower and the Approved Technical Manager regarding the technical management of the Ship.

“Termination Date” means 31 December 2020.

“Termination Event” means any of the following events or circumstances:

- (a) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any borrower or other party providing security under any Group Facility Agreement; or
 - (ii) the enforcement of any security interest over any assets of any borrower or any other party providing security under any Group Facility Agreement; or
 - (iii) any analogous procedure or step is taken in any jurisdiction; or
- (b) any arrest or detention of any Existing Fleet Vessel securing the indebtedness under any Group Facility Agreement or any exercise or purported exercise of any lien on any such Existing Fleet Vessel or any requisition of any such Existing Fleet Vessel, in each case by any creditor(s) under that Group Facility Agreement.

“Third Parties Act” has the meaning given to it in Clause 1.5 (*Third party rights*).

“Total Commitments” means the aggregate of the Commitments, being \$19,500,000 at the date of this Agreement.

“Total Loss” means:

- (a) actual, constructive, compromised, agreed or arranged total loss of the Ship; or
- (b) any Requisition of the Ship unless the Ship is returned to the full control of the Borrower within 30 days of such Requisition (or such later period agreed by the Facility Agent acting with the authorisation of the Majority Lenders).

“Total Loss Date” means, in relation to the Total Loss of the Ship:

- (a) in the case of an actual loss of the Ship, the date on which it occurred or, as notified to the Facility Agent by an Obligor, or if that is unknown, the date when the Ship was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of the Ship, the earlier 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 with the Ship’s insurers in which the insurers agree to treat the Ship as a total loss; and
- (c) in the case of any other type of Total Loss, the date (or the most likely date) on which it appears to the Majority Lenders that the event constituting the total loss occurred.

“Transaction Document” means:

- (a) a Finance Document; or
- (b) any other document designated as such by the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrower.

“Transaction Obligor” means an Obligor, any Approved Manager or any other person who executes a Transaction Document (other than a Finance Party, any Charterer, K&T Marine and any Affiliate of the Guarantor which is a Subordinated Creditor).

“Transaction Security” means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

“Transfer Certificate” means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the parties to such transfer certificate.

“Transfer Date” means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

“UK Establishment” means a UK establishment as defined in the Overseas Regulations.

“Unpaid Sum” means any sum due and payable but unpaid by a Transaction Obligor under the Finance Documents.

“US” means the United States of America.

“US Tax Obligor” means:

- (a) a person which is resident for tax purposes in the US; or
- (b) a person some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

“Utilisation” means the utilisation of the Facility.

“Utilisation Date” means the date of the Utilisation, being the date on which the Loan is to be advanced.

“Utilisation Request” means a notice substantially in the form set out in Part A of Schedule 3 (*Requests*).

“VAT” means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

“Write-down and Conversion Powers” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

1.2 Construction

(a) Unless a contrary indication appears, a reference in this Agreement to:

- (i) the **“Account Bank”**, the **“Facility Agent”**, any **“Finance Party”**, any **“Lender”**, any **“Obligor”**, any **“Party”**, any **“Secured Party”**, the **“Security Agent”**, any **“Transaction Obligor”** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (ii) **“assets”** includes present and future properties, revenues and rights of every description;
- (iii) a liability which is **“contingent”** means a liability which is not certain to arise and/or the amount of which remains unascertained;
- (iv) **“document”** includes a deed and also a letter, fax or telex;
- (v) **“expense”** means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Tax including VAT;
- (vi) a **“Finance Document”**, a **“Security Document”** or **“Transaction Document”** or any other agreement or instrument is a reference to that Finance Document, Security Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (vii) a **“group of Lenders”** includes all the Lenders;
- (viii) **“indebtedness”** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (ix) **“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 States of America, the United Nations or its Security Council;

- (x) **“proceedings”** means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;
 - (xi) a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (xii) a **“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;
 - (xiii) a provision of law is a reference to that provision as amended or re-enacted;
 - (xiv) a time of day is a reference to New York time unless specified to the contrary;
 - (xv) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
 - (xvi) words denoting the singular number shall include the plural and vice versa; and
 - (xvii) **“including”** and **“in particular”** (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.
- (b) The determination of the extent to which a rate is **“for a period equal in length”** to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
 - (c) Section, Clause and Schedule headings are for ease of reference only and are not to be used for the purposes of construction or interpretation of the Finance Documents.
 - (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under, or in connection with, any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (e) A Potential Event of Default is **“continuing”** if it has not been remedied or waived and an Event of Default is **“continuing”** if it has not been waived.

1.3 Construction of insurance terms

In this Agreement:

“approved” means, for the purposes of Clause 22 (*Insurance Undertakings*), approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders).

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

“obligatory insurances” means all insurances effected, or which the Borrower is obliged to effect, under Clause 22 (*Insurance Undertakings*) or any other provision of this Agreement or of another Finance Document.

“**policy**” 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) (1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/10/83) (1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision.

“**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 23 of the Institute Time Clauses (Hulls)(1/10/83).

1.4 **Agreed forms of Finance Documents**

References in Clause 1.1 (*Definitions*) to any Finance Document being in “agreed form” are to that Finance Document:

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by the Borrower and the Facility Agent); or
- (b) in any other form agreed in writing between the Borrower and the Facility Agent acting with the authorisation of the Majority Lenders or, where Clause 42.2 (*All Lender matters*) applies, all the Lenders.

1.5 **Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Subject to Clause 42.3 (*Other exceptions*) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate, Affiliate or for the purpose of Clause 14.2 (*Other indemnities*), Clause 14.4 (*Indemnity to the Facility Agent*) and Clause 14.5 (*Indemnity to the Security Agent*), any Indemnified Person, or any other person described in paragraph (b) of Clause 29.10 (*Exclusion of liability*), paragraph (b) of Clause 30.11 (*Exclusion of liability*), Clause 29.21 (*Role of Reference Banks*) or Clause 29.22 (*Third Party Reference Banks*) may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

SECTION 2

THE FACILITY

2 THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a dollar term loan facility in one advance in an aggregate amount not exceeding the Total Commitments.

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from a Transaction Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of the Loan or any other amount owed by a Transaction Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by that Transaction Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.3 Borrower's Agent

- (a) The Borrower by its execution of this Agreement irrevocably appoints the Guarantor to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Guarantor on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including the Utilisation Request), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by the Borrower notwithstanding that they may affect the Borrower, without further reference to or the consent of the Borrower; and
 - (ii) each Finance Party to give any notice, demand or other communication to the Borrower pursuant to the Finance Documents to the Guarantor,

and in each case the Borrower shall be bound as though the Borrower itself had given the notices and instructions (including, without limitation, the Utilisation Request) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Guarantor or given to the Guarantor under any Finance Document on behalf of the Borrower or in connection with any Finance Document (whether or not known to the Borrower) shall be binding for all purposes on the Borrower as if the Borrower had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Guarantor and the Borrower, those of the Guarantor shall prevail.

3 PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility only for the purpose stated in the preamble (*Background*) to this Agreement.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4 CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Borrower may not deliver the Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Part A of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders).

4.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if:

- (a) on the date of the Utilisation Request and on the proposed Utilisation Date and before the Loan is advanced:
 - (i) no Default (excluding, up to (and including) the relevant Refinancing Date, any Default having occurred and being continuing in connection with and under any of the Existing Group Facility Agreements) is continuing or would result from the proposed Loan; and
 - (ii) the Repeating Representations to be made by each Transaction Obligor are true;
- (b) the Facility Agent has received on or before the Utilisation Date, or the Majority Lenders are satisfied they will receive when the Loan is made available, all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders).

4.3 Notification of satisfaction of conditions precedent

- (a) The Facility Agent shall promptly send to the Lenders all of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*) which it has received.
- (b) Each Lender shall promptly confirm to the Facility Agent in writing that it is satisfied as to the satisfaction of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*).
- (c) The Facility Agent shall notify the Borrowers and the Lenders promptly upon receipt of those confirmations referred to in paragraph (b) above from all of the Lenders.
- (d) Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (c) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.4 Waiver of conditions precedent

If the Majority Lenders, at their discretion, permit the Loan to be borrowed before any of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*) or Clause 4.2 (*Further conditions precedent*) has been satisfied, the Borrower shall ensure that that condition is satisfied within five Business Days after the Utilisation Date or such later date as the Facility Agent, acting with the authorisation of the Majority Lenders, may agree in writing with the Borrower.

SECTION 3

UTILISATION

5 UTILISATION

5.1 Delivery of Utilisation Request

- (a) The Borrower may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.
- (b) The Borrower may not deliver more than one Utilisation Request.

5.2 Completion of Utilisation Request

- (a) The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
 - (iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*).
- (b) Only one advance may be requested in the Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in the Utilisation Request must be dollars.
- (b) The amount of the Loan must be an amount which is not more \$19,500,000.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met or, as the case may be, waived, each Lender shall make its participation in the Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in the Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately before advancing the Loan.
- (c) Subject to receiving a Utilisation Request, the Facility Agent shall notify each Lender of the amount of the Loan and the amount of its participation in the Loan by the Specified Time.

5.5 Cancellation of Commitments

The Commitments which are unutilised at the end of the Availability Period shall then be cancelled.

5.6 Retentions and payment to third parties

The Borrower irrevocably authorises the Facility Agent, to pay on the Utilisation Date to, or for the account of, the Borrower the amounts which the Facility Agent receives from the Lenders in respect of the Loan. That payment shall be made:

- (a) to the account which the Borrower specifies in the Utilisation Request; and

- (b) in like funds as the Facility Agent received from the Lenders in respect of the Loan.

5.7 Disbursement of Loan to third party

Payment by the Facility Agent under Clause 5.6 (*Retentions and payment to third parties*) to a person other than the Borrower shall constitute the advance of the Loan and the Borrower shall at that time become indebted, as principal and direct obligor, to each Lender in an amount equal to that Lender's participation in the Loan.

5.8 Prepositioning of funds

If, in respect of the Utilisation of the Loan, the Facility Agent (acting on the instructions of the Lenders), at the request of the Borrower and on terms acceptable to all the Lenders and the Borrower, prepositions funds with any bank:

- (a) the Lenders shall, prior to any such pre-positioning of funds, provide an instruction letter to the Facility Agent in form and substance acceptable to the Facility Agent; and
- (b) the Borrower and the Guarantor:
 - (i) agree to pay interest on the amount of the funds so prepositioned at the rate described in Clause 8.1 (*Calculation of interest*) on the basis of successive interest periods of one day and so that interest shall be paid together with the first payment of interest on the Loan after the Utilisation Date in respect of it or, if the Utilisation Date does not occur, within three Business Days of demand by the Facility Agent (acting on the instructions of the Lenders); and
 - (ii) shall, without duplication, indemnify each Finance Party against any costs, loss or liability it may incur in connection with such arrangement.

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

6 REPAYMENT

6.1 Repayment of Loan

(a) The Borrower shall repay the Loan by:

- (i) 4 equal consecutive quarterly instalments, each in the amount of \$650,000 (the “**Instalments**” and each an “**Instalment**”); and
- (ii) a balloon instalment in the amount of \$16,900,000 (the “**Balloon Instalment**” and together with the Instalments, the “**Repayment Instalments**” and each a “**Repayment Instalment**”).

(b) The first Instalment shall be repaid on 31 March 2020, each subsequent Instalment shall be repaid at quarterly intervals thereafter and the last Instalment, together with the Balloon Instalment, shall be repaid on the Termination Date.

6.2 Effect of cancellation and prepayment on scheduled repayments

- (a) If the Borrower cancels the whole or any part of any Available Commitment in accordance with Clause 7.5 (*Right of repayment and cancellation in relation to a single Lender*) or if the Available Commitment of any Lender is cancelled under Clause 7.1 (*Illegality*) then the Repayment Instalments falling after that cancellation will be reduced pro rata by the amount of the Available Commitments so cancelled.
- (b) If any part of the Loan is repaid or prepaid in accordance with Clause 7.5 (*Right of repayment and cancellation in relation to a single Lender*) or Clause 7.1 (*Illegality*) then the Repayment Instalments for each Repayment Date falling after that repayment or prepayment will be reduced pro rata by the amount of the Loan repaid or prepaid.
- (c) If any part of the Loan is prepaid in accordance with Clause 7.3 (*Voluntary prepayment of Loan*) then the amount of the Repayment Instalments for each Repayment Date falling after that repayment or prepayment will be reduced in inverse chronological order by the amount of the Loan repaid or prepaid.

6.3 Termination Date

On the Termination Date, the Borrower shall additionally pay to the Facility Agent for the account of the Finance Parties all other sums then accrued and owing under the Finance Documents.

6.4 Reborrowing

The Borrower may not reborrow any part of the Facility which is repaid.

7 PREPAYMENT AND CANCELLATION

7.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Loan or it becomes unlawful for that Lender to do so:

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;

- (b) upon the Facility Agent notifying the Borrower, the Available Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall prepay that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Facility Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled or terminated in the amount of the participation prepaid.

7.2 Change of control

- (a) If the Shareholders cease to control directly or indirectly the Guarantor:
 - (i) the Guarantor shall promptly notify the Facility Agent upon becoming aware of that event; and
 - (ii) if the Majority Lenders so require, the Facility Agent shall (acting on the instructions of the Majority Lenders), by not less than 7 days' notice to the Borrower, cancel the Facility and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility will be cancelled and the Loan and all such outstanding interest and other amounts will become immediately due and payable.
- (b) For the purpose of paragraph (a) above "**control**" means:
 - (i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (A) cast, or control the casting of, all of the votes that might be cast at a general meeting of the Guarantor; or
 - (B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Guarantor; or
 - (C) give directions with respect to the operating and financial policies of the Guarantor with which the directors or other equivalent officers of the Guarantor are obliged to comply; and/or
 - (ii) the holding beneficially of all of the issued share capital of the Guarantor (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

7.3 Voluntary prepayment of Loan

- (a) Subject to paragraph (b) below, the Borrower may, if it gives the Facility Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders and the Facility Agent may agree) prior written notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$250,000 or a multiple of that amount).
- (b) The Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

7.4 Mandatory prepayment on sale or Total Loss

If the Ship is sold or becomes a Total Loss, the Borrower shall repay the Loan together with accrued interest, and all other amounts accrued under the Finance Documents. Such repayment shall be made:

- (a) in the case of a sale of the Ship, on or before the date on which the sale is completed by delivery of the Ship to the buyer; or

- (b) in the case of a Total Loss, on the earlier of (i) the date falling 90 days after the Total Loss Date and (ii) the date of receipt by the Security Agent of the proceeds of insurance relating to such Total Loss.

7.5 Right of repayment and cancellation in relation to a single Lender

(a) If:

- (i) any sum payable to any Lender by a Transaction Obligor is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*) or under that clause as incorporated by reference or in full in any other Finance Document; or
- (ii) any Lender claims indemnification from the Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13.1 (*Increased costs*); or
- (iii) the Facility Agent receives notification from a Relevant Lender under Clause 10.3 (*Market disruption*),

the Borrower may:

- (A) whilst in the case of sub-paragraphs (i) and (ii) above the circumstance giving rise to the requirement for that increase or indemnification continues; or
- (B) whilst in the case of sub-paragraph (iii) above the situation in relation to the Relevant Lender continues,

give the Facility Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loan.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the Loan.

7.6 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 (*Prepayment and Cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment and, if relevant, the part of the Loan to be prepaid or cancelled.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrower or the affected Lenders, as appropriate.
- (g) If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

7.7 **Excess Cash Flow**

If on an Excess Cash Flow Date, the aggregate of the daily Earnings (for the avoidance of doubt, excluding the Minimum Liquidity Amount held in the Earnings Account and any commission and brokerage fees not otherwise included in the Operating Expenses) for the Cash Sweep Period ending on such Excess Cash Flow Date exceeds the aggregate of:

- (a) the aggregate of the Operating Expenses in respect of the Ship, for the Cash Sweep Period ending on such Excess Cash Flow Date; and
- (b) the sums incurred by the Borrower in respect of the payment of principal of, and accrued interest on, the Loan and any accrued costs and expenses pursuant to this Agreement, during the Cash Sweep Period ending on such Excess Cash Flow Date,

the Borrower shall pay such excess amount (the "**Excess Cash Flow**"), as evidenced in the Excess Cash Flow Notice relating to such Excess Cash Flow Date, to the Facility Agent, on the next Interest Payment Date falling due after receipt of such relevant Excess Cash Flow Notice, such Excess Cash Flow to be applied in prepayment of the then outstanding Repayment Instalments (including the Balloon Instalment) in inverse order of maturity.

This Clause shall only be applicable for the duration of the Excess Cash Flow Period.

In this Clause 7.7 (*Excess Cash Flow*):

"Cash Sweep Period" means each three-month period commencing on 1 January, 1 April, 1 July and 1 October in each financial year of the Borrower.

"Excess Cash Flow Date" means the last day of each Cash Sweep Period; and

"Excess Cash Flow Notice" means a certificate to be provided by the Borrower to the Facility Agent pursuant to Clause 19.2 (*Financial statements*) within 45 days from each Excess Cash Flow Date evidencing the Excess Cash Flow available on such date.

"Excess Cash Flow Period" means the period commencing on the Utilisation Date and ending on the Cash Sweep End Date.

7.8 **Additional mandatory prepayment event**

If (a) the Cash Sweep End Date has not occurred on or prior to 31 December 2019 and (b) the aggregate of the excess Earnings applied in prepayment of the Loan pursuant to Clause 7.7 (*Excess Cash Flow*) and/or Clause 7.3 (*Voluntary prepayment of Loan*) is less than \$400,000 for the duration of the period commencing on 1 January 2019 until the Cash Sweep Period ending on 31 December 2019, the Guarantor shall procure that part of the shareholders' equity (as provided in Clause 21.17 (*Guarantor's Equity Contribution*)) is injected to the Borrower, and the Borrower shall be obliged to utilise such part of the equity to prepay the Shortfall Amount to the Lenders on the next Interest Payment Date falling due after receipt of the Excess Cash Flow Notice relevant to the Cash Sweep Period ending on 31 December 2019. Such Shortfall Amount shall be applied in or towards prepayment of the then outstanding Repayment Instalments in inverse order of maturity.

7.9 Application of prepayments

Any prepayment of any part of the Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality*)) and Clause 7.5 (*Right of repayment and cancellation in relation to a single Lender*) shall be applied pro rata to each Lender's participation in that part of the Loan.

SECTION 5

COSTS OF UTILISATION

8 INTEREST

8.1 Calculation of interest

The rate of interest on the Loan or any part of the Loan for each Interest Period is the percentage rate per annum which is the aggregate of:

- (a) the Margin; and
- (b) LIBOR.

8.2 Payment of interest

- (a) The Borrower shall pay accrued interest on the Loan or any part of the Loan on the last day of each Interest Period (each an “**Interest Payment Date**”).
- (b) If an Interest Period is longer than three Months, the Borrower shall also pay interest then accrued on the Loan or the relevant part of the Loan on the dates falling at three Month intervals after the first day of the Interest Period.

8.3 Default interest

- (a) If a Transaction Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 2 per cent. per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted part of the Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Facility Agent (acting on the instructions of the Lenders). Any interest accruing under this Clause 8.3 (*Default interest*) shall be immediately payable by the Obligor on demand by the Facility Agent (acting on the instructions of the Lenders).
- (b) If an Unpaid Sum consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period relating to the Loan or that part of the Loan:
 - (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan or that part of the Loan; and
 - (ii) the rate of interest applying to that Unpaid Sum during that first Interest Period shall be 2 per cent. per annum higher than the rate which would have applied if that Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

8.4 Notification of rates of interest

- (a) The Facility Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- (b) The Facility Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan, any part of the Loan or any Unpaid Sum.

9 INTEREST PERIODS

9.1 Commencement of Interest Periods

The first Interest Period for the Loan shall start on the Utilisation Date and end on the last day of the current calendar quarter and each subsequent Interest Period shall start on the last day of the preceding Interest Period.

9.2 Duration of normal Interest Periods

Each Interest Period (other than the first Interest Period, whose duration shall be determined in accordance with Clause 9.1 (*Commencement of Interest Periods*)) shall be:

- (a) 3 months; or
- (b) such other period as the Facility Agent may, with the authorisation of all the Lenders, agree with the Borrower.

9.3 Duration of Interest Period for Repayment Instalments

In respect of the Repayment Instalments payable pursuant to Clause 6.1 (*Repayment of Loan*), an Interest Period shall end on the Repayment Date of any such Repayment Instalment.

9.4 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10 CHANGES TO THE CALCULATION OF INTEREST

10.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of the Loan or any part of the Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:
 - (i) dollars; or
 - (ii) the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Screen Rate, the applicable LIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for dollars or the relevant Interest Period there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 10.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

10.2 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if LIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.

- (b) If at or about noon on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

10.3 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 10 per cent. of the Loan or the relevant part of the Loan as appropriate) (the “**Relevant Lender**”) that the cost to it of funding its participation in the Loan or that part of the Loan from whatever source it may reasonably select would be in excess of LIBOR then Clause 10.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

10.4 Cost of funds

- (a) If this Clause 10.4 (*Cost of funds*) applies, the rate of interest on each Lender’s share of the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin; and
 - (ii) the weighted average of the rates notified to the Facility Agent by each Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause 10.4 (*Cost of funds*) applies and the Facility Agent (acting on the instructions of the Majority Lenders) or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 42.4 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (ii) above shall, with the prior consent of all the Lenders, the Facility Agent and the Borrower, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
- (e) If this Clause 10.4 (*Cost of funds*) applies pursuant to Clause 10.3 (*Market disruption*) and:
- (i) a Lender’s Funding Rate is less than LIBOR; or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph(ii) of paragraph (a) above,
- the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.
- (f) If this Clause 10.4 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

10.5 Break Costs

- (a) The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for the Loan, the relevant part of the Loan or that Unpaid Sum.
- (b) Each Lender shall, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11 FEES

11.1 Servicing Parties fee

The Borrower shall pay to each of the Facility Agent and the Security Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

11.2 Upfront fee

The Borrower shall pay to the Facility Agent a non-refundable upfront fee (for the account of the Lenders pro-rata to their Commitments) in the amount \$292,500 (representing 1.5 per cent. of the Total Commitments) on the date of this Agreement.

11.3 Additional fee

The Borrower shall pay to the Facility Agent a non-refundable additional fee in the amount of \$5,000,000 (the “**Additional Fee**”) on the earlier of the date (the “**Fee Payment Date**”) on which (i) the Loan is prepaid or repaid in full (including but not limited to any mandatory prepayments made pursuant to Clauses 7.2 (*Change of control*) and 7.4 (*Mandatory prepayment on sale or Total Loss*) and (ii) the Facility Agent (acting on the instructions of the Majority Lenders) takes any action as a result of the occurrence of an Event of Default which is continuing and a notice is served under Clause 26.18 (*Acceleration*).

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

12 TAX GROSS UP AND INDEMNITIES

12.1 Definitions

(a) In this Agreement:

“**Protected Party**” means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

“**Tax Payment**” means either the increase in a payment made by an Obligor to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 12 (*Tax Gross Up and Indemnities*) reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

(a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.

(c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 Tax indemnity

(a) The Obligors shall (within three Business Days of demand by the Facility Agent acting on the instructions of a Protected Party or claiming on its own behalf) pay to a Protected Party an

amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or
 - (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Obligors.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3 (*Tax indemnity*), notify the Facility Agent.

12.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was received; and
 - (b) that Finance Party has obtained and utilised that Tax Credit,
- the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

12.5 Stamp taxes

The Obligors shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability which that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

12.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply

made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
 - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this sub-paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.6 (VAT) to any Party shall, at any time when that Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or representative or head) of that group or unity at the relevant time (as the case may be).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party’s VAT registration and such other information as is reasonably requested in connection with such Finance Party’s VAT reporting requirements in relation to such supply.

12.7 **FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or

- (B) not a FATCA Exempt Party; and
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to sub-paragraph (i) of paragraph (a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything and sub-paragraph (iii) of paragraph (a) above shall not oblige any other Party to do anything which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with sub-paragraphs (i) or (ii) of paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If the Borrower is a US Tax Obligor, or the Facility Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
- (i) where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where the Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
 - (iii) where the Borrower is not a US Tax Obligor, the date of a request from the Facility Agent,
- supply to the Facility Agent:
- (i) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (ii) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.

- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.
- (h) The Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

12.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify each Obligor and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

13 INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*), the Borrower shall, within three Business Days of a demand by the Facility Agent (acting on the instructions of a Lender or claiming on its own behalf), pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
 - (ii) compliance with any law or regulation made,in each case after the date of this Agreement; or
 - (iii) the implementation, application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.
- (b) In this Agreement:
 - (i) **“Basel III”** means:
 - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
 - (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

- (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.
- (ii) **“CRD IV”** means:
- (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012;
 - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and
 - (C) any other law or regulation which implements Basel III.
- (iii) **“Increased Costs”** means:
- (A) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
 - (B) an additional or increased cost; or
 - (C) a reduction of any amount due and payable under any Finance Document,
- which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

Notwithstanding anything above to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directives promulgated thereunder, are deemed to have been introduced or adopted after the date of this Agreement, regardless of the date enacted or adopted.

13.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);
- (d) compensated for by any payment made pursuant to Clause 14.3 (*Mandatory Cost*); or

- (e) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14 OTHER INDEMNITIES

14.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
- (i) making or filing a claim or proof against that Obligor; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
- that Obligor shall, as an independent obligation, on demand, indemnify each Secured Party to which that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other indemnities

- (a) Each Obligor shall, on demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:
- (i) the occurrence of any Event of Default;
 - (ii) a failure by a Transaction Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 32 (*Sharing among the Finance Parties*);
 - (iii) funding, or making arrangements to fund, its participation in the Loan requested by the Borrower in the Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or
 - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.
- (b) Each Obligor shall, on demand, indemnify each Finance Party, each Indemnified Person, against any cost, loss or liability incurred by that Indemnified Person pursuant to or in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry, in connection with or arising out of the entry into and the transactions contemplated by the Finance Documents, having the benefit of any Security constituted by the Finance Documents or which relates to the condition or operation of, or any incident occurring in relation to, the Ship unless such cost, loss or liability is caused by the gross negligence or wilful misconduct of that Indemnified Person.
- (c) Without limiting, but subject to any limitations set out in paragraph (b) above, the indemnity in paragraph (b) above shall cover any cost, loss or liability incurred by each Indemnified Person in any jurisdiction:
- (i) arising or asserted under or in connection with any law relating to safety at sea, the ISM Code, any Environmental Law or any Sanctions; or

- (ii) in connection with any Environmental Claim.
- (d) Any Affiliate or any officer or employee of a Finance Party or of any of its Affiliates may rely on this Clause 14.2 (*Other indemnities*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

14.3 Mandatory Cost

The Borrower shall, on demand by the Facility Agent (on the request of a relevant Lender), pay to the Facility Agent for the account of the relevant Lender, such amount which any Lender certifies in a notice to the Facility Agent to be its good faith determination of the amount necessary to compensate it for complying with:

- (a) in the case of a Lender lending from a Facility Office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank or any other authority or agency which replaces all or any of its functions) in respect of loans made from that Facility Office; and
- (b) in the case of any Lender lending from a Facility Office in the United Kingdom, any reserve asset, special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England (or any other governmental authority or agency) and/or paying any fees to the Financial Conduct Authority and/or the Prudential Regulation Authority (or any other governmental authority or agency which replaces all or any of their functions),

which, in each case, is referable to that Lender's participation in the Loan.

14.4 Indemnity to the Facility Agent

Each Obligor shall, on demand, indemnify each Indemnified Person against:

- (a) any cost, loss or liability incurred by the Facility Agent as a result of:
 - (i) investigating (acting on the instructions of the Majority Lenders) any event which the Majority Lenders reasonably believes is a Default; or
 - (ii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents or as may be required by the Majority Lenders; and
- (b) any cost, loss or liability incurred by the Indemnified Person (otherwise than by reason of the Indemnified Person's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 33.11 (*Disruption to Payment Systems etc.*) notwithstanding the Indemnified Person's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Finance Documents.

14.5 Indemnity to the Security Agent

- (a) Each Obligor shall, on demand, indemnify each Indemnified Person against any cost, loss or liability incurred by any of them:
 - (i) in relation to or as a result of:
 - (A) any failure by the Borrower to comply with its obligations under Clause 16 (*Costs and Expenses*);

- (B) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (C) the taking, holding, protection or enforcement of the Finance Documents and the Transaction Security;
 - (D) the exercise of any of the rights, powers, discretions, authorities and remedies vested in that Indemnified Person by the Finance Documents or by law;
 - (E) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
 - (F) any action by any Transaction Obligor which vitiates, reduces the value of, or is otherwise prejudicial to, the Transaction Security; and
 - (G) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents,
- (ii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property or the performance of the terms of this Agreement or the other Finance Documents (otherwise, in each case, than by reason of the relevant Indemnified Person's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.5 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

15 MITIGATION BY THE FINANCE PARTIES

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax Gross Up and Indemnities*), Clause 13 (*Increased Costs*) or paragraph (a) of Clause 14.3 (*Mandatory Cost*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Transaction Obligor under the Finance Documents.

15.2 Limitation of liability

- (a) Each Obligor shall, on demand, indemnify each Finance Party for all documented costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if either:
- (i) a Default has occurred and is continuing; or
 - (ii) in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16 COSTS AND EXPENSES

16.1 Transaction expenses

The Obligors shall, on demand, pay the Facility Agent and the Security Agent the amount of all documented costs and expenses (including legal fees (other than the fees of the Facility Agent's legal counsel incurred up to the date of this Agreement which the Lenders have agreed to pay on a pro rata basis)) reasonably incurred by any Secured Party in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) any other Finance Documents executed after the date of this Agreement.

16.2 Amendment costs

If:

- (a) a Transaction Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 33.9 (*Change of currency*); or
- (c) a Transaction Obligor requests, and the Security Agent agrees to (acting on the instructions of the Majority Lenders), the release of all or any part of the Security Assets from the Transaction Security,

the Obligors shall, on demand, reimburse each of the Facility Agent and the Security Agent for the amount of all documented costs and expenses (including legal fees) reasonably incurred by each Secured Party in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 Enforcement and preservation costs

The Obligors shall, on demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

SECTION 7

GUARANTEE

17 GUARANTEE AND INDEMNITY

17.1 Guarantee and indemnity

The Guarantor irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each Transaction Obligor other than the Guarantor of all such other Transaction Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever a Transaction Obligor other than the Guarantor does not pay any amount when due under or in connection with any Finance Document, the Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Transaction Obligor other than the Guarantor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 17 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

17.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Transaction Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

17.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Transaction Obligor or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Clause 17 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

17.4 Waiver of defences

The obligations of the Guarantor under this Clause 17 (*Guarantee and Indemnity*) and in respect of any Transaction Security will not be affected or discharged by an act, omission, matter or thing which, but for this Clause 17.4 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Clause 17 (*Guarantee and Indemnity*) or in respect of any Transaction Security (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;
- (b) the release of any other Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect or delay in perfecting, or refusal or neglect to take up or enforce, or delay in taking or enforcing any rights against, or security over assets of, any Transaction Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Transaction Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

17.5 Immediate recourse

The Guarantor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person (including without limitation to commence any proceedings under any Finance Document or to enforce any Transaction Security) before claiming or commencing proceedings under this Clause 17 (*Guarantee and Indemnity*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

17.6 Appropriations

Until all amounts which may be or become payable by the Transaction Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (b) hold in a non-interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Clause 17 (*Guarantee and Indemnity*).

17.7 Deferral of Guarantor's rights

All rights which the Guarantor at any time has (whether in respect of this guarantee, a mortgage or any other transaction) against the Borrower, any other Transaction Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents and until the end of the Security Period and unless the Facility Agent otherwise directs (acting on the instructions of the Majority Lenders), the Guarantor will not exercise any rights which it may have (whether in respect of any Finance Document to which it is a Party or any other transaction) by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 17 (*Guarantee and Indemnity*):

- (a) to be indemnified by a Transaction Obligor;

- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Transaction Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under Clause 17.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Transaction Obligor; and/or
- (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Secured Party.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Transaction Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct (acting on the instructions of the Majority Lenders) for application in accordance with Clause 33 (*Payment Mechanics*).

17.8 Additional security

This guarantee and any other Security given by the Guarantor is in addition to and is not in any way prejudiced by, and shall not prejudice, any other guarantee or Security or any other right of recourse now or subsequently held by any Secured Party or any right of set-off or netting or right to combine accounts in connection with the Finance Documents.

17.9 Applicability of provisions of Guarantee to other Security

Clauses 17.2 (*Continuing guarantee*), 17.3 (*Reinstatement*), 17.4 (*Waiver of defences*), 17.5 (*Immediate recourse*), 17.6 (*Appropriations*), 17.7 (*Deferral of Guarantor's rights*) and 17.8 (*Additional security*) shall apply, with any necessary modifications, to any Security which the Guarantor creates (whether at the time at which it signs this Agreement or at any later time) to secure the Secured Liabilities or any part of them.

SECTION 8

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

18 REPRESENTATIONS

18.1 General

Each Obligor makes the representations and warranties set out in this Clause 18 (*Representations*) to each Finance Party on the date of this Agreement.

18.2 Status

- (a) It is a limited liability company, duly formed and validly existing in good standing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

18.3 LLC Shares and ownership

- (a) In the case of the Borrower, its limited liability company interest is unitized into a maximum of 500 LLC Shares, all of which have been issued to the Guarantor.
- (b) In the case of the Guarantor, its limited liability company interest is unitized and no limitation on the number of units is established within its limited liability company agreement. The legal title to and beneficial interest in the limited liability company interests in the Borrower is held free of any Security other than Permitted Security or any other claim by the Guarantor.
- (c) Its ultimate beneficial ownership and control is maintained by those person(s) advised to the Facility Agent in writing prior to the date of this Agreement.
- (d) None of the LLC Shares in the Borrower is subject to any option to purchase, pre-emption rights or similar rights.

18.4 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and, subject to the Legal Reservations which may be applicable at any relevant time, and enforceable obligations.

18.5 Validity, effectiveness and ranking of Security

- (a) Each Finance Document to which it is a party does now or, as the case may be, will upon execution and delivery create the Security it purports to create over any assets to which such Security, by its terms, relates, and such Security will, subject to the Legal Reservations which may be applicable at any relevant time, when created or intended to be created, be valid and effective.
- (b) No third party has or will have any Security (except for Permitted Security) over any assets that are the subject of any Transaction Security granted by it.
- (c) The Transaction Security granted by it to the Security Agent or any other Secured Party has or will when created or intended to be created have first ranking priority or such other priority it is expressed to have in the Finance Documents and is not subject to any prior ranking or *pari passu* ranking security save for any security mandatorily preferred by law.
- (d) No concurrence, consent or authorisation of any person is required for the creation of or otherwise in connection with any Transaction Security.

18.6 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, each Transaction Document to which it is a party do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any Obligor; or
- (c) any agreement or instrument binding upon it or any Obligor or any Obligor's assets or constitute a default or termination event (however described) under any such agreement or instrument.

18.7 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise:
 - (i) its entry into, performance and delivery of, each Transaction Document to which it is or will be a party and the transactions contemplated by those Transaction Documents; and
 - (ii) in the case of the Borrower, its registration of the Ship under the Approved Flag.
- (b) No limit on its powers will be exceeded as a result of the borrowing, granting of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

18.8 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
- (b) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect.

18.9 Governing law and enforcement

- (a) The choice of governing law of each Transaction Document to which it is a party will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in relation to a Transaction Document to which it is a party in the jurisdiction of the governing law of that Transaction Document will be recognised and enforced in its Relevant Jurisdictions.

18.10 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 26.8 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 26.9 (*Creditors' process or Ship arrest*),

has been taken or, to its knowledge, threatened in relation to a Transaction Obligor (other than an Approved Manager); and none of the circumstances described in Clause 26.7 (*Insolvency*) applies to a Transaction Obligor (other than an Approved Manager).

18.11 No filing or stamp taxes

Under the laws of its Relevant Jurisdictions it is not necessary that the Finance Documents to which it is a party be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by those Finance Documents except registration of the Mortgage at the Approved Flag's Ships Registry which registration filings and fees will be made and paid promptly after the date of Mortgage.

18.12 Deduction of Tax

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to which it is a party.

18.13 No default

- (a) No Event of Default and, on the date of this Agreement and on the Utilisation Date, no Default is continuing or might reasonably be expected to result from the making of the Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document (excluding, for the duration of the Refinancing Period, any Events of Default or any Default having occurred and continuing in connection with any of the Group Facility Agreements).
- (b) No other event or circumstance is outstanding which constitutes a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject.

18.14 No misleading information

- (a) Any factual information provided by Transaction Obligor for the purposes of this Agreement was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) The financial projections contained in any such information have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from any such information and no information has been given or withheld that results in any such information being untrue or misleading in any material respect.

18.15 Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) Its Original Financial Statements fairly present its financial condition as at the end of the relevant financial year and results of operations during the relevant financial year (consolidated in the case of the Guarantor).
- (c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group since 31 December 2016).

- (d) Its most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*):
- (i) have been prepared in accordance with Clause 19.4 (*Requirements as to financial statements*); and
 - (ii) fairly present its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Guarantor).
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition (or the business or consolidated financial condition of the Group, in the case of the Guarantor).

18.16 *Pari passu* ranking

Its payment obligations under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

18.17 No proceedings pending or threatened

- (a) No litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any other Transaction Obligor.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or any other Transaction Obligor.

18.18 Valuations

- (a) All information supplied by it or on its behalf to an Approved Valuer for the purposes of a valuation delivered to the Facility Agent in accordance with this Agreement was true and accurate as at the date it was supplied or (if appropriate) as at the date (if any) at which it is stated to be given.
- (b) It has not omitted to supply any information to an Approved Valuer which, if disclosed, would adversely affect any valuation prepared by such Approved Valuer.
- (c) There has been no change to the factual information provided pursuant to paragraph (a) above in relation to any valuation between the date such information was provided and the date of that valuation which, in either case, renders that information untrue or misleading in any material respect.

18.19 No breach of laws

- (a) It has not breached any law or regulation which breach has a Material Adverse Effect.
- (b) No Transaction Obligor is in violation of and nor shall it violate any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at <http://ustreas.gov/offices/enforcement/ofac> or as otherwise published from time to time, in each case, as applicable to it.

18.20 No Charter

Except as disclosed by the Borrower to the Facility Agent in writing on or before the date of this Agreement, the Ship is not subject to any Charter other than a Permitted Charter.

18.21 Compliance with Environmental Laws

All Environmental Laws relating to the ownership, operation and management of the Ship (as now conducted and as reasonably anticipated to be conducted in the future) and the terms of all Environmental Approvals have been complied with.

18.22 No Environmental Claim

No Environmental Claim has been made or threatened against any Transaction Obligor or the Ship.

18.23 No Environmental Incident

No Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred.

18.24 ISM and ISPS Code compliance

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

18.25 Taxes paid

- (a) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes.

18.26 Financial Indebtedness

- (a) The Borrower has no Financial Indebtedness outstanding other than Permitted Financial Indebtedness incurred in the ordinary course of its business of trading, chartering and operating the Ship.
- (b) The Guarantor has no Financial Indebtedness outstanding other than Permitted Financial Indebtedness and any Financial Indebtedness incurred in the ordinary course of its business (including, without limitation, any guarantees the Guarantor has issued or may issue at any time securing the obligations of any of its present or future Subsidiaries and any other guarantee having been previously granted by the Guarantor as at the date of this Agreement and disclosed to the Lenders).

18.27 Overseas companies

No Transaction Obligor has delivered particulars, whether in its name stated in the Finance Documents or any other name, of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or, if it has so registered, it has provided to the Facility Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

18.28 Good title to assets

It has good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

18.29 Ownership

- (a) Subject to paragraph (e) below, the Borrower is the sole legal and beneficial owner of all rights and interests which any charter creates in favour of the Borrower.
- (b) Subject to paragraph (e) below, the Borrower is the sole legal and beneficial owner of the Ship, the Earnings and the Insurances.
- (c) Subject to paragraph (e) below, with effect on and from the date of its creation or intended creation, each Transaction Obligor will be the sole legal and beneficial owner of any asset that is the subject of any Transaction Security created or intended to be created by such Transaction Obligor.
- (d) The constitutional documents of each Transaction Obligor do not and could not restrict or inhibit any transfer of the limited liability company interests of the Borrower on creation or enforcement of the security conferred by the Security Documents.
- (e) Until (and including) the Utilisation Date the application of paragraphs (a) to (d) above is subject to any rights granted by the Transaction Obligors securing obligations under the Existing Facility Agreements.

18.30 Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in Greece (other than the Guarantor) and it has no “establishment” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

18.31 Place of business

No Transaction Obligor has a place of business in any country other than Greece or, in respect of the Guarantor, the United States of America.

18.32 No employee or pension arrangements

No Transaction Obligor (other than an Approved Manager) has any employees or any liabilities under any pension scheme.

18.33 Sanctions

- (a) No Transaction Obligor:
 - (i) is a Prohibited Person;
 - (ii) is owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Person;
 - (iii) owns or controls a Prohibited Person; or
 - (iv) has, to the best of its knowledge, a Prohibited Person serving as a director, officer or employee.
- (b) No proceeds of the Loan shall be made available, directly or indirectly, to or for the benefit of a Prohibited Person nor shall they be otherwise directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions.

18.34 US Tax Obligor

No Transaction Obligor is a US Tax Obligor.

18.35 Margin Regulations; Investment Company Act

- (a) The Borrower is not engaged, nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States.
- (b) The Borrower is not, nor is it required to be, registered as an “investment company” under the United States of America Investment Company Act of 1940

18.36 Patriot Act

To the extent applicable the Borrower is in compliance with (i) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto and (ii) the PATRIOT Act. No part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

18.37 Repetition

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of the Utilisation Request and the first day of each Interest Period.

19 INFORMATION UNDERTAKINGS

19.1 General

The undertakings in this Clause 19 (*Information Undertakings*) remain in force throughout the Security Period unless the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders), may otherwise permit.

19.2 Financial statements

The Borrower and the Guarantor shall supply to the Facility Agent in sufficient copies for all the Lenders:

- (a) as soon as they become available, but in any event within 180 days after the end of each of its financial years:
 - (i) the unaudited financial statements for that financial year of the Borrower; and
 - (ii) the audited consolidated financial statements for that financial year of the Guarantor;
- (b) as soon as the same become available, but in any event within 45 days after the end of each quarter of each of its financial years:
 - (i) the unaudited financial statements for that financial quarter of the Borrower; and

- (ii) the unaudited consolidated financial statement of the Guarantor for that financial quarter; and
- (c) as soon as possible, but in no event later than 90 days after the end of each financial year of the Borrower, a budget in a format approved by the Facility Agent which shows all anticipated income and expenditure in respect of the Ship during the next financial year of the Borrower.

19.3 Compliance Certificate

- (a) After 1 January 2020, the Guarantor shall supply to the Facility Agent, with each set of financial statements delivered pursuant to sub-paragraph (ii) of paragraph (b) of Clause 19.2 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 20 (*Financial Covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by the chief financial officer of the Guarantor.

19.4 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Borrower pursuant to Clause 19.2 (*Financial statements*) shall be certified by a senior officer of the Borrower or chief financial officer of the company as fairly presenting its financial condition and operations as at the date as at which those financial statements were drawn up.
- (b) The Borrower shall procure that each set of financial statements of a Transaction Obligor delivered pursuant to Clause 19.2 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in GAAP, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Facility Agent:
 - (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether Clause 20 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

19.5 Information: miscellaneous

Each Obligor shall and shall procure that each other Obligor shall supply to the Facility Agent (acting on the instructions of the Majority Lenders) (in sufficient copies for all the Lenders, if the Facility Agent (acting on the instructions of the Majority Lenders) so requests):

- (a) immediately upon the Facility Agent's request, all documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) which are current, threatened or pending against it, and which might, if adversely determined, have a Material Adverse Effect;

- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against it and which might have a Material Adverse Effect;
- (d) promptly, its constitutional documents where these have been amended or varied;
- (e) promptly, such further information and/or documents regarding:
 - (i) the Ship, goods transported on the Ship, the Earnings or the Insurances;
 - (ii) the Security Assets;
 - (iii) compliance of the Transaction Obligors with the terms of the Finance Documents;
 - (iv) the financial condition, business and operations of any Obligor,as any Finance Party (through the Facility Agent) may reasonably request; and
- (f) promptly, such further information and/or documents as any Finance Party (through the Facility Agent) may reasonably request so as to enable such Finance Party to comply with any laws applicable to it or as may be required by any regulatory authority.

19.6 Notification of Default

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor shall, notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Facility Agent, (acting on the instructions of the Majority Lenders) the Borrower shall supply to the Facility Agent a certificate signed by a senior officer on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

19.7 Use of websites

- (a) Each Obligor may satisfy its obligation under the Finance Documents to which it is a party to deliver any information in relation to those Lenders (the **“Website Lenders”**) which accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Facility Agent (the **“Designated Website”**) if:
 - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the relevant Obligor and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the relevant Obligor and the Facility Agent (acting on the instructions of the Majority Lenders).

If any Lender (a **“Paper Form Lender”**) does not agree to the delivery of information electronically then the Facility Agent shall notify the Obligors accordingly and each Obligor shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form.

- (b) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Obligor or any of them and the Facility Agent.
- (c) An Obligor shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended;
or
 - (v) if that Obligor becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If an Obligor notifies the Facility Agent under sub-paragraph (i) or (v) of paragraph (c) above, all information to be provided by the Obligor under this Agreement after the date of that notice shall be supplied in paper form unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Obligor shall comply with any such request within 10 Business Days.

19.8 “Know your customer” checks

- (a) Each Obligor shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by a Servicing Party (for itself or on behalf of any other Finance Party) or any Lender (for itself or on behalf of any prospective new Lender) in order for such Finance Party or any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents including without limitation obtaining, verifying and recording certain information and documentation that will allow the Facility Agent and each of the Lenders to identify each Transaction Obligor in accordance with the requirements of the PATRIOT Act.
- (b) Each Lender shall promptly upon the request of a Servicing Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Servicing Party (for itself) in order for that Servicing Party to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

19.9 Anti-money laundering

The Borrower shall promptly upon the request of a Servicing Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by a Servicing Party (for itself) in order for that Servicing Party to be satisfied it has complied with all applicable anti-money laundering laws.

20 FINANCIAL COVENANTS

20.1 Borrower's minimum liquidity

The Borrower shall maintain from the Utilisation Date and at all times throughout the Security Period at least \$300,000 (the "**Minimum Liquidity Amount**") in the Earnings Account.

20.2 Guarantor's financial covenants

The Guarantor shall maintain from the Utilisation Date and at all times during the Security Period (and, in respect of paragraphs (a) and (a) below, as of 1 January 2020 and at all times thereafter during the Security Period):

- (a) the Value Adjusted Leverage Ratio shall not exceed 75 per cent.;
- (b) the minimum Net Worth shall not be less than \$41,000,000;
- (c) the Book Leverage Ratio shall not exceed during the period commencing on:
 - 1. (i) the Utilisation Date and ending on 31 December 2018 (inclusive), 85 per cent.; and
 - 2. (ii) 1 January 2019 and at all times thereafter, 75 per cent.; and

The expressions used in this Clause shall be construed in accordance with IFRS, and for purposes of this Agreement:

"Book Leverage Ratio" means the ratio of Total Consolidated Long Term Debt to Total Assets, as shown in the applicable Financial Statements of the Guarantor for any accounting period and determined in accordance with IFRS.

"Financial Statements" means the Financial Statements of the Guarantor and the Borrower provided in accordance with Clause 19.2 (*Financial statements*).

"Fleet Vessels" means any vessel (including the Vessels) from time to time wholly owned by the Guarantor (directly or indirectly) (each a **"Fleet Vessel"**).

"Fleet Market Value" means in relation to a Fleet Vessel, the Market Value of such Fleet Vessel.

"Net Worth" means equity payments already advanced in respect of the Fleet Vessel less accumulated dividends plus retained earnings of the Fleet Vessels, as each such term is defined in the applicable Financial Statements for the Guarantor determined in accordance with IFRS.

"Total Assets" means, in respect of the Guarantor, the amount of total assets of the Guarantor at any time on a consolidated basis which would be included in the applicable Financial Statements for the Guarantor as total assets determined in accordance with IFRS.

"Total Consolidated Long Term Debt" means, in respect of the Guarantor, the amount of total liabilities of the Guarantor (as such term is defined in the applicable Financial Statements of the Guarantor) at any time on a consolidated basis which would be included

in the applicable Financial Statements of the Guarantor as total long term debt in accordance with IFRS including the current portion of long term debt (as such term is defined in the applicable Financial Statements for the Guarantor).

“Value Adjusted leverage Ratio” means the ratio of Total Consolidated Long Term Debt to Value Adjusted Total Assets, as shown in the applicable Financial Statement of the Guarantor for any accounting period and determined in accordance with IFRS.

“Value Adjusted Total Assets” means the Total Assets of the Guarantor adjusted in each case for the difference of the book value of the Fleet Vessels (as evidenced in the most recent Financial Statements) and the Fleet Market Value.

20.3 Most favoured nation

The Borrower and the Guarantor undertake to procure that, (i) during the Relevant Period in respect of items listed in sub-paragraphs (b), (d) and (f) and (ii) throughout the duration of the Security Period in respect of items listed in sub-paragraphs (a), (c) and (e), the Creditor Parties shall receive no less favourable treatment under this Agreement than that provided or to be provided under any Group Facility Agreement (by way of amendment or supplement to, or refinancing of, that Group facility Agreement) in relation to:

- (a) any amendment to a maturity date under any such Group Facility Agreement as a result of which the maturity date will fall before 31 December 2020 (save for the part of the loan made available under the ABN Facility Agreement which expires in June 2018);
- (b) the existence of any amortization principal payment profile/schedule until 31 December 2019 (inclusive);
- (c) the provisions relevant to the calculation of the Excess Cash Flow and generally the cash sweep mechanism;
- (d) the waiver of the security cover ratio at the Borrowers’ level;
- (e) the financial covenants relevant to the Value Adjusted Leverage Ratio, Book Leverage Ratio and minimum Net Worth of the Guarantor; and
- (f) any increase to the aggregate of any amounts to be paid in respect of interest solely related to margin (howsoever defined) for the duration of the Relevant Period (calculated as at the date of that Group Facility Agreement).

Accordingly, should any member of the Group or the Guarantor provide to any other creditor more favourable treatment in relation to (a) to (f) above (and, in relation to subparagraphs (b), (d) and (f) for the duration of the Relevant Period) than those which the Creditor Parties have been provided with under this Agreement or any other Finance Document, the Borrower and the Guarantor shall promptly advise the Facility Agent of those arrangements and covenants and shall, upon the Facility Agent’s request (acting on the instructions of the Lenders), enter into such documentation supplemental to the Finance Documents, as the Lenders may require in order to achieve parity with the creditors under such relevant Group Facility Agreement.

21 GENERAL UNDERTAKINGS

21.1 General

The undertakings in this Clause 21 (*General Undertakings*) remain in force throughout the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit (and in the case of Clause 21.13 (*Disposals*), 21.16 (*Financial Indebtedness*) and 21.21 (b)(ii) (*Other transactions*) such permission not to be unreasonably withheld by the Majority Lenders or the Lenders (as the case may be).

21.2 Authorisations

Each Obligor shall, and shall procure that each other Transaction Obligor will (where applicable), promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of,
any Authorisation required under any law or regulation of a Relevant Jurisdiction or the state of the Approved Flag at any time of the Ship to enable it to:
 - (i) perform its obligations under the Transaction Documents to which it is a party;
 - (ii) ensure the legality, validity, enforceability or admissibility in evidence in any Relevant Jurisdiction or in the state of the Approved Flag at any time of the Ship of any Transaction Document to which it is a party; and
 - (iii) own and operate the Ship (in the case of the Borrower).

21.3 Corporate Existence

Each Obligor shall maintain its separate corporate existence, remain in goodstanding under the law of its jurisdiction of incorporation and duly observe and conform to all requirements of any governmental authorities relating to the conduct of its business or to its properties or assets.

21.4 Compliance with laws

Each Obligor shall comply in all respects with all laws and regulations to which it may be subject if failure so to comply has or is reasonably likely to have a Material Adverse Effect, including without limitation (i) the Trading with the Enemy Act and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order thereto) and (ii) the PATRIOT Act.

21.5 Environmental compliance

Each Obligor shall, and shall procure that each Approved Manager will:

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has a Material Adverse Effect.

21.6 Environmental Claims

Each Obligor shall, and shall procure that each Approved Manager will, promptly upon becoming aware of the same, inform the Facility Agent in writing of:

- (a) any Environmental Claim against any Transaction Obligor which is current, pending or threatened; and

- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any Transaction Obligor,
where the claim, if determined against that Transaction Obligor, has a Material Adverse Effect.

21.7 Taxation

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor will, pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
- (i) such payment is being contested in good faith;
 - (ii) adequate reserves are maintained for those Taxes and the costs required to contest them and have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 19.2 (*Financial statements*); and
 - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have a Material Adverse Effect.
- (b) The Obligors shall procure that no other Transaction Obligor will, change its residence for Tax purposes.

21.8 Overseas companies

Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly inform the Facility Agent if it delivers to the Registrar particulars required under the Overseas Regulations of any UK Establishment and it shall comply with any directions given to it by the Facility Agent regarding the recording of any Transaction Security on the register which it is required to maintain under The Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009.

21.9 No change to centre of main interests

No Obligor shall change the location of its centre of main interest (as that term is used in Article 3(1) of the Regulation) from that stated in relation to it in Clause 18.30 (*Centre of main interests and establishments*) and it will create no “**establishment**” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

21.10 *Pari passu* ranking

Each Obligor shall, and shall procure that each other Transaction Obligor will, ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents to which such Obligor or Transaction Obligor is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

21.11 Title

- (a) Following the release on the Utilisation Date of the Security securing the Existing Indebtedness, the Borrower shall hold the legal title to, and own the entire beneficial interest in:
- (i) the Ship, the Earnings and the Insurances; and

- (ii) with effect on and from its creation or intended creation, any other assets the subject of any Transaction Security created or intended to be created by the Borrower.
- (b) The Guarantor shall hold the legal title to, and own the entire beneficial interest in with effect on and from its creation or intended creation, any assets the subject of any Transaction Security created or intended to be created by the Guarantor.

21.12 Negative pledge

- (a)
 - (i) The Borrower shall not create any form of Security over any of its assets or revenues other than Permitted Security; and
 - (ii) the Guarantor shall not create any form of Security (other than Permitted Security), over any of its assets or revenues unless it is reasonably incurred in the normal course of its business of acquiring and financing vessels to be owned by the Guarantor or any of its present or future Subsidiaries.
- (b) No Obligor shall:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any Obligor or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Permitted Security.

21.13 Disposals

- (a) The Borrower shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset (including without limitation the Ship, the Earnings or the Insurances).
- (b) Paragraph (a) above does not apply to any Charter as all Charters are subject to Clause 23.15 (*Restrictions on chartering, appointment of managers etc.*).

21.14 Merger

No Obligor shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction (save for an IPO).

21.15 Change of business

- (a) The Guarantor shall procure that no substantial change is made to the general nature of its business from that carried on at the date of this Agreement.
- (b) The Borrower shall not engage in any business other than the ownership and operation of the Ship.

21.16 Financial Indebtedness

No Obligor shall:

- (a) in the case of the Borrower, incur or permit to be outstanding any Financial Indebtedness except (A) Financial Indebtedness incurred in the normal course of its business of trading, chartering and operating the Ship and (B) Permitted Financial Indebtedness; and
- (b) in the case of the Guarantor, incur or permit to be outstanding Financial Indebtedness except for (A) Financial Indebtedness incurred in the ordinary course of its business (including, without limitation, the issuance of guarantees securing the obligations of any of its future or present Subsidiaries and any guarantee previously granted by the Guarantor as at the date of this Agreement and disclosed to the Facility Agent), (B) Permitted Financial Indebtedness and (C) Financial Indebtedness incurred under the K&T Loan Agreement.

21.17 Guarantor's Equity Contribution

- (a) The Guarantor shall procure that an equity contribution of \$8,000,000 is paid in to the Group utilising funds to be advanced to the Guarantor pursuant to the K&T Loan Agreement.
- (b) The contribution shall be effected through quarterly payments commencing as of 31 August 2017, each in an amount being the lesser of (i) such amount set out in Schedule 8 and (ii) the maximum amount the Guarantor would be entitled to request in its utilisation request under the K&T Loan Agreement at the relevant time if all conditions precedent thereunder were satisfied, on such dates as set out in Schedule 8 (or as otherwise requested by the Borrower and agreed by the Facility Agent (acting on the instructions of the Majority Lenders) from time to time).
- (c) In the event that the equity contribution is less than \$8,000,000 on 31 December 2019, then the Guarantor will contribute the difference between the actual capital contribution and \$8,000,000 in the form of equity injection by 31 December 2019.

The Guarantor shall procure that such contribution of \$8,000,000 (in addition to the \$5,000,000 contribution injected as a condition precedent in item 5.6 of Part A of Schedule 2) shall be utilised in or towards payment of the Shortfall Amount and, as the case may, any cash flow shortfall in connection with the Ship, including, but not limited to, any operating expenses or any other cash flow shortfall in connection with their operation, trading and financing under this Agreement or, as the case maybe, any Group Facility Agreement entered into during the Refinancing Period (as necessary).

21.18 Expenditure

The Borrower shall not incur any expenditure, except for expenditure reasonably incurred in the ordinary course of owning, operating, maintaining and repairing the Ship.

21.19 Limited liability company interests

The Borrower shall not:

- (a) purchase, cancel or redeem any of its LLC Shares;
- (b) increase or reduce its LLC Shares; and
- (c) issue any further LLC Shares except to the Guarantor and provided such new LLC Shares are made subject to the terms of the relevant Shares Security immediately upon the issue of such new LLC Shares in a manner satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) and the terms of the relevant Shares Security are complied with.

21.20 Dividends

The Borrower shall not make or pay any dividend or other distribution (in cash or in kind) in respect of its LLC shares (i) prior to (and including) the Cash Sweep End Date and (ii) thereafter, if an Event of Default has occurred and is continuing or if the making or payment of such dividend or distribution would result in the occurrence of an Event of Default.

21.21 Other transactions

The Borrower shall not:

- (a) be the creditor in respect of any loan or any form of credit to any person other than another Transaction Obligor and where such loan or form of credit creates Permitted Financial Indebtedness;
- (b) give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which the Borrower assumes any liability of any other person other than (i) any guarantee or indemnity given under the Finance Documents or (ii) any guarantee and indemnity issued in the ordinary course of its business of trading, chartering and operating the Ship having an aggregate maximum value of \$1,000,000 in respect of the Borrower or such higher value as may be requested by the Borrower and approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders);
- (c) enter into any material agreement other than:
 - (i) the Transaction Documents;
 - (ii) any other agreement expressly allowed under any other term of this Agreement or in the ordinary course of the Borrower's business of trading, operating and chartering the Ship;
- (d) without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders), such consent not to be unreasonably withheld or delayed, enter into any transaction on terms which are, in any respect, less favourable to the Borrower than those which it could obtain in a bargain made at arms' length provided further that such consent of the Facility Agent (acting on the instructions of the Majority Lenders) shall not be required in the absence of an Event of Default having occurred and continuing; or
- (e) 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.

21.22 Unlawfulness, invalidity and ranking; Security imperilled

No Obligor shall, and the Obligors shall procure that no other Transaction Obligor will, do (or fail to do) or cause or permit another person to do (or omit to do) anything which is likely to:

- (a) make it unlawful for a Transaction Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of a Transaction Obligor under the Transaction Documents to cease to be legal, valid, binding or enforceable;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Transaction Security to rank after, or lose its priority to, any other Security; and
- (e) imperil or jeopardise the Transaction Security.

21.23 No Subsidiaries

The Borrower shall not form or acquire any Subsidiaries.

21.24 Employees and ERISA Compliance

The Borrower shall not employ any individual nor sponsor, maintain or become obligated to contribute to any Plan. However, without prejudice to the foregoing, the Borrower shall provide prompt written notice to the Facility Agent in the event that the Borrower becomes aware that it has incurred or is reasonably likely to incur any liability with respect to any Plan, that, individually or in the aggregate with any other such liability, would be reasonably expected to have a Material Adverse Effect.

21.25 Books and records

The Borrower will keep proper books of record and account which will be accurate in all material respects and in which full, true and correct entries in accordance with GAAP will be made of all dealings or transactions in relation to its business and activities.

21.26 Group Facility Agreement

The Guarantor undertakes to ensure that (i) each Group Facility Agreement secured on the Existing Fleet Vessels is duly executed by the parties to it and (ii) the loan made or to be made available under each Group Facility Agreement is drawn by the relevant borrower in each case on or before the last day of the Refinancing Period, unless the relevant creditor(s) under the relevant Existing Group Facility Agreement have given their written consent to an extension of drawdown under the relevant Group Facility Agreement past the last day of the Refinancing Period **Provided that** the Facility Agent (acting with the authorisation of the Lenders) has also given its prior written consent to such corresponding extension of the Refinancing Period.

21.27 Further assurance

(a) Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly, and in any event within three (3) Business Days (or such other time period as may be specified by the Security Agent (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders)) of demand by the Security Agent (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Agent may specify (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) (and in such form as the Security Agent may require (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) in favour of the Security Agent or its nominee(s):

- (i) to create, perfect, vest in favour of the Security Agent or protect the priority of the Security or any right of any kind created or intended to be created under or evidenced by the Finance Documents to which such Transaction Obligor is a party (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of any of the Secured Parties provided by or pursuant to the Finance Documents or by law;
- (ii) to confer on the Security Agent or confer on the Secured Parties Security over any property and assets of that Transaction Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Finance Documents;

- (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Transaction Security or to exercise any power specified in any Finance Document in respect of which the Security has become enforceable; and/or
 - (iv) to enable or assist the Security Agent to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Obligor shall, and shall procure that each other Transaction Obligor will, take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to the Finance Documents.
- (c) At the same time as an Obligor delivers to the Security Agent any document executed by itself or another Transaction Obligor pursuant to this Clause 21.27 (*Further assurance*), that Obligor shall deliver, or shall procure that such other Transaction Obligor will deliver, to the Security Agent a certificate signed by two of that Obligor's or Transaction Obligor's directors or officers which shall:
- (i) set out the text of a resolution of that Obligor's or Transaction Obligor's directors specifically authorising the execution of the document specified by the Security Agent; and
 - (ii) 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 or officers and is valid under that Obligor's or Transaction Obligor's articles of association or other constitutional documents.

22 INSURANCE UNDERTAKINGS

22.1 General

The undertakings in this Clause 22 (*Insurance Undertakings*) remain in force on and from the Utilisation Date and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

22.2 Maintenance of obligatory insurances

The Borrower shall keep the Ship insured at its expense against:

- (a) hull and machinery plus freight interest and hull interest and/or increased value and any other usual marine risks (including excess risks);
- (b) war risks (including the London Blocking and Trapping addendum or its equivalent);
- (c) protection and indemnity risks (including liability for oil pollution for an amount of no less than \$1,000,000,000 and excess war risk P&I cover) on standard Club Rules, covered by a Protection and Indemnity association which is a member of the International Group of Protection and Indemnity Associations (or, if the International Group ceases to exist, any other leading protection and indemnity association or other leading provider of protection and indemnity insurance) (including, without limitation, the proportion (if any) of any collision liability not covered under the terms of the hull cover);
- (d) freight, demurrage and defence;

- (e) any other risks against which the Facility Agent acting on the instructions of the Majority Lenders considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for the Borrower to insure and which are specified by the Facility Agent (acting on the instructions of the Majority Lenders) by notice to the Borrower.

22.3 Terms of obligatory insurances

The Borrower shall effect such insurances:

- (a) in dollars;
- (b) in the case of hull and machinery and war risks, in an amount on an agreed value basis at least the greater of:
 - (i) 120 per cent. of the Loan; and
 - (ii) the Market Value of the Ship;
- (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 under basic protection and indemnity club entry and in the international marine insurance market (such amount currently being \$1,000,000,000);
- (d) hull and machinery plus freight interest and hull interest and/or increased value and any other usual marine risks (including excess risks);
- (e) war risks (including the London Blocking and Trapping addendum or its equivalent, Terrorism and War Protection and Indemnity);
- (f) protection and indemnity risks (including liability for oil pollution for an amount of no less than \$1,000,000,000 and excess war risk P&I cover) on standard Club Rules, covered by a Protection and Indemnity association which is a member of the International Group of Protection and Indemnity Associations (or, if the International Group ceases to exist, any other leading protection and indemnity association or other leading provider of protection and indemnity insurance) (including, without limitation, the proportion (if any) of any collision liability not covered under the terms of the hull cover);
- (g) freight, demurrage and defence;
- (h) on approved terms; and
- (i) through Approved Brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations.

22.4 Further protections for the Finance Parties

In addition to the terms set out in Clause 22.3 (*Terms of obligatory insurances*), the Borrower shall procure that the obligatory insurances shall:

- (a) subject always to paragraph (b), name the Borrower as the sole named insured unless the interest of every other named insured (including each Approved Manager as co-assured) is limited:
 - (i) in respect of any obligatory insurances for hull and machinery and war risks;
 - (A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and

- (B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
- (ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

and every other named insured has undertaken in writing to the Security Agent (in such form as it requires (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders) that any deductible shall be apportioned between the Borrower and every other named insured in proportion to the gross claims made or paid by each of them and that it shall do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;

- (b) whenever the Facility Agent requires (acting on the instructions of the Majority Lenders), name (or be amended to name) the Security Agent as additional named insured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Agent, but without the Security Agent being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (c) name the Security Agent as loss payee with such directions for payment as the Facility Agent may specify (acting on the instructions of the Majority Lenders);
- (d) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Agent shall be made without set off, counterclaim or deductions or condition whatsoever;
- (e) provide that the obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Agent or any other Finance Party; and
- (f) provide that the Security Agent may make proof of loss if the Borrower fails to do so.

22.5 **Renewal of obligatory insurances**

The Borrower shall:

- (a) at least 10 days before the expiry of any obligatory insurance:
 - (i) notify the Facility Agent of the Approved Brokers (or other insurers) and any protection and indemnity or war risks association through or with which the Borrower proposes to renew that obligatory insurance and of the proposed terms of renewal; and
 - (ii) obtain the Facility Agents' approval (acting on the instructions of the Majority Lenders) to the matters referred to in sub-paragraph (i) above;
- (b) at least 14 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Facility Agent's approval pursuant to paragraph (a) above; and
- (c) procure that the Approved Brokers and/or the approved war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Facility Agent in writing of the terms and conditions of the renewal.

22.6 Copies of policies; letters of undertaking

The Borrower shall ensure that the Approved Brokers provide the Security Agent, upon the Security Agent's request (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders), with:

- (a) *pro forma* copies of all policies relating to the obligatory insurances which they are to effect or renew; and
- (b) a letter or letters or undertaking in a form required by the Facility Agent (acting on the instructions of the Majority Lenders) and including undertakings by the Approved Brokers that:
 - (i) 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 22.4 (*Further protections for the Finance Parties*);
 - (ii) they will hold such policies, and the benefit of such insurances, to the order of the Security Agent in accordance with such loss payable clause;
 - (iii) they will advise the Security Agent immediately of any material change to the terms of the obligatory insurances;
 - (iv) they will, if they have not received notice of renewal instructions from the Borrower or its agents, notify the Security Agent not less than 14 days before the expiry of the obligatory insurances;
 - (v) if they receive instructions to renew the obligatory insurances, they will promptly notify the Facility Agent of the terms of the instructions;
 - (vi) they will not set off against any sum recoverable in respect of a claim relating to the Ship under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of the Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts; and
 - (vii) they will arrange for a separate policy to be issued in respect of the Ship forthwith upon being so requested by the Facility Agent.

22.7 Copies of certificates of entry

The Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship is entered provide the Security Agent with:

- (a) a certified copy of the certificate of entry for the Ship;
- (b) a letter or letters of undertaking in such form as may be required by the Facility Agent (acting on the instructions of Majority Lenders); and
- (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 the Ship.

22.8 Deposit of original policies

The Borrower shall ensure that all policies relating to obligatory insurances are deposited with the Approved Brokers through which the insurances are effected or renewed.

22.9 Payment of premiums

The 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 Facility Agent (acting on the instructions of the Majority Lenders) or the Security Agent (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders).

22.10 Guarantees

The 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.

22.11 Compliance with terms of insurances

- (a) The Borrower shall not 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.
- (b) Without limiting paragraph (a) above, the Borrower shall:
 - (i) 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 sub-paragraph (iii) of paragraph (b) of Clause 22.6 (*Copies of policies; letters of undertaking*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Facility Agent has not given its prior approval (acting on the instructions of the Majority Lenders);
 - (ii) not make any changes relating to the classification or classification society or manager or operator of the Ship approved by the underwriters of the obligatory insurances;
 - (iii) make (and promptly supply copies to the Facility Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
 - (iv) not employ the Ship, 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.

22.12 Alteration to terms of insurances

The Borrower shall not make or agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance.

22.13 Settlement of claims

The Borrower shall:

- (a) not settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty; and
- (b) do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

22.14 **Provision of copies of communications**

The Borrower shall provide the Security Agent, immediately upon the Facility Agent's request (acting on the instructions of the Majority Lenders), with copies of all written communications between the Borrower and:

- (a) the Approved Brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters,

which relate directly or indirectly to:

- (i) the 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 the Borrower and any of the persons referred to in paragraphs (a) or (b) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

22.15 **Provision of information**

The Borrower shall promptly provide the Facility Agent (or any persons which it may designate) with any information which the Facility Agent (or any such designated person) requests (acting on the instructions of the Majority Lenders) 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 22.16 (*Mortgagee's interest and additional perils insurances*) or dealing with or considering any matters relating to any such insurances,

and the Borrower shall, forthwith upon demand, indemnify the Facility Agent in respect of all fees and other expenses incurred by or for the account of the Facility Agent in connection with any such report as is referred to in paragraph (a) above.

22.16 **Mortgagee's interest and additional perils insurances**

- (a) The Security Agent shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance and a mortgagee's interest additional perils insurance each in an amount of up to 120 per cent. of the Loan, on such terms, through such insurers and generally in such manner as the Security Agent acting on the instructions of the Majority Lenders may from time to time consider appropriate.
- (b) The Borrower shall upon demand fully indemnify the Security Agent in respect of all premiums and other expenses which are incurred in connection with or with a view to effecting, maintaining or renewing any insurance referred to in paragraph (a) above or dealing with, or considering, any matter arising out of any such insurance.

23 **SHIP UNDERTAKINGS**

23.1 **General**

The undertakings in this Clause 23 (*Ship Undertakings*) remain in force on and from the date of this Agreement and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit in writing (and in the case of Clauses 23.3 (*Repair and classification*), 23.4 (*Modifications*), 23.5 (*Removal and installation of parts*) and 23.15 (*Restrictions on chartering, appointment of managers etc.*) such permission not to be unreasonably withheld).

23.2 Ship's names and registration

The Borrower shall:

- (a) keep the Ship registered in its name under an Approved Flag from time to time at its port of registration;
- (b) not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperilled; and
- (c) not change the name of the Ship,

provided that any change of flag of the Ship shall be subject to:

- (i) the Ship remaining subject to Security securing the Secured Liabilities created by a first priority or preferred ship mortgage on the Ship and, if appropriate, a first priority deed of covenant collateral to that mortgage (or equivalent first priority Security) on substantially the same terms as the Mortgage and on such other terms and in such other form as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require; and
- (ii) the execution of such other documentation amending and supplementing the Finance Documents as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require.

23.3 Repair and classification

The Borrower shall keep the Ship in a good and safe condition and state of repair:

- (a) consistent with first class ship ownership and management practice; and
- (b) so as to maintain the Approved Classification free of overdue recommendations and conditions.

23.4 Modifications

The Borrower shall not make any modification or repairs to, or replacement of, the Ship or equipment installed on it which would or might materially and adversely alter the structure, type or performance characteristics of the Ship or materially reduce its value.

23.5 Removal and installation of parts

- (a) Subject to paragraph (b) below, the Borrower shall not remove any material part of the Ship, or any item of equipment installed on the Ship unless:
 - (i) 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;
 - (ii) the replacement part or item is free from any Security in favour of any person other than the Security Agent; and
 - (iii) the replacement part or item becomes, on installation on the Ship, the property of the Borrower and subject to the security constituted by the Mortgage.
- (b) The Borrower may install equipment owned by a third party if the equipment can be removed without any risk of damage to the Ship.

23.6 Surveys

The Borrower shall submit the Ship regularly to all periodic or other surveys which may be required for classification purposes and, if so required by the Facility Agent acting on the instructions of the Majority Lenders, provide the Facility Agent, with copies of all survey reports.

23.7 Inspection

- (a) The Borrower shall permit the Security Agent (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) acting through surveyors or other persons appointed by it for that purpose to board the Ship at all reasonable times without interfering with the Ship's trading schedule, to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections.
- (b) The cost of all inspections under this Clause 23.7 (*Inspection*) shall be for the account of the Borrower once annually and at any time when an Event of Default has occurred and is continuing.

23.8 Prevention of and release from arrest

- (a) The Borrower shall promptly discharge:
 - (i) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against the Ship, the Earnings or the Insurances;
 - (ii) all Taxes, dues and other amounts charged in respect of the Ship, the Earnings or the Insurances; and
 - (iii) all other outgoings whatsoever in respect of the Ship, the Earnings or the Insurances.
- (b) The Borrower shall as soon as reasonably practicable upon receiving notice of the arrest of the Ship or of its detention in exercise or purported exercise of any lien or claim, take all steps necessary to procure its release by providing bail or otherwise as the circumstances may require.

23.9 Compliance with laws etc.

The Borrower shall:

- (a) comply, or procure compliance with all laws or regulations:
 - (i) relating to its business generally; and
 - (ii) relating to the Ship, its ownership, employment, operation, management and registration, including, but not limited to, the ISM Code, the ISPS Code, all Environmental Laws, all Sanctions and the laws of the Approved Flag;
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals; and
- (c) without limiting paragraph (a) above, not employ the Ship nor allow its employment, operation or management in any manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and all Sanctions (or which would be contrary to Sanctions if Sanctions were binding on each Transaction Obligor).

23.10 ISPS Code

Without limiting paragraph (a) of Clause 23.9 (*Compliance with laws etc.*), the Borrower shall:

- (a) procure that the Ship and the company responsible for the Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain an ISSC for the Ship; and
- (c) notify the Facility Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

23.11 Sanctions and Ship trading

Without limiting Clause 23.9 (*Compliance with laws etc.*), the Borrower shall procure:

- (a) that the Ship shall not be used by or for the benefit of a Prohibited Person;
- (b) that the Ship shall not be used in trading in any manner contrary to Sanctions (or which could be contrary to Sanctions if Sanctions were binding on each Transaction Obligor);
- (c) that the Ship shall not be traded in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances; and
- (d) that each charterparty in respect of the Ship shall contain, for the benefit of the Borrower, language which gives effect to the provisions of paragraph (c) of Clause 23.9 (*Compliance with laws etc.*) as regards Sanctions and of this Clause 23.11 (*Sanctions and Ship trading*) and which permits refusal of employment or voyage orders if compliance would result in a breach of Sanctions (or which would result in a breach of Sanctions if Sanctions were binding on each Transaction Obligor).

23.12 Trading in war zones

In the event of hostilities in any part of the world (whether war is declared or not including, without limitation, any civil war), the Borrower shall not cause or permit the Ship to be employed in carrying any goods which may be declared to be contraband of war or which may render the Ship liable to confiscation, seizure, detention or destruction, nor shall the Borrower permit the Ship to enter any area which is declared a war zone by any governmental authority or by the Ship's insurers unless that employment or voyage is either (a) consented to in advance and in writing by the underwriters of the Ship's war risks insurances and fully covered by those insurances or (b) (to the extent not covered by those insurances) covered by additional insurance taken out by the Borrower at the Borrower's expense, which additional insurance shall be deemed to be part of the Insurances assigned under the General Assignment.

23.13 Provision of information

Without prejudice to Clause 19.5 (*Information: miscellaneous*) the Borrower shall promptly provide the Facility Agent with any information which it requests (acting on the instructions of the Majority Lenders) regarding:

- (a) the Ship, its employment, position and engagements;
- (b) the Earnings and payments and amounts due to its master and crew;
- (c) any expenditure incurred, or likely to be incurred, in connection with the operation, maintenance or repair of the Ship and any payments made by it in respect of the Ship;

- (d) any towages and salvages; and
- (e) its compliance, the Approved Manager's compliance and the compliance of the Ship with the ISM Code and the ISPS Code, and, upon the Facility Agent's request (acting on the instructions of the Majority Lenders), promptly provide copies of any current Charter relating to the Ship, of any current guarantee of any such Charter, the Ship's Safety Management Certificate and any relevant Document of Compliance.

23.14 Notification of certain events

The Borrower shall immediately notify the Facility Agent by email, confirmed forthwith by letter, of:

- (a) any casualty to the Ship which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which the Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requisition of the Ship for hire;
- (d) any requirement or recommendation made in relation to the Ship by any insurer or classification society or by any competent authority which is not immediately complied with;
- (e) any arrest or detention of the Ship or any exercise or purported exercise of any lien on the Ship or the Earnings;
- (f) any intended dry docking of the Ship;
- (g) any Environmental Claim made against the Borrower or in connection with the Ship, or any Environmental Incident;
- (h) any claim for breach of the ISM Code or the ISPS Code being made against the Borrower, an Approved Manager or otherwise in connection with the Ship; or
- (i) 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 Borrower shall keep the Facility Agent advised in writing on a regular basis and in such detail as the Facility Agent shall require (acting on the instructions of the Majority Lenders) as to the Borrower's, any such Approved Manager's or any other person's response to any of those events or matters.

23.15 Restrictions on chartering, appointment of managers etc.

The Borrower shall not:

- (a) let the Ship on demise charter for any period;
- (b) enter into any time, voyage or consecutive voyage charter in respect of the Ship other than a Permitted Charter;
- (c) amend, supplement or terminate a Management Agreement;
- (d) appoint a manager of the Ship other than the Approved Commercial Manager and the Approved Technical Manager or agree to any alteration to the terms of an Approved Manager's appointment;

- (e) de activate or lay up the Ship; or
- (f) put the Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed \$500,000 (or the equivalent in any other currency) unless that person has first given to the Security Agent (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders) and in terms satisfactory to it a written undertaking not to exercise any lien on the Ship or the Earnings for the cost of such work or for any other reason.

23.16 Notice of Mortgage

The Borrower shall keep the Mortgage registered against the Ship as a valid first priority or preferred mortgage (as applicable), carry on board the Ship a certified copy of the 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 the Borrower to the Security Agent.

23.17 Sharing of Earnings

The Borrower shall not enter into any agreement or arrangement for the sharing of any Earnings.

23.18 Charter assignment

Provided that all approvals necessary under Clause 23.15 (*Restrictions on chartering, appointment of managers etc.*) have been previously obtained, the Borrower shall:

- (a) provide promptly to the Facility Agent a true and complete copy of any Charter (including all amendments) and all other documents related thereto for a term which exceeds, or which by virtue of any optional extensions may exceed 12 months; and
- (b) in respect of any Charter for a term which (excluding any optional extensions and any redelivery allowance) exceeds, or which by virtue of any optional extensions may exceed 12 months, execute and deliver to the Facility Agent a Charter Assignment together with each of the documents required to be delivered pursuant to such Charter Assignment (each in the agreed form).

23.19 Notification of compliance

The Borrower shall promptly provide the Facility Agent from time to time with evidence (in such form as the Facility Agent requires) (acting on the instructions of the Majority Lenders) that it is complying with this Clause 23 (*Ship Undertakings*).

24 SECURITY COVER

24.1 Minimum required security cover

Clause 24.2 (*Provision of additional security; prepayment*) applies if, at any time commencing on 1 January 2020 and throughout the remainder of the Security Period, the Facility Agent (acting on the instructions of the Majority Lenders) notifies the Borrower that:

- (a) the Market Value of the Ship; plus
- (b) the net realisable value of additional Security previously provided under this Clause 24 (*Security Cover*),
is below 115 per cent. of the Loan.

24.2 Provision of additional security; prepayment

- (a) If the Facility Agent (acting on the instructions of the Majority Lenders) serves a notice on the Borrower under Clause 24.1 (*Minimum required security cover*), the Borrower shall, on or before the date falling one Month after the date (the “**Prepayment Date**”) on which the Facility Agent’s notice is served, prepay such part of the Loan as shall eliminate the shortfall.
- (b) The Borrower may, instead of making a prepayment as described in paragraph (a) above, provide, or ensure that a third party has provided, additional security which, in the opinion of the Facility Agent acting on the instructions of the Majority Lenders:
- (i) has a net realisable value at least equal to the shortfall; and
 - (ii) is documented in such terms as the Facility Agent (acting on the instructions of the Majority Lenders) may approve or require, before the Prepayment Date; and conditional upon such security being provided in such manner, it shall satisfy such prepayment obligation.

24.3 Value of additional vessel security

The net realisable value of any additional security which is provided under Clause 24.2 (*Provision of additional security; prepayment*) and which consists of Security over a vessel shall be the Market Value of the vessel concerned.

24.4 Valuations binding

Any valuation under this Clause 24 (*Security Cover*) shall be binding and conclusive as regards the Borrower.

24.5 Provision of information

- (a) The Borrower shall promptly provide the Facility Agent and any Approved Valuer acting under this Clause 24 (*Security Cover*) with any information which the Facility Agent (acting on the instructions of the Majority Lenders) or the Approved Valuer may request for the purposes of the valuation.
- (b) If the Borrower fails to provide the information referred to in paragraph (a) above by the date specified in the request, the valuation may be made on any basis and assumptions which the Approved Valuer or the Facility Agent considers (acting on the instructions of the Majority Lenders) prudent.

24.6 Prepayment mechanism

Any prepayment pursuant to Clause 24.2 (*Provision of additional security; prepayment*) shall be made in accordance with the relevant provisions of Clause 7 (*Prepayment and Cancellation*) and shall be treated as a voluntary prepayment pursuant to Clause 7.3 (*Voluntary prepayment of Loan*).

24.7 Provision of valuations

- (a) The Facility Agent shall, acting on the instructions of the Majority Lenders, obtain valuations of the Ship and any other vessel over which additional Security has been created in accordance with Clause 24.2 (*Provision of additional security; prepayment*), from Approved Valuers, the first of which shall be selected by the Facility Agent (acting on the instructions of the Majority Lenders) and the second of which shall be selected by the Borrowers, to enable the Borrowers to determine the Market Value of the Ship and any such vessel, subject to approval from the Majority Lenders in relation to such determination, and following such approval in writing notify the Facility Agent in writing:
- (i) at the same time as each Compliance Certificate is provided pursuant to Clause 19.3 (*Compliance Certificate*);

- (ii) at the same time the Borrower serves the notices to the Facility Agent in respect of the renewal of the obligatory insurances pursuant to Clause 22.5 (*Renewal of obligatory insurances*); and
 - (iii) in the case of sale or Total Loss of the Ship, pursuant to Clause 7.4 (*Mandatory prepayment on sale or Total Loss*).
- (b) In addition, whilst an Event of Default has occurred which is continuing, the Facility Agent shall be entitled to obtain (acting on the instructions of the Majority Lenders) at any time valuations of the Ship and any other vessel over which additional Security has been created in accordance with Clause 24.2 (*Provision of additional security; prepayment*), from Approved Valuers selected by the Facility Agent (acting on the instructions of the Majority Lenders), to enable the Majority Lenders to determine the Market Value of the Ship and each such vessel (which Market Value shall be notified to the Facility Agent in writing).
- (c) All valuations referred to in paragraphs (a) and (b) above shall be at the cost of the Borrower.

25 EARNINGS ACCOUNT AND APPLICATION OF EARNINGS

25.1 Earnings Account

The Borrower may not, without the prior consent of the Facility Agent (acting on the instructions of the Lenders), maintain any bank account other than the Earnings Account.

25.2 Payment of Earnings

The Borrower shall ensure that, subject only to the provisions of the General Assignment, all the Earnings are paid in to the Earnings Account.

25.3 Application of Earnings

The Borrower shall transfer from the Earnings Account to the Facility Agent:

- (a) on each Repayment Date, the amount of the Repayment Instalment then due on that Repayment Date; and
- (b) on the last day of each Interest Period, the amount of interest then due on that date; and
- (c) on any day on which an amount is otherwise due from the Borrower under a Finance Document, an amount necessary to meet that due amount,

and the Borrower irrevocably authorizes the Facility Agent to apply the transferred amounts in payment of the relevant Repayment Instalment, interest amount or other amount due.

Any balance on the Earnings Account after the application of the transferred amounts shall be available to the Borrower, unless there is an Event of Default which is continuing or unless an Event of Default would result from the withdrawal of any such balance (or any part thereof) from the Earnings Account.

25.4 Shortfall in Earnings

- (a) If the credit balance on the Earnings Account is insufficient for the required amount to be transferred under Clause 25.3 (*Application of Earnings*), the Borrower shall make up the amount of the insufficiency.

- (b) The Borrower may not make up all or any part of the insufficiency by utilising the Minimum Liquidity Amount in the Earnings Account.

25.5 Application of funds

Until an Event of Default occurs which is continuing, the Facility Agent shall on each Repayment Date and on each Interest Payment Date (provided it has received sufficient funds no later than 2:00 p.m. New York time on the relevant Repayment Date or Interest Payment Date (as the case may be)) distribute to the Finance Parties in accordance with Clause 33.2 (*Distributions by the Facility Agent*) so much of the then balance on the Earnings Account as equals:

- (a) the Repayment Instalment due on that Repayment Date; and
 - (b) the amount of interest payable on that Interest Payment Date,
- in discharge of the Borrower's liability for that Repayment Instalment or that interest.

25.6 Location of Earnings Account

The Borrower shall promptly:

- (a) comply with any requirement of the Facility Agent (acting on the instructions of the Majority Lenders) as to the location or relocation of the Earnings Account; and
- (b) execute any documents which the Facility Agent (acting on the instructions of the Majority Lenders) specifies to create or maintain in favour of the Security Agent, Security over (and/or rights of set-off, consolidation or other rights in relation to) the Earnings Account.

26 EVENTS OF DEFAULT

26.1 General

Each of the events or circumstances set out in this Clause 26 (*Events of Default*) is an Event of Default except for Clause 26.18 (*Acceleration*) and Clause 26.19 (*Enforcement of security*).

26.2 Non-payment

A Transaction Obligor (other than an Approved Manager) does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within 3 Business Days of its due date.

26.3 Specific obligations

A breach occurs of Clause 4.4 (*Waiver of conditions precedent*), Clause 20 (*Financial Covenants*), Clause 21.11 (*Title*), Clause 21.12 (*Negative pledge*), Clause 21.22 (*Unlawfulness, invalidity and ranking; Security imperilled*), Clause 22.2 (*Maintenance of obligatory insurances*), Clause 22.3 (*Terms of obligatory insurances*), Clause 22.5 (*Renewal of obligatory insurances*), Clause 23.11 (*Sanctions and Ship trading*) or Clause 24 (*Security Cover*).

26.4 Other obligations

- (a) A Transaction Obligor does not comply with any provision of the Finance Documents to which it is a party (other than those referred to in Clause 26.2 (*Non-payment*) and Clause 26.3 (*Specific obligations*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days of the Facility Agent giving notice to the Borrower or (if earlier) any relevant Transaction Obligor becoming aware of the failure to comply.

26.5 Misrepresentation

Any representation or statement made or deemed to be made by a Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made and is not remedied within five Business Days of the Facility Agent (acting on the instructions of the Majority Lenders) giving notice to the Borrower.

26.6 Cross default

- (a) Any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described) **Provided that** in the case of any Financial Indebtedness created under (i) any guarantee and indemnity of the Guarantor, a demand is made by the relevant creditor(s) under such guarantee and indemnity or (ii) any guarantee and indemnity of the Guarantor securing the obligations of any Subsidiary, the guaranteed Financial Indebtedness of that Subsidiary is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of that Subsidiary's payment default and always provided that the relevant creditor has exercised any of its enforcement rights (the "**Action**") in connection with that payment default and, in the reasonable opinion of the Majority Lenders, that Action may adversely affect the ability of the Guarantor to comply with its obligations under Clause 16 (*Costs and Expenses*).
- (c) Any commitment for any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is cancelled or suspended by a creditor of any Transaction Obligor (other than an Approved Manager) as a result of an event of default (however described).
- (d) Any creditor of any Transaction Obligor (other than an Approved Manager) becomes entitled to declare any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) due and payable prior to its specified maturity as a result of an event of default (however described) **Provided that** in the case of any Financial Indebtedness created under any guarantee and indemnity of the Guarantor, a demand is made by the relevant creditor(s) under such guarantee and indemnity).
- (e) No Event of Default will occur under this Clause 26.6 (*Cross default*) in respect of the Borrower if the failure to comply is capable of remedy and is remedied within five Business Days of the Facility Agent giving notice to the Borrower or the Borrower becoming aware of the failure to comply with this Clause 26.6 (*Cross default*). In relation to a cross-default for the Guarantor, no Event of Default will occur under this Clause 26.6 (*Cross default*) if failure to comply is capable of remedy and is remedied within two weeks of the Facility Agent giving notice (acting on the instructions of the Majority Lenders) to the Borrower or the Borrower becoming aware of the failure to comply with this Clause 26.6 (*Cross default*).

26.7 Insolvency

- (a) A Transaction Obligor (other than an Approved Manager):
 - (i) is unable or admits inability to pay its debts as they fall due;

- (ii) is declared to be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or
 - (iv) obtains or receives a deferral or suspension of payments, a rescheduling or re-organisation of debt (or certain debt) or an arrangement with all or a substantial proportion (by number or value) of creditors or of any class of them in respect of such deferral, suspension, rescheduling or re-organisation, strictly by court order or by the filing of documents with a court.
- (b) A moratorium is officially declared (and, if applicable, registered with appropriate authorities) in respect of any indebtedness of any Transaction Obligor (other than an Approved Manager),

Provided however that should a Transaction Obligor (other than an Approved Manager), by any reason, including without limitation, any actual or anticipated financial difficulties, commence negotiations with one or more of its creditors (including any Finance Party in its capacity as such) with a view to rescheduling, deferring, re-organising or suspending, any of its indebtedness, the existence of such negotiations or the entry, as a result of such negotiations, into any agreement or contract with one or more creditors (including any Finance Party in its capacity as such) setting out the terms of any such rescheduling, deferral, reorganisation or suspension of its indebtedness, shall not in itself constitute an Event of Default.

26.8 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other similar legal procedure or similar legal step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation of any Transaction Obligor (other than an Approved Manager);
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor (other than an Approved Manager);
 - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Transaction Obligor (other than an Approved Manager) or any of its assets (other than an Approved Manager); or
 - (iv) enforcement of any Security over any assets of any Transaction Obligor (other than an Approved Manager),
- or any analogous similar legal procedure or similar legal step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

26.9 Creditors' process or Ship arrest

- (a) Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor and is not discharged within 21 days (or such later period agreed by the Facility Agent acting with the authorisation of the Majority Lenders in their absolute discretion) unless (i) the Borrower provides evidence acceptable to the Facility Agent (acting on the instructions of the Majority Lenders in their absolute discretion) that that expropriation, attachment, sequestration,

distress or execution or any analogous process is being contested in good faith on substantial grounds and (ii) the Majority Lenders, in its reasonable opinion, considers that the relevant Obligor has adequate reserves or the financial ability to satisfy any such claims.

- (b) In the case of an arrest or detention of the Ship, the Ship is not redelivered to the full control of the Borrower, on or before the date falling 21 days (or such later period agreed by the Facility Agent acting with the authorisation of the Majority Lenders in their absolute discretion) after the date of the arrest or detention.

26.10 Ownership of the Borrower

There is any change in the ultimate beneficial ownership or control of the Borrower from that advised in writing to the Facility Agent prior to the date of this Agreement or there is any change in the direct legal or beneficial ownership or control of the Borrower from the Guarantor as owner of the LLC Shares and the voting rights attaching to the LLC Shares.

26.11 Unlawfulness, invalidity and ranking

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation of a Transaction Obligor under the Finance Documents is not or ceases to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or to be continuing or is or purports to be determined or any Transaction Security is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) Any Transaction Security proves to have ranked after, or loses its priority to, any other Security.

26.12 Security imperilled

Any Security created or intended to be created by a Finance Document is in any way imperilled or in jeopardy.

26.13 Cessation of business

Any Transaction Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

26.14 Expropriation

The authority or ability of a Transaction Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets other than:

- (a) an arrest or detention of the Ship referred to in Clause 26.9 (*Creditors' process or Ship arrest*); or
- (b) any Requisition.

26.15 Repudiation and rescission of agreements

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Transaction Document or any Transaction Security.

26.16 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened, or any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body is made, in relation to any of the Transaction Documents or the transactions contemplated in any of the Transaction Documents or against any member of the Group or its assets which has a Material Adverse Effect.

26.17 Material adverse change

Any event or circumstance occurs which has a Material Adverse Effect.

26.18 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:

- (a) cancel the Total Commitments, whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon it shall become immediately due and payable;
- (c) declare that all or part of the Loan be payable on demand, whereupon it shall immediately become payable on demand by the Facility Agent acting on the instructions of the Majority Lenders; and/or
- (d) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents, and the Facility Agent may serve notices under paragraphs (a), (b) and (c) above simultaneously or on different dates and the Security Agent may take any action referred to in Clause 26.19 (*Enforcement of security*) if no such notice is served or simultaneously with or at any time after the service of any of such notice.

26.19 Enforcement of security

On and at any time after the occurrence of an Event of Default which is continuing the Security Agent may, and shall if so directed by the Majority Lenders, take any action which, as a result of the Event of Default or any notice served under Clause 26.18 (*Acceleration*), the Security Agent is entitled to take under any Finance Document or any applicable law or regulation.

SECTION 9

CHANGES TO PARTIES

27 CHANGES TO THE LENDERS

27.1 Assignments and transfers by the Lenders

Subject to this Clause 27 (*Changes to the Lenders*), a Lender (the “**Existing Lender**”) may without the consent of any Obligor:

- (i) assign any of its rights; or
- (ii) transfer by novation any of its rights and obligations,

under the Finance Documents to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets or, following the occurrence of an Event of Default which is continuing, to any other person (in each case, the “**New Lender**”).

27.2 Conditions of assignment or transfer

(a) An assignment will only be effective on:

- (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Secured Parties as it would have been under if it were an Original Lender; and
- (ii) performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.

(b) Each Obligor on behalf of itself and each Transaction Obligor agrees that all rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender’s title and of any rights or equities which the Borrower or any other Transaction Obligor had against the Existing Lender.

(c) A transfer will only be effective if the procedure set out in Clause 27.5 (*Procedure for transfer*) is complied with.

(d) If:

- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
- (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, a Transaction Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross Up and Indemnities*) or under that clause as incorporated by reference or in full in any other Finance Document or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (d) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.

- (e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

27.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of \$3,500.

27.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Transaction Obligor;
 - (iii) the performance and observance by any Transaction Obligor of its obligations under the Transaction Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties and the Secured Parties that it:
- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its related entities throughout the Security Period.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
- (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 27 (*Changes to the Lenders*); or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Transaction Obligor of its obligations under the Transaction Documents or otherwise.

27.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate.
- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied in its sole discretion that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 27.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security, each of the Transaction Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
 - (ii) each of the Transaction Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Transaction Obligor and the New Lender have assumed and/or acquired the same in place of that Transaction Obligor and the Existing Lender;
 - (iii) the Facility Agent, the Security Agent, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent and the Existing Lenders shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a “**Lender**”.

27.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied in its sole discretion that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 27.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;

- (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 27.6 (*Procedure for assignment*) to assign their rights under the Finance Documents (but not, without the consent of the relevant Transaction Obligor or unless in accordance with Clause 27.5 (*Procedure for transfer*), to obtain a release by that Transaction Obligor from the obligations owed to that Transaction Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*).

27.7 **Copy of Transfer Certificate or Assignment Agreement to Borrower**

The Facility Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

27.8 **Security over Lenders’ rights**

In addition to the other rights provided to Lenders under this Clause 27 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
 - (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,
- except that no such charge, assignment or Security shall:
- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by a Transaction Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

27.9 **Pro rata interest settlement**

- (a) If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a “*pro rata* basis” to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 27.5 (*Procedure for transfer*) or any assignment pursuant to Clause 27.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
 - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on

them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

- (ii) The rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 27.9 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.

(b) In this Clause 27.9 (*Pro rata interest settlement*) references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.

(c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 27.9 (*Pro rata interest settlement*) but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

28 CHANGES TO THE TRANSACTION OBLIGORS

28.1 Assignment or transfer by Transaction Obligors

No Transaction Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

28.2 Release of security

(a) If a disposal of any asset subject to security created by a Security Document is made in the following circumstances:

- (i) the disposal is permitted by the terms of any Finance Document;
- (ii) all the Lenders agree to the disposal;
- (iii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or
- (iv) the disposal is being effected by enforcement of a Security Document,

the Security Agent may release the asset(s) being disposed of from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).

(b) If the Security Agent is satisfied that a release is allowed under this Clause 28.2 (*Release of security*) (at the request and expense of the Borrower) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Transaction Obligor under the Finance Documents.

THE FINANCE PARTIES

29 THE FACILITY AGENT AND THE REFERENCE BANKS

29.1 Appointment of the Facility Agent

- (a) Each of the Lenders appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Lenders authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

29.2 Instructions

- (a) The Facility Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) (A) in accordance with sub-paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties) or (B) in its capacity as Facility Agent under the Transaction Documents (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct).
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Without prejudice to paragraph (a)(ii) above, paragraph (a)(i) above shall not apply in respect of any provision which protects the Facility Agent's own position in its personal capacity as opposed to its role of Facility Agent for the relevant Finance Parties.
- (e) The Facility Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

- (f) Without prejudice to the remainder of this Clause 29.2 (*Instructions*), in the absence of instructions, the Facility Agent shall not be obliged to take any action (or refrain from taking action) even if it considers acting or not acting to be in the best interests of the Finance Parties.
- (g) The Facility Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document.

29.3 Duties of the Facility Agent

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document or notice which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to Clause 27.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Notwithstanding anything set out in any Transaction Document, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Facility Agent receives notice from a Party referring to any Finance Document, describing a circumstance and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties but shall not have any duty to verify whether the circumstance described has actually occurred or whether it constitutes a Default.
- (f) If the Facility Agent is aware of the non-payment of any principal, interest or any fee payable to a Finance Party under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Facility Agent shall provide to the Borrower within 5 Business Days of a request by the Borrower (but no more frequently than once per calendar quarter), a list (which may be in electronic form) setting out the names of the Lenders as at that Business Day, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Facility Agent to that Lender under the Finance Documents.
- (h) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

29.4 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Facility Agent as a trustee or fiduciary of any other person.

- (b) The Facility Agent shall not be bound to account to other Finance Party for any sum or the profit element of any sum received by it for its own account.

29.5 **Application of receipts**

Except as expressly stated to the contrary in any Finance Document, any moneys which the Facility Agent receives or recovers in its capacity as Facility Agent shall be applied by the Facility Agent in accordance with Clause 33.5 (*Application of receipts; partial payments*).

29.6 **Business with the Group**

The Facility Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

29.7 **Rights and discretions**

- (a) The Facility Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing, as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 26.2 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iii) any notice or request made by the Borrower (other than the Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (c) The Facility Agent may engage (at the Borrowers' expense) the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage (at the Borrowers' expense) the services of any

lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.

- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.

- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Without prejudice to Clause 29.4, the Facility Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

29.8 Responsibility for documentation

The Facility Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party or Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

29.9 No duty to monitor

The Facility Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;

- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

29.10 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to paragraph (e) of Clause 33.11 (*Disruption to Payment Systems* etc.) or any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or any other category of liability whatsoever) arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Facility Agent may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.

- (d) Nothing in this Agreement shall oblige the Facility Agent to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,
- on behalf of any Finance Party and each Finance Party confirms to the Facility Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent’s liability, any liability of the Facility Agent arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

29.11 Lenders’ indemnity to the Facility Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent’s gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 33.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent’s negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.

29.12 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively, the Facility Agent may resign by giving 30 days’ notice to the other Finance Parties and the Borrower, in which case the Majority Lenders may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent may appoint a successor Facility Agent.
- (d) The retiring Facility Agent shall, at the Borrower’s cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor

Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrower shall indemnify the retiring Facility Agent prior to it being required to undertake any actions referred to in this sub-paragraph for the amount of all costs and expenses (including legal fees) to be properly incurred by it in making available such documents and records and providing such assistance.

- (e) All Parties shall consult, co-operate and use commercially reasonable endeavours to appoint a successor Facility Agent and the retiring Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (d) above) but shall remain entitled to the benefit of Clause 14.4 (*Indemnity to the Facility Agent*) and this Clause 29 (*The Facility Agent and the Reference Banks*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Facility Agent. Any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Lenders pro-rata to their Commitments.
- (h) The consent of the Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Facility Agent.
- (i) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
 - (i) the Facility Agent fails to respond to a request under Clause 12.7 (*FATCA Information*) and a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Facility Agent pursuant to Clause 12.7 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Facility Agent notifies the Borrower and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

29.13 Confidentiality

- (a) In acting as Facility Agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Facility Agent other than the division or department responsible for complying with the obligations assumed by it under

the Finance Documents, that information may be treated as confidential to that division or department, and the Facility Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.

- (c) Without prejudice to Clause 29.4 (*No fiduciary duties*) and notwithstanding any other provision of any Finance Document to the contrary, the Facility Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

29.14 Relationship with the other Finance Parties

- (a) Subject to Clause 27.9 (*Pro rata interest settlement*), the Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office.
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior written notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Each Finance Party shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Finance Party shall deal with the Security Agent exclusively through the Facility Agent and shall not deal directly with the Security Agent and any reference to any instructions being given by or sought from any Finance Party or group of Finance Parties to or by the Security Agent in this Agreement must be given or sought through the Facility Agent.
- (c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 36.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 36.2 (*Addresses*) and sub-paragraph (ii) of paragraph (a) of Clause 36.5 (*Electronic communication*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

29.15 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Facility Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;

- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Facility Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

29.16 Facility Agent's management time

Any amount payable to the Facility Agent under Clause 14.4 (*Indemnity to the Facility Agent*), Clause 16 (*Costs and Expenses*) and Clause 29.11 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrower and the other Finance Parties, and is in addition to any fee paid or payable to the Facility Agent under Clause 11 (*Fees*).

29.17 Deduction from amounts payable by the Facility Agent

If any Party owes an amount to the Facility Agent under the Finance Documents, the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

29.18 Reliance and engagement letters

Each Secured Party confirms that the Facility Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Facility Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

29.19 Full freedom to enter into transactions

Without prejudice to Clause 29.6 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Facility Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other

transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);

- (b) to deal in and enter into and arrange transactions relating to:
 - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
 - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, the Facility Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

29.20 Majority Lenders' Instructions

- (a) Notwithstanding anything to the contrary contained in the Transaction Documents, the Parties acknowledge that where any provision in a Transaction Document refers to the Facility Agent being obliged to or entitled to take any specified action, exercise any discretion, make any determination, give any consent or waiver, or act in a certain way in connection with the transactions contemplated by the Transaction Documents, it shall or may (as the case may be) take such specified action, exercise such discretion, make such determination, give any consent in accordance with the instructions or directions of the Majority Lenders or all Lenders, as the case may be) and in doing so shall be deemed to have acted reasonably.
- (b) Any instructions given by the Majority Lenders or the Lenders shall be in writing and any instructions by the Majority Lenders on matters which do not require the consent or instructions of all the Lenders as specified in this Agreement shall be binding on all the Lenders.
- (c) The Facility Agent may refrain from acting in accordance with the instructions of the Majority Lenders or the Lenders (as the case may be) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) The Facility Agent is not authorised to act on behalf of a Finance Party (without first obtaining the relevant Finance Party's consent) in any legal or arbitration proceedings relating to any Transaction Document.

29.21 Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Facility Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have

against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 29.21 (*Role of Reference Banks*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

29.22 **Third Party Reference Banks**

A Reference Bank which is not a Party may rely on Clause 29.21 (*Role of Reference Banks*), Clause 42.3 (*Other exceptions*) and Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

30 **THE SECURITY AGENT**

30.1 **Trust**

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 30 (*The Security Agent*) and the other provisions of the Finance Documents.
- (b) Each other Finance Party authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

30.2 **Parallel Debt (Covenant to pay the Security Agent)**

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of an Obligor:
 - (i) shall become due and payable at the same time as its Corresponding Debt;
 - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For the purposes of this Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent:
 - (i) is the independent and separate creditor of each Parallel Debt;
 - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
 - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).
- (d) The Parallel Debt of an Obligor shall be:
 - (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Corresponding Debt has increased,

and the Corresponding Debt of an Obligor shall be:

- (A) decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged; and
- (B) increased to the extent that its Parallel Debt has increased,

in each case provided that the Parallel Debt of an Obligor shall never exceed its Corresponding Debt.

- (e) All amounts received or recovered by the Security Agent in connection with this Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 33.5 (*Application of receipts; partial payments*).
- (f) This Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) shall apply, with any necessary modifications, to each Finance Document.

30.3 Enforcement through Security Agent only

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

30.4 Instructions

- (a) The Security Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by:
 - (A) all Lenders (or the Facility Agent on their behalf) if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders (or the Facility Agent on their behalf); and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) (A) in accordance with sub-paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties) or (B) in its capacity as Security Agent under the Transaction Documents (otherwise than by reason of the Security Agent's gross negligence or wilful misconduct).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or the Facility Agent on their behalf) (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Facility Agent (acting on the instructions of the Majority Lenders) shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.

- (d) Without prejudice to paragraph (a)(ii) above, paragraph (a)(i) shall not apply:
 - (i) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Secured Parties.
 - (ii) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 30.28 (*Application of receipts*);
 - (B) Clause 30.29 (*Permitted Deductions*); and
 - (C) Clause 30.30 (*Prospective liabilities*).
- (e) The Security Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (f) Without prejudice to the remainder of this Clause 30.4 (*Instructions*), in the absence of instructions, the Security Agent may (but shall not be obliged to) take such action in the exercise of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.
- (g) The Security Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (g) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

30.5 Duties of the Security Agent

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a circumstance and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties but shall not have any duty to verify whether the circumstances described has actually occurred or whether it constitutes a Default.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

30.6 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor or any other person.

- (b) The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

30.7 Business with the Group

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

30.8 Rights and discretions

- (a) The Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing, as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the other Finance Parties through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to any Finance Party.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Secured Parties) that:
 - (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iii) any notice or request made by the Borrower (other than the Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (d) The Security Agent may engage (at the Borrower's cost) the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

- (e) Without prejudice to the generality of paragraph (c) above or paragraph (f) below, the Security Agent may at any time engage (at the Borrower's cost) the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Facility Agent or the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Security Agent's gross negligence or wilful misconduct.
- (h) Unless a Finance Document expressly provides otherwise the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under the Finance Documents.
- (i) Without prejudice to Clause 30.6 and notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security *for*, such risk or liability is not reasonably assured to it.

30.9 Responsibility for documentation

None of the Security Agent, any Receiver or Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

30.10 No duty to monitor

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

30.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate), none of the Security Agent nor any Receiver or Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or any other category of liability whatsoever) arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Security Agent, that Receiver or that Delegate (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party, on behalf of any Finance Party and each Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate, any liability of the Security Agent or any Receiver or Delegate arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent. Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

30.12 Lenders’ indemnity to the Security Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the Security Agent’s, Receiver’s or Delegate’s gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Finance Documents (unless the Security Agent, Receiver or Delegate has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.

30.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively, the Security Agent may resign by giving 30 days’ notice to the other Finance Parties and the Borrower, in which case the Majority Lenders may appoint a successor Security Agent.

- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, at the Borrower's cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrower shall indemnify the retiring Security Agent prior to it being required to undertake any actions referred to in this sub-paragraph for the amount of all costs and expenses (including legal fees) to be properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer, by way of a document expressed as a deed, of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged, by way of a document executed as a deed, from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 30.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of Clause 14.5 (*Indemnity to the Security Agent*) and this Clause 30 (*The Security Agent*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Security Agent. Any fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Lenders pro-rata to their Commitments.
- (h) The consent of the Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Agent.

30.14 Confidentiality

- (a) In acting as Security Agent for the Finance Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Security Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Security Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Without prejudice to Clause 30.6 (*No fiduciary duties*) and notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

30.15 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

30.16 Security Agent's management time

- (a) Any amount payable to the Security Agent under Clause 14.5 (*Indemnity to the Security Agent*), Clause 16 (*Costs and Expenses*) and Clause 30.12 (*Lenders' indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Borrower and the other Finance Parties, and is in addition to any fee paid or payable to the Security Agent under Clause 11 (*Fees*).
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default;
 - (ii) the Security Agent being requested by a Transaction Obligor or the Majority Lenders to undertake duties which the Security Agent and the Borrower agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
 - (iii) the Security Agent and the Borrower agreeing that it is otherwise appropriate in the circumstances,the Borrower shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.
- (c) If the Security Agent and the Borrower fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional

remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrower or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrower) and the determination of any investment bank shall be final and binding upon the Parties.

30.17 Reliance and engagement letters

Each Secured Party confirms that the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Security Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

30.18 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Transaction Obligor to any of the Security Assets;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Transaction Obligor to take, any step to perfect its title to any of the Security Assets or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

30.19 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:

- (i) to insure any of the Security Assets;
- (ii) to require any other person to maintain any insurance; or
- (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind.

30.20 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

30.21 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of any such delegate or sub delegate.

30.22 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties; or
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the Borrower and the Finance Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

30.23 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Transaction Obligor may have to any of the Security Assets and shall not be liable for or bound to require any Transaction Obligor to remedy any defect in its right or title.

30.24 Releases

Upon a disposal of any of the Security Assets pursuant to the enforcement of the Transaction Security by a Receiver, a Delegate or the Security Agent, the Security Agent is irrevocably authorised (at the cost of the Obligors and without any consent, sanction, authority or further confirmation from any other Secured Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

30.25 Winding up of trust

If the Security Agent, with the approval of the Facility Agent (acting on the instructions of the Majority Lenders) determines (acting on the instructions of the Majority Lenders) that:

- (a) all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and
 - (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Transaction Obligor pursuant to the Finance Documents,
- then
- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
 - (ii) any Security Agent which has resigned pursuant to Clause 30.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

30.26 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

30.27 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement and the other Finance Documents. Where there are any inconsistencies between (i) the Trustee Acts 1925 and 2000 and (ii) the provisions of this Agreement and any other Finance Document, the provisions of this Agreement and any other Finance Document shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement and any other Finance Document shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

30.28 Application of receipts

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document, under Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or in connection with the realisation or enforcement of all or any part of the Security Property (for the purposes of this Clause 30 (*The Security Agent*), the “**Recoveries**”) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and

subject to the remaining provisions of this Clause 30 (*The Security Agent*)), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) other than pursuant to Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or any Receiver or Delegate;
- (b) in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Secured Parties, for application towards the discharge of all sums due and payable by any Transaction Obligor under any of the Finance Documents in accordance with Clause 33.5 (*Application of receipts; partial payments*);
- (c) if none of the Transaction Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Transaction Obligor; and
- (d) the balance, if any, in payment or distribution to the relevant Transaction Obligor.

30.29 Permitted Deductions

The Security Agent may, in its discretion:

- (a) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
- (b) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

30.30 Prospective liabilities

Following enforcement of any of the Transaction Security, the Security Agent may, in its discretion, or at the request of the Facility Agent, hold any Recoveries in a suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit for later payment to the Facility Agent for application in accordance with Clause 30.28 (*Application of receipts*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent or, in the case of paragraph (b) only, the Facility Agent, reasonably considers, in each case, might become due or owing at any time in the future.

30.31 Currency conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

30.32 Good discharge

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Facility Agent on behalf of the Secured Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Facility Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

30.33 Amounts received by Obligors

If any of the Obligors receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, that Obligor will hold the amount received or recovered on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement.

30.34 Full freedom to enter into transactions

Without prejudice to Clause 30.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Security Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
 - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
 - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Security Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

30.35 Majority Lenders' Instructions

- (a) Notwithstanding anything to the contrary contained in the Transaction Documents, the Parties acknowledge that where any provision in Transaction Document refers to the Security Agent being obliged to or entitled to take any specified action, exercise any discretion, make any determination, give any consent or waiver, or act in a certain way in connection with the transactions contemplated by the Transaction Documents, it shall or may (as the case may be) take such specified action, exercise such discretion, make such determination, give any consent in accordance with the instructions or directions of the Facility Agent (acting on the instructions of the Majority Lenders or all Lenders, as the case may be) and in doing so shall be deemed to have acted reasonably.

- (b) Any instructions given by the Majority Lenders shall be in writing and be binding on all the Lenders.
- (c) The Security Agent may refrain from acting in accordance with the instructions of the Facility Agent until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Facility Agent, the Security Agent shall not be obliged to take any action.

The Security Agent is not authorised to act on behalf of a Finance Party (without first obtaining the relevant Finance Party's consent) in any legal or arbitration proceedings relating to any Security Document. Subject to the terms of the Transaction Documents, this paragraph (d) shall not apply to any legal or arbitration proceedings relating to the perfection preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or any Security Documents.

31 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

32 SHARING AMONG THE FINANCE PARTIES

32.1 Payments to Finance Parties

If a Finance Party (a **"Recovering Finance Party"**) receives or recovers any amount from a Transaction Obligor other than in accordance with Clause 33 (*Payment Mechanics*) (a **"Recovered Amount"**) and applies that amount to a payment due to it under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 33 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the **"Sharing Payment"**) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 33.5 (*Application of receipts; partial payments*).

32.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Transaction Obligor and distribute it among the Finance Parties (other than the Recovering Finance Party) (the **"Sharing Finance Parties"**) in accordance with Clause 33.5 (*Application of receipts; partial payments*) towards the obligations of that Transaction Obligor to the Sharing Finance Parties.

32.3 **Recovering Finance Party's rights**

On a distribution by the Facility Agent under Clause 32.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from a Transaction Obligor, as between the relevant Transaction Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Transaction Obligor.

32.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the **"Redistributed Amount"**); and
- (b) as between the relevant Transaction Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Transaction Obligor.

32.5 **Exceptions**

- (a) This Clause 32 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Transaction Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

ADMINISTRATION

33 PAYMENT MECHANICS**33.1 Payments to the Facility Agent**

- (a) On each date on which a Transaction Obligor or a Lender is required to make a payment under a Finance Document, that Transaction Obligor or Lender shall make an amount equal to such payment available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date no later than 2:00 p.m. (New York time) and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account and with such bank as the Facility Agent, in each case, specifies.

33.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 33.3 (*Distributions to a Transaction Obligor*) and Clause 33.4 (*Clawback and pre-funding*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five Business Days' notice with a bank specified by that Party or, in the case of the Advance, to such account of such person as may be specified by the Borrowers in a Utilisation Request.

33.3 Distributions to a Transaction Obligor

The Facility Agent may (with the consent of the Transaction Obligor or in accordance with Clause 34 (*Set-Off*)) apply any amount received by it for that Transaction Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Transaction Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

33.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

33.5 Application of receipts; partial payments

- (a) If the Facility Agent or the Security Agent (as applicable) receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction Obligor under the Finance Documents, the Facility Agent or the Security Agent (as applicable) shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order (in addition to any relevant provisions in the Security Documents):
- (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of, and any other amounts owing to, the Facility Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;

- (ii) **secondly**, in or towards payment pro rata of any accrued interest and fees due but unpaid to the Lenders under this Agreement;
 - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid to the Lenders under this Agreement; and
 - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary, or instruct the Security Agent to vary (as applicable) the order set out in sub-paragraphs (ii) to (iv) of paragraph (a) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by a Transaction Obligor.

33.6 No set-off by Transaction Obligors

All payments to be made by a Transaction Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

33.7 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

33.8 Currency of account

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from a Transaction Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

33.9 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
- (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (acting on the instructions of the Majority Lenders) (after consultation with the Borrower); and

- (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting on the instructions of the Majority Lenders).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting on the instructions of the Majority Lenders and after consultation with the Borrower) specifies (acting on the instructions of the Majority Lenders) to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

33.10 Currency Conversion

- (a) For the purpose of, or pending any payment to be made by any Servicing Party under any Finance Document, such Servicing Party may convert any moneys received or recovered by it from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

33.11 Disruption to Payment Systems etc.

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by the Borrower that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties and any Transaction Obligors as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 42 (*Amendments and Waivers*);
- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 33.11 (*Disruption to Payment Systems etc.*); and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

34 SET-OFF

A Finance Party may set off any matured obligation due from a Transaction Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Transaction Obligor, regardless of the

place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

35 BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each Party acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

36 NOTICES

36.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

36.2 Addresses

The address, email address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents are:

- (a) in the case of the Borrower, that specified in Schedule 1 (*The Parties*);
 - (b) in the case of each Lender or any other Obligor, that specified in Schedule 1 (*The Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or before the date on which it becomes a Party;
 - (c) in the case of the Facility Agent, that specified in Schedule 1 (*The Parties*); and
 - (d) in the case of the Security Agent, that specified in Schedule 1 (*The Parties*),
- or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

36.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form;

- (ii) if by way of email, when such message is received; or
- (iii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 36.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to a Servicing Party will be effective only when actually received by that Servicing Party and then only if it is expressly marked for the attention of the department or officer of that Servicing Party specified in Schedule 1 (*The Parties*) (or any substitute department or officer as that Servicing Party shall specify for this purpose).
- (c) All notices from or to a Transaction Obligor shall be sent through the Facility Agent unless otherwise specified in any Finance Document.
- (d) Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to each of the Transaction Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

36.4 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 36.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

36.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5.00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 36.5 (*Electronic communication*).

36.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
- (i) in English; or
 - (ii) if not in English, and if so required by the Facility Agent (acting on the instructions of the Majority Lenders), accompanied by a certified English translation prepared by a translator approved by the Facility Agent (acting on the instructions of the Majority Lenders) and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

37 CALCULATIONS AND CERTIFICATES

37.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

37.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

37.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

38 PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

39 REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

40 SETTLEMENT OR DISCHARGE CONDITIONAL

Any settlement or discharge under any Finance Document between any Finance Party and any Transaction Obligor shall be conditional upon no security or payment to any Finance Party by any Transaction Obligor or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.

41 IRREVOCABLE PAYMENT

If the Facility Agent considers that an amount paid or discharged by, or on behalf of, a Transaction Obligor or by any other person in purported payment or discharge of an obligation of that Transaction Obligor to a Secured Party under the Finance Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Transaction Obligor or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Finance Documents.

42 AMENDMENTS AND WAIVERS

42.1 Required consents

- (a) Subject to Clause 42.2 (*All Lender matters*) and Clause 42.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and, in the case of an amendment, the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 42 (*Amendments and Waivers*).
- (c) Without prejudice to the generality of Clause 29.7 (*Rights and discretions*), the Facility Agent may at the Borrowers' cost, engage and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Paragraph (c) of Clause 27.9 (*Pro rata interest settlement*) shall apply to this Clause 42 (*Amendments and Waivers*).

42.2 All Lender matters

Subject to Clause 42.4 (*Replacement of Screen Rate*), an amendment of or waiver or consent in relation to any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) a postponement to or extension of the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
- (f) a change to any Transaction Obligor other than in accordance with Clause 28 (*Changes to the Transaction Obligors*);

- (g) any provision which expressly requires the consent of all the Lenders;
- (h) this Clause 42 (*Amendments and Waivers*);
- (i) any change to the preamble (*Background*), Clause 2 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Utilisation*), Clause 6.2 (*Effect of cancellation and prepayment on scheduled repayments*), Clause 7.4 (*Mandatory prepayment on sale or Total Loss*), Clause 8 (*Interest*), Clause 25 (*Earnings Account and Application of Earnings*), Clause 27 (*Changes to the Lenders*), Clause 32 (*Sharing among the Finance Parties*), Clause 46 (*Governing Law*) or Clause 47 (*Enforcement*);
- (j) unless otherwise specified in the relevant Finance Document, any release of, or material variation to, any Transaction Security, guarantee, indemnity or subordination arrangement set out in a Finance Document (except in the case of a release of Transaction Security as it relates to the disposal of an asset which is the subject of the Transaction Security and where such disposal is expressly permitted by the Majority Lenders or otherwise under a Finance Document);
- (k) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (i) the guarantee and indemnity granted under Clause 17 (*Guarantee and Indemnity*);
 - (ii) the Security Assets; or
 - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed,(except in the case of sub-paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- (l) the release of the guarantee and indemnity granted under Clause 17 (*Guarantee and Indemnity*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document, shall not be made, or given, without the prior consent of all the Lenders.

42.3 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of a Servicing Party or a Reference Bank (each in their capacity as such) may not be effected without the consent of that Servicing Party or that Reference Bank, as the case may be.
- (b) The Borrower and the Facility Agent or the Security Agent, as applicable, may amend or waive a term of a Fee Letter to which they are party.

42.4 Replacement of Screen Rate

- (a) Subject to Clause 42.3 (*Other exceptions*), if the Screen Rate is not available for dollars, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to dollars, in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that benchmark rate) may be made with the consent of the Majority Lenders and the Borrower.
- (b) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within 3 Business Days (unless the Borrower and the Facility Agent

(acting on the instructions of the Majority Lenders) agree to a longer time period in relation to any request) of that request being made:

- (i) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
- (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

42.5 Obligor Intent

Without prejudice to the generality of Clauses 1.2 (*Construction*) and 17.4 (*Waiver of defences*), each Obligor expressly confirms that it intends that any guarantee contained in this Agreement or any other Finance Document and any Security created by any Finance Document shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

43 CONFIDENTIAL INFORMATION

43.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 43.2 (*Disclosure of Confidential Information*) and Clause 43.3 (*Disclosure to numbering service providers*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

43.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 29.14 (*Relationship with the other Finance Parties*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraph (i) or (ii) of paragraph (b) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 27.8 (*Security over Lenders' rights*);
- (viii) who is a Party, a member of the Group or any related entity of a Transaction Obligor;
- (ix) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
- (x) with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to sub-paragraphs (i), (ii) and (iii) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to sub-paragraph (iv) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to sub-paragraphs (v), (vi) and (vii) of paragraph (b) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- (c) to any person appointed by that Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered in to a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Transaction Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

43.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Transaction Obligors the following information:
 - (i) names of Transaction Obligors;
 - (ii) country of domicile of Transaction Obligors;
 - (iii) place of incorporation of Transaction Obligors;
 - (iv) date of this Agreement;
 - (v) Clause 46 (*Governing Law*);
 - (vi) the name of the Facility Agent;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amount of Total Commitments;
 - (ix) currency of the Facility;
 - (x) type of Facility;
 - (xi) ranking of Facility;
 - (xii) Termination Date for Facility;
 - (xiii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xii) above; and
 - (xiv) such other information agreed between such Finance Party and the Borrower,to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

(b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Transaction Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

(c) Each Obligor represents, on behalf of itself and the other Transaction Obligors, that none of the information set out in sub-paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.

43.4 Entire agreement

This Clause 43 (*Confidential Information*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

43.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

43.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

(a) of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (v) of paragraph (b) of Clause 43.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 43 (*Confidential Information*).

43.7 Continuing obligations

The obligations in this Clause 43 (*Confidential Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

(a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

44 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

44.1 Confidentiality and disclosure

(a) The Facility Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.

- (b) The Facility Agent may disclose:
- (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause 8.4 (*Notification of rates of interest*); and
 - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The Facility Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The Facility Agent's obligations in this Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.4 (*Notification of rates of interest*) **provided that** (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Facility Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

44.2 Related obligations

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation for any unlawful purpose.

- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
- (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 44.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

44.3 No Event of Default

No Event of Default will occur under Clause 26.4 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

45 COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

GOVERNING LAW AND ENFORCEMENT

46 GOVERNING LAW

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

47 ENFORCEMENT

47.1 Jurisdiction

- (a) Unless specifically provided in another Finance Document in relation to that Finance Document, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute regarding the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a “**Dispute**”).
- (b) The Obligors accept that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Obligor will argue to the contrary.
- (c) This Clause 47.1 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

47.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
 - (i) irrevocably appoints Saville & Co. at its registered office for the time being, presently at One Carey Lane, London EC2V 8AE, England, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

48 PATRIOT ACT NOTICE

48.1 PATRIOT Act Notice

Each of the Facility Agent and the Lenders hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act and the policies and practices of the Facility Agent and each Lender, the Facility Agent and each of the Lenders is required to obtain, verify and record certain information and documentation that identifies each Transaction Obligor, which information includes the name and address of each Transaction Obligor and such other information that will allow the Facility Agent and each of the Lenders to identify each Transaction Obligor in accordance with the PATRIOT Act.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1

THE PARTIES

PART A

THE OBLIGORS

Name of Borrower	Place of Incorporation	Registration number (or equivalent, if any)	Address for Communication
Leonidas Marine LLC	Marshall Islands	961847	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
Name of Guarantor	Place of Incorporation	Registration number (or equivalent, if any)	Address for Communication
Poseidon Containers Holdings LLC	Marshall Islands	961853	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224

PART B

THE ORIGINAL LENDERS

Name of Original Lender	Commitment	Address for Communication
EnTrustPermal ICAV, for and on behalf of Blue Ocean Fund	\$9,845,496	EnTrustPermal ICAV c/o EnTrustPermal Partners Offshore LP 375 Park Avenue New York, NY 10152 Facsimile: +1 212 888 0751 Email: sengh@entrustpermal.com /odonnerstein@entrustpermal.com/ bkahne@entrustpermal.com Attention: Svein Engh/ Omer Donnerstein / Bruce Kahne
Blue Ocean Onshore Fund LP	\$9,654,504	Blue Ocean Onshore Fund LP c/o EnTrust Partners LLC 375 Park Avenue New York, NY 10152 Facsimile: +1 212 888 0751 Email: sengh@entrustpermal.com /odonnerstein@entrustpermal.com/ bkahne@entrustpermal.com Attention: Svein Engh/ Omer Donnerstein /Bruce Kahne

PART C

THE SERVICING PARTIES

Name of Facility Agent
Wilmington Trust, National Association

Address for Communication
50 South Sixth Street
Suite 1290
Minneapolis, MN 55402
USA

Attn: Josh James

Fax: +1 612-217-5651

Email: jjames@wilmingtontrust.com

Name of Security Agent
Wilmington Trust, National Association

Address for Communication
50 South Sixth Street
Suite 1290
Minneapolis, MN 55402
USA

Attn: Josh James

Fax: +1 612-217-5651

Email: jjames@wilmingtontrust.com

SCHEDULE 2

CONDITIONS PRECEDENT

PART A

CONDITIONS PRECEDENT TO UTILISATION REQUEST

1 Obligors

- 1.1 A copy of the constitutional documents of each Transaction Obligor.
- 1.2 A copy of a resolution of the board of directors or, as applicable members of each Transaction Obligor:
 - (a) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (b) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, the Utilisation Request) to be signed and/or despatched by it under, or in connection with, the Finance Documents to which it is a party.
- 1.3 An original of the power of attorney of any Transaction Obligor authorising a specified person or persons to execute the Finance Documents to which it is a party.
- 1.4 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above.
- 1.5 A copy of a resolution signed by the Guarantor as the holder of the limited liability company interests in the Borrower, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Borrower is a party.
- 1.6 A certificate of each Transaction Obligor that is incorporated outside the UK (signed by a director or officer) certifying either that (i) it has not delivered particulars of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or (ii) it has a UK Establishment and specifying the name and registered number under which it is registered with the Registrar of Companies.
- 1.7 A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document relating to it specified in this Part A of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2 Finance Documents

- 2.1 A duly executed original of the Subordination Agreement and copies of each Subordinated Finance Document.
- 2.2 A duly executed original of any Finance Document not otherwise referred to in this Schedule 2 (*Conditions Precedent*).
- 2.3 A duly executed original of any other document required to be delivered by each Finance Document if not otherwise referred to this Schedule 2 (*Conditions Precedent*).

- 3 Security**
- 3.1 A duly executed original of the Account Security and of the Shares Security (and of each document to be delivered under each of them).
- 4 Legal opinions**
- 4.1 A legal opinion of Watson Farley & Williams LLP, legal advisers to the Facility Agent and the Security Agent in England, substantially in the form distributed to the Original Lenders before signing this Agreement.
- 4.2 If a Transaction Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Facility Agent and the Security Agent in the relevant jurisdiction, substantially in the form distributed to the Original Lenders before signing this Agreement.
- 5 Other documents and evidence**
- 5.1 Evidence that any process agent referred to in Clause 47.2 (*Service of process*), if not an Obligor, has accepted its appointment.
- 5.2 A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent considers (acting on the instructions of the Majority Lenders) to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Transaction Document or for the validity and enforceability of any Transaction Document.
- 5.3 The Original Financial Statements of the Borrower and the Guarantor.
- 5.4 The original of any mandates or other documents required in connection with the opening or operation of the Earnings Account.
- 5.5 Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and Expenses*) have been paid or will be paid on or before the Utilisation Date.
- 5.6 Evidence satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) that the shareholders' equity of \$5,000,000 has been paid in to the Guarantor.
- 5.7 Such evidence as may be required for the Finance Parties to be able to satisfy each of their "know your customer" or similar identification procedures in relation to the transactions contemplated by the Finance Documents.

PART B

CONDITIONS PRECEDENT TO UTILISATION

1 Borrower

A certificate of an authorised signatory of the Borrower certifying that each copy document which it is required to provide under this Part B Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at the Utilisation Date.

2 Release of Existing Security

An original of each Deed of Release and of each document to be delivered under or pursuant to it, together with evidence satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) of its due execution by the parties to it.

3 Ship and other security

3.1 A duly executed original of the Mortgage, the General Assignment and any Charter Assignment and of each document to be delivered under or pursuant to each of them together with documentary evidence that the Mortgage has been duly registered or recorded (as applicable) as a valid first preferred or priority (as applicable) ship mortgage in accordance with the laws of the jurisdiction of the Approved Flag.

3.2 Documentary evidence that the Ship:

- (a) is definitively and permanently registered in the name of the Borrower under the Approved Flag.
- (b) is in the absolute and unencumbered ownership of the Borrower save as contemplated by the Finance Documents;
- (c) maintains the Approved Classification with the Approved Classification Society free of all recommendations and conditions of the Approved Classification Society; and
- (d) is insured in accordance with the provisions of this Agreement and all requirements in this Agreement in respect of insurances have been complied with.

3.3 Documents establishing that the Ship will, as from the Utilisation Date, be managed commercially by the Approved Commercial Manager and managed technically by the Approved Technical Manager on terms acceptable to the Facility Agent acting with the authorisation of all of the Lenders, together with:

- (a) a Manager's Undertaking for each of the Approved Technical Manager and the Approved Commercial Manager; and
- (b) copies of the Approved Technical Manager's Document of Compliance and of the Ship's Safety Management Certificate (together with any other details of the applicable Safety Management System which the Facility Agent requires (acting on the instructions of the Majority Lenders)) and of any other documents required under the ISM Code and the ISPS Code in relation to the Ship including without limitation an ISSC.

3.4 An opinion from an independent insurance consultant acceptable to the Facility Agent on (acting on the instructions of the Majority Lenders) on such matters relating to the Insurances as the Facility Agent may require (acting on the instructions of the Majority Lenders).

3.5 A valuation of the Ship dated 19 June 2017 from Barry Rogliano Salles which shows a value for the Ship acceptable to the Lenders.

4 Legal opinions

Legal opinions of the legal advisers to the Facility Agent and the Security Agent in the jurisdiction of the Approved Flag of the Ship, Marshall Islands and such other relevant jurisdictions as the Facility Agent may require.

5 Other documents and evidence

5.1 Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (Fees) and Clause 16 (*Costs and Expenses*) have been paid or will be paid by the Utilisation Date.

5.2 Evidence that a minimum credit balance of \$300,000 is standing to the credit of the Earnings Account.

SCHEDULE 3

REQUESTS

PART A

UTILISATION REQUEST

From: Leonidas Marine LLC

To: Wilmington Trust, National Association

Dated: [●] 2017

Dear Sirs

Leonidas Marine LLC - \$19,500,000 Facility Agreement dated [●] August 2017 (the "Agreement")

1 We refer to the Agreement. This is the Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2 We wish to borrow the Loan on the following terms:

Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)

Amount: [●] or, if less, the Available Facility

Interest Period for the Loan: [●]

3 [We request that funds are prepositioned with [include details of relevant bank] in accordance with Clause 5.8 (*Prepositioning of funds*).]

4 We hereby agree and acknowledge that the Facility Agent shall make payments strictly on the basis of the information set forth in this Utilisation Request hereto even if such information is incorrect. In the event that any of such information is incorrect, we agree that the Facility Agent shall not have any liability with respect thereto.

5 We confirm that each condition specified in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*) of the Agreement as they relate to the Loan is satisfied on the date of this Utilisation Request.

6 The net proceeds of the Loan should be credited to [●].

7 This Utilisation Request is irrevocable.

Yours faithfully

[●]
authorised signatory for
LEONIDAS MARINE LLC

SCHEDULE 4

FORM OF TRANSFER CERTIFICATE

To: WILMINGTON TRUST, NATIONAL ASSOCIATION as Facility Agent

From: [The Existing Lender] (the "Existing Lender") and [The New Lender] (the "New Lender")

Dated: [●]

Dear Sirs

Leonidas Marine LLC - \$19,500,000 Facility Agreement dated [●] August 2017 (the "Agreement")

- 1 We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to Clause 27.5 (*Procedure for transfer*) of the Agreement:
- (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participation in the Loan under the Agreement as specified in the Schedule in accordance with Clause 27.5 (*Procedure for transfer*) of the Agreement.
- (b) The proposed Transfer Date is [●].
- (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) of the Agreement are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 27.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
- 4 This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 5 This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 6 This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details

for notices and account details for payments.]

[Existing Lender]

[New Lender]

By: [●]

By: [●]

This Transfer Certificate is accepted by the Facility Agent and the Transfer Date is confirmed as [●].

[Facility Agent]

By: [●]

SCHEDULE 5

FORM OF ASSIGNMENT AGREEMENT

To: Wilmington Trust, National Association as Facility Agent and Leonidas Marine LLC as Borrower, for and on behalf of each Transaction Obligor

From: [the Existing Lender] (the “Existing Lender”) and [the New Lender] (the “New Lender”)

Dated: [●]

Dear Sirs

Leonidas Marine LLC - \$19,500,000 Facility Agreement dated [●] August 2017 (the “Agreement”)

- 1 We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
- 2 We refer to Clause 27.6 (*Procedure for assignment*):
- (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender’s Commitment and participations in the Loan under the Agreement as specified in the Schedule.
- (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitments and participations in the Loan under the Agreement specified in the Schedule.
- (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
- (d) All rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender’s title and of any rights or equities which the Borrower or any other Transaction Obligor had against the Existing Lender.
- 3 The proposed Transfer Date is [●].
- 4 On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
- 5 The Facility Office and address, fax, number and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) are set out in the Schedule.
- 6 The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 27.4 (*Limitation of responsibility of Existing Lenders*).
- 7 This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 27.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), to the Borrower (on behalf of each Transaction Obligor) of the assignment referred to in this Assignment Agreement.
- 8 This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.

9 This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

10 This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment rights and obligations to be transferred by assignment, release and accession

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By: [●]

By: [●]

This Assignment Agreement is accepted by the Facility Agent and the Transfer Date is confirmed as [●].

Signature of this Assignment Agreement by the Facility Agent constitutes confirmation by the Facility Agent of receipt of notice of the assignment referred to herein, which notice the Facility Agent receives on behalf of each Finance Party.

[Facility Agent]

By:

SCHEDULE 6

FORM OF COMPLIANCE CERTIFICATE

To: Wilmington Trust as Facility Agent

From: Poseidon Containers Holdings LLC

Dated: [●]

Dear Sirs

Leonidas Marine LLC - \$19,500,000 Facility Agreement dated [●] August 2017 (the "Agreement")

1 We refer to the Agreement. This is a Compliance Certificate. 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:

- (a) an amount of \$[●] remains credited to the Earnings Account;
- (b) the Market Value of the Ship plus any net realisable value of additional security previously provided under Clause 24.1 (*Minimum required security cover*) is equal to [●] per cent. of the Loan.
- (c) as at the 3-month period ending on [●] to which the financial statements referred to below were prepared, the Guarantor is in compliance with the following covenants under Clause 20.2 (*Guarantor's financial covenants*):
 - (i) the Value Adjusted Leverage Ratio is [●] per cent.;
 - (ii) the minimum Net Worth is \$[●];
 - (iii) the Book Leverage Ratio is [●].

To evidence such compliance, we attach a copy of the latest [annual][quarterly] consolidated financial statements of the Group together with calculations and evidence setting out in reasonable detail the data and calculations made above (including valuations in a form acceptable to the Facility Agent evidencing the Market Value of each Fleet Vessel which were used to calculate the Value Adjusted Total Assets of the Group as at [●]).

3 We confirm that no Default is continuing.

Signed: _____
Chief Financial Officer
of
POSEIDON CONTAINERS HOLDINGS LLC

SCHEDULE 7

TIMETABLES

Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of Utilisation Request</i>))	2 Business Days before the intended Utilisation Date (Clause 5.1 (<i>Delivery of Utilisation Request</i>))
Facility Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' participation</i>)	2 Business Days before the intended Utilisation Date.
LIBOR is fixed	Quotation Day as of 11:00 am London time
Reference Bank Rate calculated by reference to available quotations in accordance with Clause 10.2 (<i>Calculation of Reference Bank Rate</i>)	Noon of the Quotation Day

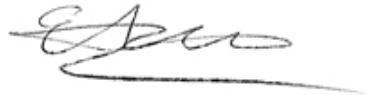
SCHEDULE 8

EQUITY CONTRIBUTION DATED AND AMOUNTS

Date	Amount (in US Dollars)
31 August 2017	1,200,000
30 November 2017	610,000
28 February 2018	750,000
31 May 2018	750,000
31 August 2018	750,000
30 November 2018	750,000
28 February 2019	800,000
31 May 2019	800,000
31 August 2019	800,000
30 November 2019	800,000
	<u>8,000,000</u>

BORROWER

SIGNED by)
duly authorised)
for and on behalf of)
LEONIDAS MARINE LLC)
in the presence of: AIKATERINI EMMANOUIL)



Witness' signature:)
Witness' name:)
Witness' address:)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

GUARANTOR

SIGNED by)
duly authorised)
for and on behalf of)
POSEIDON CONTAINERS HOLDINGS LLC)
in the presence of: AIKATERINI EMMANOUIL)



Witness' signature:)
Witness' name:)
Witness' address:)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

ORIGINAL LENDERS

SIGNED by)
duly authorised)
for and on behalf of)
BLUE OCEAN ONSHORE FUND LP)
By: EnTrust Partners LLC,)
as its General Partner)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

BORROWER

SIGNED by)
duly authorised)
for and on behalf of)
LEONIDAS MARINE LLC)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

GUARANTOR

SIGNED by)
duly authorised)
for and on behalf of)
POSEIDON CONTAINERS HOLDINGS LLC)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

ORIGINAL LENDERS

SIGNED by)
)
duly authorised) /s/ Matthew A. Lux
for and on behalf of) Matthew A. Lux
BLUE OCEAN ONSHORE FUND LP) Managing Director, Deputy General Counsel
By: EnTrust Partners LLC,)
as its General Partner)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

Caridad Schweizer
Caridad Schweizer
375 Park Avenue, NY, NY
10152

SIGNED by)
)
duly authorised) /s/ Matthew A. Lux
for and on behalf of) Matthew A. Lux
ENTRUSTPERMAL ICAV, for and on) Managing Director, Deputy General Counsel
behalf of Blue Ocean Fund)
By: EnTrustPermal Partners Offshore LP,)
as its Investment Advisor)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

Candida Schneider
Candida Schneider
375 Park Avenue NY NY
10152

FACILITY AGENT

SIGNED by)
)
duly authorised)
for and on behalf of)
WILMINGTON TRUST,)
NATIONAL ASSOCIATION)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

SECURITY AGENT

SIGNED by)
)
duly authorised)
for and on behalf of)
WILMINGTON TRUST,)
NATIONAL ASSOCIATION)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

SIGNED by)
)
duly authorised)
for and on behalf of)
ENTRUSTPERMAL ICAV, for and on)
behalf of Blue Ocean Fund)
By: EnTrustPermal Partners Offshore LP,)
as its Investment Advisor)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

FACILITY AGENT

SIGNED by Joshua G. James)
Vice President)
duly authorised)
for and on behalf of)
WILMINGTON TRUST,)
NATIONAL ASSOCIATION)
in the presence of:)

/s/ Joshua G. James
Joshua G. James
Vice President

Witness' signature:) /s/ Dorothy Huey
Witness' name:) Dorothy Huey
Witness' address:) 505 6th St. Suite 1290, Minneapolis, MN 55402

SECURITY AGENT

SIGNED by Joshua G. James)
Vice President)
duly authorised)
for and on behalf of)
WILMINGTON TRUST,)
NATIONAL ASSOCIATION)
in the presence of:)

/s/ Joshua G. James
Joshua G. James
Vice President

Witness' signature:) /s/ Dorothy Huey
Witness' name:) Dorothy Huey
Witness' address:) 505 6th St. Suite 1290, Minneapolis, MN 55402

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

15 August 2017

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402 USA
Attn: Joshua James

Ladies and Gentlemen:

Reference is made to the Facility Agreement dated 11 August 2017, among Leonidas Marine LLC, as borrower (the "**Borrower**"), Poseidon Containers Holdings LLC, as guarantor (the "**Guarantor**"), Wilmington Trust, National Association, as facility agent (the "**Facility Agent**"), Wilmington Trust Company, as security agent (the "**Security Agent**"), and the other financial institutions named therein (the "**Facility Agreement**"). Capitalized terms used herein that are not otherwise defined herein shall have the meanings ascribed thereto in the Facility Agreement.

Reference is also made to the Utilisation Request executed by the Borrower, a copy of which is attached hereto as Exhibit A (the "Utilisation Request").

1. Pursuant to Clause 5.8 of the Facility Agreement, the undersigned Lenders, who constitute all of the Lenders under the Facility Agreement, hereby irrevocably direct and instruct the Facility Agent to transfer \$ US\$19,500,000 to the wire instructions listed in Schedule 1 on 16 August 2017 in accordance with the Utilisation Request. The undersigned Lenders acknowledge that they are directing and instructing the Facility Agent to make such transfer notwithstanding the fact that certain conditions precedent as set forth in Clause 4.1 and 4.2 of the Facility Agreement have not been satisfied.
2. This letter (this "Letter of Direction") and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.
3. This Letter of Direction may be executed in any number of counterpart, each of which, when taken together, shall constitute an original.
4. The undersigned Lenders expressly agree and confirm that the Facility Agent's right to indemnification as set forth in the Facility Agreement shall apply with respect to any and all losses, claims, costs and expenses that the Facility Agent suffers, incurs or is threatened with relating to actions taken or omitted by the Facility Agent in connection with this Letter of Direction and the actions contemplated therein, other than as a result of the Facility Agent's gross negligence or willful misconduct as set forth in the Facility Agreement.

Agreed and accepted to as of the date first written above:

SIGNED by)
)
duly authorised) /s/ Matthew A. Lux
for and on behalf of) Matthew A. Lux
BLUE OCEAN ONSHORE FUND LP) Managing Director, Deputy General Counsel
By: En Trust Partners LLC,)
as its General Partner)

SIGNED by)
)
duly authorised) /s/ Matthew A. Lux
for and on behalf of) Matthew A. Lux
ENTRUSTPERMAL ICAV,) Managing Director, Deputy General Counsel
for and on behalf of Blue Ocean Fund)
By: EnTrustPermal Partners Offshore LP,)
as its Investment Advisor)

Schedule 1

Wire Instructions

Beneficiary Bank:

BIC UCB Munich Head Office:

UCB Hamburg A/C No.:

IBAN:

Beneficiary:

Reference:

UniCredit Bank AG, Munich, Germany

HYVEDEMM

0497 415 001 002

DE13 2003 0000 0415 0010 02

UniCredit Bank AG, Global Shipping – 6920FCS4 – Athens, Greece

Leonidas et al loan

via

USD Clearing Bank:

SWIFT:

ABA:

Wells Fargo Bank, NA – New York

PNBP US 3N NYC

026005092


UTILISATION REQUEST

From: Leonidas Marine LLC
 To: Wilmington Trust, National Association

Dated: 11 August 2017

Dear Sirs

Leonidas Marine LLC - \$19,500,000 Facility Agreement dated 11 August 2017 (the "Agreement")

- 1 We refer to the Agreement. This is the Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2 We wish to borrow the Loan on the following terms:
- Proposed Utilisation Date:
- Day, the 16 August 2017 (or, if that is not a Business  next Business Day)
- Amount: \$19,500,000, or, if less, the Available Facility
- Interest Period for the Loan: From (and including the Utilisation Date) up to (but excluding) 30 September 2017
- 3 We request that funds are prepositioned with UniCredit Bank AG, Munich, Germany in accordance with Clause 5.8 (*Prepositioning of funds*).
- 4 We hereby agree and acknowledge that the Facility Agent shall make payments strictly on the basis of the information set forth in this Utilisation Request hereto even if such information is incorrect. In the event that any of such information is incorrect, we agree that the Facility Agent shall not have any liability with respect thereto.
- 5 We confirm that, save for any conditions precedent that may have been waived by the Majority Lenders, each condition specified in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*) of the Agreement as they relate to the Loan is satisfied on the date of this Utilisation Request.
- 6 The net proceeds of the Loan should be credited to the following account:

Beneficiary Bank:	UniCredit Bank AG, Munich, Germany
BIC UCB Munich Head Office:	HYVEDEMM
UCB Hamburg A/C No.:	0497 415 001 002
IBAN:	DE13 2003 0000 0415 0010 02
Beneficiary:	UniCredit Bank AG, Global Shipping – 6920FCS4 – Athens, Greece
Reference:	Leonidas et al loan

via

USD Clearing Bank:	Wells Fargo Bank, NA – New York
SWIFT:	PNBP US 3N NYC
ABA:	026005092

Yours faithfully

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

authorised signatory for
LEONIDAS MARINE LLC

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

Payment Directions

To: Wilmington Trust, N.A.
50 South Sixth Street
Suite 1290
Minneapolis
MN 55402

Attn: Joshua James, Vice President

Date: 11 August 2017

Dear Sirs

Re: M.V. AGIOS DIMITRIOS (IMO Number 9349605) (the "Vessel") - Facility Agreement dated August 2017 (the "Facility Agreement") between, among others, (1) Leonidas Marine LLC (the "Borrower"); (2) Poseidon Containers Holdings LLC (the "Guarantor"); and Wilmington Trust, National Association (the "Facility Agent" and the "Security Agent").

In connection with the Facility Agreement we, being Borrower, have remitted the sum of US\$312,500 to your nominated account, for application as follows:

- (a) the sum of US\$292,500 for the account of the Lenders in respect of the upfront fee referred to in clause 11.2 (*Upfront fee*) of the Facility Agreement in accordance with provisions thereof on a pro-rata basis to be remitted to the wire instructions on file with the Facility Agent.
- (b) the sum of US\$20,000 to be retained for your own account as Security Agent in respect of the Annual Administration Fee as defined in the Fee Letter.

Yours faithfully,



For and on behalf of
LEONIDAS MARINE LLC
Name: Aikaterini Emmanouil
Title: Attorney-in-fact.

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402

11 August 2017

Leonidas Marine LLC
Trust Company Complex
Ajeltake Road
Ajeltake Island
MH96960
Majuro
Marshall Islands

Re: Administration Fees for "Leonidas" Credit Facility

Dear Sirs:

Reference is made to (a) that certain USD \$19,500,000 Credit Agreement for the refinancing of m.v.s "AGIOS DIMITRIOS", dated as of 11 August 2017, and entered into by and among Leonidas Marine LLC (the "Borrower") and the Lenders party thereto from time to time, Wilmington Trust, National Association, in its capacities as facility agent and security agent (the "Agent") (as further amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"); and (b) the other Transaction Documents and the other documents and agreements entered into in connection therewith (collectively, with the Credit Agreement, the "Credit Facility Documents"). Defined terms used herein but not otherwise defined herein shall have the meaning set forth in the Credit Agreement.

Pursuant to Clause 11 (Fees) of the Credit Agreement, the Borrower hereby agrees to pay directly to the Agent for its own account, in its capacity as Agent, all fees and expenses set forth on Schedule I hereto. All fees of the Agent shall be fully earned on each day that such fee is payable.

The Borrower also acknowledges that the costs and expenses of the Agent for which they are responsible under Clause 16 (Costs and Expenses) of the Credit Agreement include, without limitation, all costs and expenses arising out of or relating to the hiring of third party consultants, legal counsels, financial advisors and other consultants in connection with the Credit Agreement and each other Credit Facility Document (other than the fees of Watson Farley & Williams LLP, as counsel for the Agent, as at the date of the Credit Agreement), and any local counsel necessary to enforce the rights and remedies of the Agent in accordance with the Credit Facility Documents.

All fees and reimbursement of expenses, costs and professional fees under the Credit Facility Documents shall be paid by the Borrower in Dollars and in immediately available funds, and shall be payable immediately and not later than the date falling 15 days after the date of the invoice relating to such fees, expenses, costs and professional fees. The Borrower hereby agree that, once paid, the fees, expenses and costs, or any part thereof, will not be refundable under any circumstances and shall not be subject to reduction by way of setoff or counterclaim.

Failure of any party to enforce any of the provisions hereof shall not be construed as a waiver of such provisions or of the right thereafter to enforce such provisions. If any provisions of this letter agreement shall be held to be invalid, void, or unenforceable, the remaining provisions hereof shall not be affected or impaired and such remaining provisions shall remain in full force and effect.

This letter agreement has been prepared through the joint efforts of all of the parties. Neither the provisions of this letter agreement nor any alleged ambiguity shall be interpreted or resolved against any party on the ground that such party's counsel drafted this letter agreement, or based on any other rule of strict construction. Each of the parties hereto represents and declares that such party has carefully read this letter agreement and that such party knows the contents thereof and signs the same freely and voluntarily.

This letter agreement shall be binding on and shall inure to the benefit of the Agent and the Borrower and their respective successors and permitted assigns.

THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LETTER AGREEMENT.

THIS LETTER AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED IN ALL RESPECTS BY, THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

Each party hereto hereby irrevocably and unconditionally (a) submits for itself and its property in any legal action or proceeding relating to this letter agreement or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the United States for New York County in the State of New York, and appellate courts from any thereof and (b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same.

Neither this letter agreement nor any of its terms or substance shall be disclosed, directly or indirectly, by the Borrower to any person except (a) to the Borrower's officers, directors, employees, affiliates, controlling persons, members, partners, equity holders, attorneys, accountants, representatives, agents and advisors on a confidential and need-to-know basis, (b) as required by applicable law or regulation or the order of any court or administrative agency in any pending legal or administrative proceeding or as requested by a governmental authority (in which case the Borrower agrees to inform the Agent promptly thereof prior to such disclosure to the extent lawfully permitted to do so) and (c) on a confidential basis to the Borrower's accounting, legal, tax and other advisors.

This letter agreement may be executed in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this letter agreement by fax or electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this letter agreement.

[SIGNATURE PAGE TO FOLLOW]

Please indicate your agreement with the foregoing terms and provisions by countersigning this letter agreement and returning to us executed counterparts hereof.

Very truly yours,

WILMINGTON TRUST, NATIONAL ASSOCIATION

By: _____

Name:

Title:

Agreed and accepted to
as of the date first written above:

LEONIDAS MARINE LLC

By: /s/ Aikaterini Emmanouil

Name: Aikaterini Emmanouil

Please indicate your agreement with the foregoing terms and provisions by countersigning this letter agreement and returning to us executed counterparts hereof.

Very truly yours,

WILMINGTON TRUST, NATIONAL
ASSOCIATION

By: /s/ Joshua G. James

Name: Joshua G. James

Title: Vice President

Agreed and accepted to
as of the date first written above:

LEONIDAS MARINE LLC

By: _____

Name:

Schedule I

**Fees for Services as Agent under the
Credit Agreement**

Annual Administration Fee:

\$20,000

The Annual Administration Fee covers the services of Wilmington Trust for the day to day discharge of our duties and responsibilities in acting as Agent under the Credit Facility Documents. The Annual Administration Fee is due and payable annually in advance, with the first year's payment due at the time of closing of the transaction. This fee covers maintenance of the Agent's registrar, records and files, establishment of necessary cash accounts, distribution of covenant compliance and reporting items, responses to inquiries from all parties-in-interest, rendering of periodic statements and reports, and receipt and distribution of debt service payments.

Extraordinary Administration:

Extraordinary administration fees may be charged in connection with services of the Agent outside the scope of the services set forth above, including services in connection with document amendments, supplements, forbearances or waivers, extraordinary collateral release or substitutions, or participation and correspondence with parties-of-interest in steering or other committees formed in connection with a restructuring under the Credit Facility Documents. Extraordinary administration fees may also apply for pursuits of any remedies provided to the Agent under the operative documents which may arise as a result of defaults or events of default under the Credit Agreement. Extraordinary administration fees are billed at the rate of \$450 per hour for account managers, and \$225 per hour for associates and administrative assistants.

Out-of-Pocket Expenses:

In addition to the fees listed above, all out-of-pocket expenses will be billed and payable at cost. Out-of-pocket expenses include, but are not limited to, reasonable fees of counsel or other outside professional firms retained by the Agent (including reasonable fees and expenses incurred in litigation), reasonable travel expenses of bank officers to attend closing or other meetings related to the transaction, charges of maintaining an agency dataroom for the engagement (Intralinks, Syntrak, DebtDomain or similar data platform), and postage or copy expenses.

Wire Instructions for Fee Payments:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, DE 19801
ABA #031100092
Account No. 122954-001
Account Name: Leonidas Marine Fee Account
Reference: ICS
Attention: Josh James

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

CERTIFICATE OF NON-UK ESTABLISHMENT

To: Wilmington Trust, National Association
50 South Sixth Street,
Suite 1290, Minneapolis,
MN 55402,
USA

From: **Leonidas Marine LLC**
Trust Company Complex,
Ajeltake Road, Ajeltake Island, Majuro,
Marshall Islands,
MH 96960

11 August 2017

Dear Sirs

We refer to a facility agreement for up to US\$19,500,000 to be made between (i) Leonidas Marine LLC as borrower (ii) Poseidon Containers Holdings LLC as guarantor (iii) the financial institutions listed in Part B of Schedule 1 (*The Parties*) therein as lenders (iv) Wilmington Trust, National Association as facility agent and (v) Wilmington Trust, National Association as security agent (the “Facility Agreement”).

Words and expressions defined in the Facility Agreement have the same meanings when used in this certificate.

- 1 Pursuant to Schedule 2, Part A, paragraph 1.6 of the Facility Agreement, we certify that we have not delivered particulars of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations.

/s/ Maria Danezi

Maria Danezi

President

for and on behalf of

LEONIDAS MARINE LLC

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

CERTIFICATE OF NON-UK ESTABLISHMENT

To: Wilmington Trust, National Association
50 South Sixth Street Suite
1290 Minneapolis,
MN 55402,
USA

From: **Poseidon Containers Holdings LLC**
Trust Company Complex,
Ajeltake Road, Ajeltake Island, Majuro,
Marshall Islands,
MH 96960

11 August 2017

Dear Sirs

We refer to a facility agreement for up to US\$19,500,000 to be made between (i) Leonidas Marine LLC as borrower (ii) Poseidon Containers Holdings LLC as guarantor (iii) the financial institutions listed in Part B of Schedule 1 (*The Parties*) therein as lenders (iv) Wilmington Trust, National Association as facility agent and (v) Wilmington Trust, National Association as security agent (the “Facility Agreement”).

Words and expressions defined in the Facility Agreement have the same meanings when used in this certificate.

- 1 Pursuant to Schedule 2, Part A, paragraph 1.6 of the Facility Agreement, we certify that we have not delivered particulars of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations.

/s/ George Giouroukos

George Giouroukos

Director

for and on behalf of

POSEIDON CONTAINERS HOLDINGS LLC

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

CERTIFICATE OF NON-UK ESTABLISHMENT

To: Wilmington Trust, National Association
50 South Sixth Street,
Suite 1290, Minneapolis,
MN 55402,
USA

From: **K&T Marine LLC**
Trust Company Complex,
Ajeltake Road, Ajeltake Island, Majuro,
Marshall Islands,
MH 96960

11 August 2017

Dear Sirs

We refer to a facility agreement for up to US\$19,500,000 to be made between (i) Leonidas Marine LLC as borrower (ii) Poseidon Containers Holdings LLC as guarantor (iii) the financial institutions listed in Part B of Schedule 1 (*The Parties*) therein as lenders (iv) Wilmington Trust, National Association as facility agent and (v) Wilmington Trust, National Association as security agent (the “Facility Agreement”).

Words and expressions defined in the Facility Agreement have the same meanings when used in this certificate.

- 1 Pursuant to Schedule 2, Part A, paragraph 1.6 of the Facility Agreement, we certify that we have not delivered particulars of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations.

/s/ George Giouroukos

George Giouroukos
Director
for and on behalf of
K&T MARINE LLC

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

CERTIFICATE OF NON-UK ESTABLISHMENT

To: Wilmington Trust, National Association
50 South Sixth Street,
Suite 1290, Minneapolis,
MN 55402,
USA

From: **Conchart Commercial Inc.**
Trust Company Complex,
Ajeltake Road, Ajeltake Island, Majuro,
Marshall Islands,
MH 96960

11 August 2017

Dear Sirs

We refer to a facility agreement for up to US\$19,500,000 to be made between (i) Leonidas Marine LLC as borrower (ii) Poseidon Containers Holdings LLC as guarantor (iii) the financial institutions listed in Part B of Schedule 1 (*The Parties*) therein as lenders (iv) Wilmington Trust, National Association as facility agent and (v) Wilmington Trust, National Association as security agent (the “Facility Agreement”).

Words and expressions defined in the Facility Agreement have the same meanings when used in this certificate.

- 1 Pursuant to Schedule 2, Part A, paragraph 1.6 of the Facility Agreement, we certify that we have not delivered particulars of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations.

/s/ Dimitrios Tsiaklagkanos

Dimitrios Tsiaklagkanos

President/Secretary/Treasurer

for and on behalf of

CONCHART COMMERCIAL INC.

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

CERTIFICATE OF NON-UK ESTABLISHMENT

To: Wilmington Trust, National Association
50 South Sixth Street,
Suite 1290, Minneapolis,
MN 55402,
USA

From: **Technomar Shipping Inc.**
80 Broad Street,
Monrovia,
Liberia

11 August 2017

Dear Sirs

We refer to a facility agreement for up to US\$19,500,000 to be made between (i) Leonidas Marine LLC as borrower (ii) Poseidon Containers Holdings LLC as guarantor (iii) the financial institutions listed in Part B of Schedule 1 (*The Parties*) therein as lenders (iv) Wilmington Trust, National Association as facility agent and (v) Wilmington Trust, National Association as security agent (the "Facility Agreement").

Words and expressions defined in the Facility Agreement have the same meanings when used in this certificate.

- 1 Pursuant to Schedule 2, Part A, paragraph 1.6 of the Facility Agreement, we certify that we have not delivered particulars of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations.

/s/ Theodoros Baltatzis

Theodoros Baltatzis

Director/Vice-President/Treasurer

for and on behalf of

TECHNOMAR SHIPPING INC.

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

CERTIFICATE OF CORRECTNESS OF COPY DOCUMENTS

To: **Wilmington Trust, National Association**
50 South Sixth Street
Suite 1290
Minneapolis, MN 55402
USA

11 August 2017

Dear Sirs

We refer to a facility agreement (the “Facility Agreement”) dated 11 August 2017 and made between (i) Leonidas Marine LLC as borrower, (ii) Poseidon Containers Holdings LLC as guarantor, (iii) the financial institutions listed in Part B of Schedule 1 therein as lenders, (iv) Wilmington Trust, National Association as facility agent and (v) Wilmington Trust, National Association as security agent relating to the refinancing of certain existing indebtedness secured on m.v. “AGIOS DIMITRIOS”

Words and expressions defined in the Facility Agreement have the same meanings when used in this certificate.

- 1 Pursuant to Schedule 2, Part A, paragraph 1.7 of the Facility Agreement, we certify that each copy document which has been provided under Part A of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect at the date of the Facility Agreement.
- 2 Pursuant to Schedule 2, Part B, paragraph 1 of the Facility Agreement, we certify that each copy document which has been provided under Part B of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at the Utilisation Date.



Director/Officer
for and on behalf of
Leonidas Marine LLC

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

CERTIFICATE OF CORRECTNESS OF COPY DOCUMENTS

To: **Wilmington Trust, National Association**
50 South Sixth Street
Suite 1290
Minneapolis, MN 55402
USA

11 August 2017

Dear Sirs

We refer to a facility agreement (the “Facility Agreement”) dated 11 August 2017 and made between (i) Leonidas Marine LLC as borrower, (ii) Poseidon Containers Holdings LLC as guarantor, (iii) the financial institutions listed in Part B of Schedule 1 therein as lenders, (iv) Wilmington Trust, National Association as facility agent and (v) Wilmington Trust, National Association as security agent relating to the refinancing of certain existing indebtedness secured on m.v. “AGIOS DIMITRIOS”

Words and expressions defined in the Facility Agreement have the same meanings when used in this certificate.

Pursuant to Schedule 2, Part A, paragraph 1.7 of the Facility Agreement, we certify that each copy document which has been provided under Part A of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect at the date of the Facility Agreement.



Director/Officer
for and behalf of
Poseidon Containers Holdings LLC

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

CERTIFICATE OF CORRECTNESS OF COPY DOCUMENTS

To: **Wilmington Trust, National Association**
50 South Sixth Street
Suite 1290
Minneapolis, MN 55402
USA

11 August 2017

Dear Sirs

We refer to a facility agreement (the "Facility Agreement") dated 11 August 2017 and made between (i) Leonidas Marine LLC as borrower, (ii) Poseidon Containers Holdings LLC as guarantor, (iii) the financial institutions listed in Part B of Schedule 1 therein as lenders, (iv) Wilmington Trust, National Association as facility agent and (v) Wilmington Trust, National Association as security agent relating to the refinancing of certain existing indebtedness secured on m.v. "AGIOS DIMITRIOS"

Words and expressions defined in the Facility Agreement have the same meanings when used in this certificate.

Pursuant to Schedule 2, Part A, paragraph 1.7 of the Facility Agreement, we certify that each copy document which has been provided under Part A of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect at the date of the Facility Agreement.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Director/Officer
for and on behalf of
Conchart Commercial Inc.

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

CERTIFICATE OF CORRECTNESS OF COPY DOCUMENTS

To: **Wilmington Trust, National Association**
50 South Sixth Street
Suite 1290
Minneapolis, MN 55402
USA

11 August 2017

Dear Sirs

We refer to a facility agreement (the “Facility Agreement”) dated 11 August 2017 and made between (i) Leonidas Marine LLC as borrower, (ii) Poseidon Containers Holdings LLC as guarantor, (iii) the financial institutions listed in Part B of Schedule 1 therein as lenders, (iv) Wilmington Trust, National Association as facility agent and (v) Wilmington Trust, National Association as security agent relating to the refinancing of certain existing indebtedness secured on m.v. “AGIOS DIMITRIOS”

Words and expressions defined in the Facility Agreement have the same meanings when used in this certificate.

Pursuant to Schedule 2, Part A, paragraph 1.7 of the Facility Agreement, we certify that each copy document which has been provided under Part A of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect at the date of the Facility Agreement.

A handwritten signature in black ink, consisting of several overlapping, stylized strokes that form a unique, abstract mark.

Director/Officer
for and on behalf of
Technomar Shipping Inc.

Dated 24 October 2018

LEONIDAS MARINE LLC

as Borrower

and

POSEIDON CONTAINERS HOLDINGS LLC

as Guarantor

and

THE FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1

as Lenders

and

WILMINGTON TRUST, NATIONAL ASSOCIATION

as Facility Agent and Security Agent

FIRST SUPPLEMENTAL AGREEMENT

relating to

a facility agreement dated 11 August 2017
in respect of a loan facility of US\$19,500,000
to refinance certain existing indebtedness secured on
m.v. "AGIOS DIMITRIOS"

**WATSON FARLEY
&
WILLIAMS**

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PARTIES

- (1) **LEONIDAS MARINE LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (the “**Borrower**”);
- (2) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (the “**Guarantor**”);
- (3) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1, as lenders (the “**Lenders**”);
- (4) **WILMINGTON TRUST, NATIONAL ASSOCIATION**, as agent of the other Finance Parties (the “**Facility Agent**”); and
- (5) **WILMINGTON TRUST, NATIONAL ASSOCIATION**, as security agent of the Secured Parties (the “**Security Agent**”).

BACKGROUND

- (A) By a facility agreement dated 11 August 2017 (the “**Facility Agreement**”) and made between (i) the Borrower, (ii) the Guarantor, (iii) the Lenders, (iv) the Facility Agent and (v) the Security Agent, the Lenders have made available to the Borrower a loan facility of US\$19,500,000.
- (B) The Borrower and the Guarantor have requested that the Finance Parties consent and agree to:
 - (i) the reverse triangular merger involving the Guarantor and the New Holding Company, as a result of which (a) the Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (b) the Shareholders would receive shares of the New Holding Company;
 - (ii) the shares and voting rights attaching to the shares in respect of the New Holding Company being in turn legally and beneficially owned by, amongst others, the Shareholders and the New Shareholders;
 - (iii) the change in the ultimate beneficial ownership of the equity interests in the Borrower and the Guarantor;
 - (iv) the cessation of Mr George Giouroukos from his position as Chief Executive Officer of the Guarantor; and
 - (v) the termination of the existing Management Agreements and their replacement by new Management Agreements to be entered into between the Borrower or the Guarantor (as may be the case) and each Approved Manager on substantially similar terms to the existing Management Agreements.together, the “**Request**”.
- (C) This First Supplemental Agreement sets out the terms and conditions on which the Finance Parties agree to the Request and the consequential amendments of the Facility Agreement and the other Finance Documents in connection with the Request.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Defined expressions

Words and expressions defined in the Facility Agreement shall have the same meanings when used in this First Supplemental Agreement unless the context otherwise requires.

1.2 Definitions

In this First Supplemental Agreement, unless the contrary intention appears:

“**Effective Date**” means the date on which the Facility Agent (acting on the instructions of the Majority Lenders following receipt of a corresponding notification in writing from the Majority Lenders) notifies the Borrower in writing in the form set out in Schedule 4 that all the conditions precedent in Schedule 2 have been satisfied, which confirmation the Facility Agent shall be under no obligation to give if an Event of Default shall have occurred or if the Majority Lenders have not instructed the Facility Agent to give such notification.

“**Merger**” means a reverse triangular merger involving the Guarantor and the New Holding Company, as a result of which (a) the Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (b) the Shareholders would receive shares of the New Holding Company.

“**Merger Documents**” means the ancillary agreements entered into by the Shareholders and the New Shareholders in connection with the definitive agreement in respect of the Merger.

“**New Holding Company**” means the corporation under the name Global Ship Lease Inc. (as may be renamed following the Merger), incorporated in the Republic of the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, P.O. Box 1405, Majuro, Marshall Islands MH96960 and whose shares are publically listed on the New York Stock Exchange.

“**New Shareholder**” means each of:

- (a) Mr Michael Gross (either directly or indirectly through one or more Subsidiaries); and
- (b) CMA CGM S.A., a company incorporated in France.

“**Relevant Shareholding**” means, in respect of the New Holding Company, the percentage of ownership of shares and voting power being held by each of the Shareholders and the New Shareholders, as such percentage shall be set out in the Merger Documents and disclosed in writing to the Facility Agent on the date of the Merger.

1.3 Application of construction and interpretation provisions of Facility Agreement

Clauses 1.2 through 1.5 of the Facility Agreement apply, with any necessary modifications, to this First Supplemental Agreement.

2 AGREEMENT OF THE FINANCE PARTIES

2.1 Agreement of the Lenders

The Lenders and the Facility Agent consent and agree, subject to and upon the terms and conditions of this First Supplemental Agreement, to the Request and all actions taken in connection therewith.

2.2 Agreement of the Finance Parties

The Finance Parties agree, subject to and upon the terms and conditions of this First Supplemental Agreement, to the consequential amendments of the Facility Agreement and the other Finance Documents in connection with the matters referred to in Clause 2.1.

2.3 Effective Date

The Agreement of the Finance Parties contained in Clause 2.1 (*Agreement of the Lenders*) 2.2 (*Agreement of the Finance Parties*) shall have effect on and from the Effective Date.

2.4 Void First Supplemental Agreement

If for any reason whatsoever (including, but not limited to, the Merger not having taken place), the Borrower fails to fulfil the conditions subsequent in Clause 3.3 by 31 December 2018 (or such later date as may be agreed by the Facility Agent, acting on the instructions of the Majority Lenders), this First Supplemental Agreement shall be rendered void ab initio.

3 CONDITIONS PRECEDENT AND CONDITIONS SUBSEQUENT

3.1 General

The agreement of the Finance Parties contained in Clauses 2.1 and 2.2 is subject to the fulfilment of the conditions precedent in Clause 3.2.

3.2 Conditions precedent

The conditions referred to in Clause 3.1 are that the Facility Agent shall have received the documents and evidence referred to in Schedule 2 in all respects in form and substance satisfactory to the Majority Lenders and their lawyers (being Watson Farley & Williams). Upon receipt of the documents and evidence referred to above, the Majority Lenders shall notify the Facility Agent if the relevant conditions precedent have been satisfied and instruct the Facility Agent to notify the Borrower confirming such satisfaction. Upon receipt of the aforementioned notification from the Majority Lenders, the Facility Agent shall promptly deliver to the Borrower a written confirmation in the form set out in Schedule 4.

3.3 Conditions Subsequent

The Borrower further undertakes to provide the Facility Agent with the documents and evidence referred to in Schedule 3 in all respects in form and substance satisfactory to the Majority Lenders and their lawyers (being Watson Farley & Williams) on the date falling three (3) Business Days following the date of the Merger (or such later date as may be agreed between the Borrower and the Majority Lenders).

3.4 Deferral of conditions precedent

If the Facility Agent (acting on the instructions of the Majority Lenders in their discretion), issues a confirmation in the form set out in Schedule 4 before certain of the conditions referred to in Clause 3.2 are provided, the Borrower shall ensure that those conditions are satisfied within 5 Business Days after the Effective Date.

4 REPRESENTATIONS AND WARRANTIES

4.1 Repetition of Facility Agreement representations and warranties

The Borrower and the Guarantor represent and warrant to the Facility Agent (for the benefit of the Finance Parties) that the representations and warranties in clause 18 (*Representations*) of the Facility Agreement, as amended by the transactions contemplated in the Request and as amended by this First Supplemental Agreement and updated with appropriate modifications to refer to this First Supplemental Agreement and, where appropriate, each other Finance Document which is being amended by this First Supplemental Agreement and the transactions contemplated in the Request, remain true and not misleading if repeated on the date of this First Supplemental Agreement with reference to the circumstances now existing.

4.2 Repetition of Finance Document representations and warranties

The Borrower, the Guarantor and each of the other Transaction Obligors represent and warrant to the Facility Agent (for the benefit of the Finance Parties) that the representations and warranties in the Finance Documents (other than the Facility Agreement) to which each is a party, as amended by the transactions contemplated in the Request and as amended and supplemented by this First Supplemental Agreement and updated with appropriate modifications to refer to this First Supplemental Agreement and the transactions contemplated in the Request, remain true and not misleading if repeated on the date of this First Supplemental Agreement with reference to the circumstances now existing.

5 AMENDMENT OF FACILITY AGREEMENT AND OTHER FINANCE DOCUMENTS

5.1 Amendments to Facility Agreement

With effect on and from (and subject to the occurrence of) the Effective Date, the Facility Agreement shall be, and shall be deemed by this First Supplemental Agreement to be, amended as follows:

- (a) by adding the following definitions in clause 1.1 (*Definitions*) thereof as follows in the requisite alphabetical order:

“Effective Date” means the date on which the Facility Agent (acting on the instructions of the Majority Lenders following receipt of a corresponding notification in writing from the Majority Lenders) notifies the Borrower in writing in the form set out in schedule 4 to the First Supplemental Agreement that all the conditions precedent in schedule 2 to the First Supplemental Agreement have been satisfied, which confirmation the Facility Agent shall be under no obligation to give if an Event of Default shall have occurred or if the Majority Lenders have not instructed the Facility Agent to give such notification.

“First Supplemental Agreement” means the supplemental agreement dated 24 October 2018 and made between (*inter alios*) (i) the Borrower, (ii) the Guarantor, (iii) the Lenders, (iv) the Facility Agent and (v) the Security Agent, setting out the terms and conditions pursuant to which this Agreement is amended and supplemented.

“**Merger**” means a reverse triangular merger involving the Guarantor and the New Holding Company, as a result of which (i) the Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (ii) the Shareholders would receive shares of the New Holding Company.

“**Merger Documents**” means the ancillary agreements entered into by the Shareholders and the New Shareholders in connection with the definitive agreement in respect of the Merger.

“**New Holding Company**” means the corporation under the name Global Ship Lease Inc. (as may be renamed following the Merger), a corporation incorporated in the Republic of the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, P.O. Box 1405, Majuro, Marshall Islands MH96960 and whose shares are publically listed on the New York Stock Exchange.

“**New Shareholder**” means each of:

- (a) Mr Michael Gross (either directly or indirectly through one or more Subsidiaries); and
- (b) CMA CGM S.A., a company incorporated in France.

“**Relevant Shareholding**” means, in respect of the New Holding Company, the percentage of ownership of shares and voting power being held by each of the Shareholders and the New Shareholders, as such percentage shall be set out in the Merger Documents and disclosed in writing to the Facility Agent as of the date of the Merger.;

- (b) by deleting the definitions of “**ABN Facility Agreement**”, “**Existing ABN Amro Facility Agreement**”, “**Existing Group Facility Agreement**”, “**Existing Fleet Vessel**”, “**Refinancing Date**” and “**Termination Event**” in clause 1.1 thereof and all references thereto (including clause 21.26 thereof) in their entirety;
- (c) by deleting the definition of “**Commercial Management Agreement**” in clause 1.1 thereof and replacing it with the following:

“**Commercial Management Agreement**” means the agreement entered or to be entered into between the Guarantor and the Approved Commercial Manager regarding the commercial management of, amongst other vessels, the Ship.;

- (d) by deleting the definition “**Group Facility Agreement**” in clause 1.1 thereof and replacing it with the following:

“**Group Facility Agreement**” means:

- (a) the facility agreement dated 11 August 2017 entered into by, inter alia, Credit Agricole Corporate and Investment Bank (as Lender) and Hector Marine LLC, Hephaestus Marine LLC and Pericles Marine LLC (as joint and several borrowers), as may be amended, supplemented, novated and/or replaced from time to time;
- (b) the facility agreement dated 11 August 2017 entered into by, inter alia, ABN AMRO Bank N.V. (as Agent, Arranger, Swap Bank and Security Trustee) and Zeus One Marine LLC, Ikaros Marine LLC, Tasman Marine LLC, Hudson Marine LLC and Drake Marine LLC

(as joint and several borrowers) as amended and restated by an Amending and Restating Deed on 9 October 2018 and as may be amended, supplemented, novated and/or replaced from time to time;

- (c) the facility agreement dated 18 July 2017 entered into by, DVB Bank SE, Amsterdam Branch (as Facility Agent, Security Agent and Arranger) and Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC as borrowers, as may be amended, supplemented, novated and/or replaced from time to time; and
- (d) the facility agreement dated 9 October 2018 entered into by, inter alia, Amsterdam Trade Bank N.V. (as Agent and Security Agent) and THD Maritime Co. Limited as Borrower, as may be amended, supplemented, novated and/or replaced from time to time.”;
- (e) by deleting the definition of “**Technical Management Agreement**” in clause 1.1 thereof and replacing it with the following:
“**Technical Management Agreement**” means the agreement entered or to be entered into between the Borrower and the Approved Technical Manager regarding the technical management of the Ship.;
- (f) by deleting in its entirety the definition of “**LLC Shares**” in clause 1.1 (*Definitions*) thereof and replacing it with the following new definition:
“**LLC Shares**” in respect of the Borrower shall have the meaning ascribed thereto in the Borrower’s limited liability company agreement and, in respect of the Guarantor, shall have the meaning ascribed to the term “Unit” in the Guarantor’s limited liability company agreement, as amended.;
- (g) by deleting in its entirety clause 7.2 (*Change of Control*) thereof and replacing it with the following new clause:

“7.2 Change of Control

- (a) If a Change of Control occurs, the Borrower and the Guarantor shall promptly notify the Facility Agent upon becoming aware of that event, and the Facility Agent shall (acting on the instructions of the Majority Lenders), if the Majority Lenders so require, by not less than 15 days’ notice to the Borrower, cancel the Facility and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility will be cancelled and the Loan and all such outstanding interest and other amounts will become immediately due and payable.
- (b) In the event that such Change of Control occurs and no mandatory prepayment is required under paragraph (a) of this Clause 7.2, then the Transaction Obligors shall enter into, and provide, such documentation as may be required by the Facility Agent (acting with the authorisation of the Lenders, acting reasonably) in order to amend this Agreement and the other Finance Documents, in light of such Change of Control.

For the purposes of this Clause 7.2 (*Change of Control*), a “**Change of Control**” occurs if:

- (A) any of the Shareholders and/or the New Shareholders cease to own (either directly or indirectly through one or more Subsidiaries) any part of its respective Relevant Shareholding in the New Holding Company during the six-month period following the Merger; or
- (B) Mr George Giouroukos ceases to be the Executive Chairman (or such equivalent position as may be disclosed to the Facility Agent) of the New Holding Company, other than by reason of death or other incapacity in managing his affairs; or
- (C) a Delisting occurs.

For the purposes of this Clause 7.2 (*Change of Control*):

“**Delisting**” means if (a) the shares of the New Holding Company cease to be publically listed on the New York Stock Exchange and (b) in the opinion of the Lenders (acting reasonably), the average charter rate of hire in respect of the Ship is not sufficient to cover Six Months’ Debt Service.

“**Operating Expenses**” mean, in relation to the Ship, the appropriately and properly incurred costs and expenses of operating the Ship including expenses for crewing, victualling, insuring, maintenance, spares, management, operation and voyage (if payable by the Borrower) of the Ship.

“**Six Months’ Debt Service**” means, in respect of the six month period commencing on the date of the Delisting and ending six months thereafter, the aggregate amount of (a) the Operating Expenses in respect of the Ships and (b) any sums to be incurred by the Borrower in respect of the payment of principal of, and accrued interest on, the Loan and any accrued costs and expenses pursuant to this Agreement, during such six month period.”;

- (h) by deleting clause 18.3 (*LLC Shares and ownership*) thereof in its entirety and replacing it with the following new clause:

“18.3 LLC Shares and ownership

- (a) In the case of the Borrower, its limited liability company interest is unitized into a maximum of 500 LLC Shares, all of which have been issued to the Guarantor.
 - (b) In the case of the Guarantor, its limited liability company interest is unitized and no limitation on the number of units is established within its limited liability company agreement, all of which are indirectly legally and beneficially owned by the New Holding Company.
 - (c) The legal title to and direct beneficial interest in all of the limited liability company interests in the Borrower is held free of any Security other than Permitted Security or any other claim by the Guarantor.
 - (d) None of the LLC Shares in the Borrower is subject to any option to purchase, preemption rights or similar rights.”;
- (i) by deleting clause 18.30 (*Centre of main interests and establishments*) thereof in its entirety and replacing it with the following new clause:

“18.30 Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in Greece (or, in the case of the Guarantor, Greece or the United States of America as notified by the Guarantor to the Facility Agent on the Effective Date) and it has no “establishment” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.”;

- (j) by deleting clause 18.31 (*Place of business*) thereof in its entirety and replacing it with the following new clause:

“18.31 Place of business

No Transaction Obligor has a place of business in any country other than Greece or, in respect of the Guarantor, Greece or the United States of America as notified by the Guarantor to the Facility Agent on the Effective Date.”;

- (k) by deleting sub-paragraph (a)(ii) in clause 19.2 (*Financial statements*) thereof and all references to the requirement for consolidated financial statements of the Guarantor;

- (l) by including an additional sub-clause in clause 19.2 (*Financial statements*) thereof that shall be read and construed as follows:

“(d) The Borrower and the Guarantor shall supply to the Facility Agent in sufficient copies for all the Lenders, as soon as they become available, but in any event within 90 days after the end of each of the respective financial years of the New Holding Company, publically available annual financial statements of the New Holding Company prepared in accordance with NYSE rules (as shown and available in the website of the New Holding Company).”;

- (m) by including the words “or GAAP” next to each reference to “IFRS” in clause 20.2 (*Guarantor’s financial covenants*) thereof;

- (n) by deleting in its entirety clause 21.14 thereof and replacing it with the following new clause:

“21.14 Merger

No Obligor shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction (save for the Merger), without the prior consultations and written consent from the Facility Agent (acting on the instructions of all Lenders) **Provided that** prior consent of the Facility Agent is not required in the case of a merger, amalgamation, demerger, consolidation or corporate reconstruction of the New Holding Company where the New Holding Company remains the surviving entity of that merger and so long as (i) no Event of Default has occurred and is continuing at any relevant time, (ii) such merger, amalgamation, demerger, consolidation or corporate reconstruction has no Material Adverse Effect on the business assets, operations, property or financial condition of the New Holding Company and (iii) either (A) at the time of entry into definitive documentation with respect to such transaction, the ratio of the principal amount of the Total Debt of the Person being acquired by, or being merged, consolidated or amalgamated into, the New Holding Company to the Fair Market Value of such Person does not exceed 80% or (B) the ratio of the principal amount of the Total Debt relative to the Adjusted EBITDA of the New Holding Company on a pro forma basis will be no greater than the ratio of the New Holding Company was prior to such transaction.

For the purposes of this clause only, the following definitions shall apply:

Adjusted EBITDA means, with respect to any specified Person, the net income (loss) before interest income and expense including amortization of deferred financing costs, realized and unrealized gain (loss) on interest rate derivatives, earnings allocated to preferred shares, income taxes, depreciation, amortization and impairment charges of such Person on a consolidated basis for the most recently ended four-quarter period for which internal financial statements are available immediately preceding the calculation date or as otherwise specified.

Approved Valuer means any of Clarksons, Maersk Broker, Howe Robinson, Fearnleys, Braemar ACM, Barry Rogliano Sales (BRS), Simpson Spence Young, E.A.Gibson.

Fair Market Value means, with respect to any asset or property, the value that would be paid in cash by a willing buyer to an unaffiliated willing seller on the basis of a sale for prompt delivery in an arm's length transaction not involving distress or necessity of either party, as determined in good faith by the Obligors, provided that in respect of a vessel, such Fair Market Value shall be determined in dollars, as the arithmetic mean of independent valuations of such vessel on an "as is where is" basis, including any charters or other contracts for employment, obtained by the Obligors from two Approved Valuers.

Person means any natural person, corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity, whether legal or not.

Total Debt means, with respect to any Person, the total amount of indebtedness of such Person on a consolidated basis as of the end of the most recently ended fiscal quarter for which internal financial statements are available immediately preceding the calculation date.”;

(o) by deleting in its entirety paragraph (c) of clause 23.15 (*Restrictions on chartering, appointment of managers etc.*) thereof and replacing it with the following new paragraph:

“(c) amend, supplement or terminate a Management Agreement, save for the termination of the current Management Agreements and the entering into new Management Agreements in connection with the Merger;”;

(p) by deleting in its entirety clause 26.10 (*Ownership of the Borrower and the Guarantor*) thereof and replacing it with the following new clause:

“26.10 Ownership of the Borrower and the Guarantor/Guarantees by New Holding Company

(a) The Guarantor ceases, without the prior written consent of the Majority Lenders, to hold the direct legal and beneficial ownership and control of all of the limited liability company interests in the Borrower (and the voting rights attaching to those limited liability company interests).

- (b) The New Holding Company ceases, without the prior written consent of the Majority Lenders, to hold the direct or indirect legal and beneficial ownership and control of all of the limited liability company interests in the Guarantor (and the voting rights attaching to those limited liability company interests).
- (c) The New Holding Company guarantees the obligations of any member of the Group (other than the Borrower) under any Group Facility Agreement (the “**Initial Guarantee(s)**”) and:
 - (A) the Guarantor fails to notify the Facility Agent of its intention to enter into such Initial Guarantee(s) and of its/their terms within 7 days prior to the date of such Initial Guarantee(s); or
 - (B) the New Holding Company fails to execute in favour of the Security Agent a guarantee as security of the obligations of the Borrower under this Agreement on similar terms as the Initial Guarantee(s), within 20 days (or such later date as may be reasonably required for the negotiation and preparation of the relevant guarantee documentation) from the Facility Agent’s request (together with any other documentation that may be required by the Lenders including, without limitation, any amendment documentation in respect of this Agreement and any other documents that may be reasonably required by the Lenders).”;
- (q) by construing the definition of, and references throughout the Facility Agreement to, each Finance Document as if the same referred to that Finance Document as amended and supplemented by this First Supplemental Agreement; and
- (r) by construing references throughout the Facility Agreement to “this Agreement”, “hereunder” and other like expressions as if the same referred to the Facility Agreement as amended and supplemented by this First Supplemental Agreement.

5.2 Amendments to Finance Documents

With effect on and from (and subject to the occurrence of) the Effective Date, each of the Finance Documents (other than the Facility Agreement) shall be, and shall be deemed by this First Supplemental Agreement to be, amended as follows:

- (a) by construing the definition of, and references throughout each of the Finance Documents to, the Facility Agreement and any of the other Finance Documents as if the same referred to the Facility Agreement and those Finance Documents as amended by this First 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 First Supplemental Agreement.

5.3 The Finance Documents to remain in full force and effect

The Finance Documents shall remain in full force and effect, as amended by:

- (a) the amendments contained or referred to in Clauses 5.1 and 5.2; and

- (b) such further or consequential modifications as may be necessary to give full effect to the terms of this First Supplemental Agreement.

5.4 Lenders' instructions to Facility Agent and Security Agent

Each Lender hereby authorises, directs and instructs the Facility Agent and the Security Agent to concur in and enter into this First Supplemental Agreement and any other deeds and documents as may be necessary for the purpose of giving effect to this First Supplemental Agreement, and each Lender confirms, for the avoidance of doubt, that clause 29.11 (*Lenders' indemnity to the Facility Agent*) of the Facility Agreement and clause 30.12 (*Lenders' indemnity to the Security Agent*) of the Facility Agreement shall apply to this First Supplemental Agreement as if they were expressly incorporated in this First Supplemental Agreement with any necessary modifications.

6 FURTHER ASSURANCES

6.1 Borrower's and Guarantor's obligations to execute further documents etc.

The Borrower and the Guarantor shall:

- (a) execute and deliver to the Facility Agent (or as it may direct) any assignment, mortgage, power of attorney, proxy or other document, governed by the laws of England or such other country as the Facility Agent may (acting on the instructions of the Majority Lenders), in any particular case, specify; and
- (b) effect any registration or notarisation, give any notice or take any other step, which the Facility Agent may (acting on the instructions of the Majority Lenders), by notice to the Borrower or, as the case may be, the Guarantor, 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) to validly and effectively to create any Security or right of any kind which the Lenders intended should be created by or pursuant to the Facility Agreement or any other Finance Document, each as amended or supplemented by this First Supplemental Agreement; and
- (b) to implement the terms and provisions of this First Supplemental Agreement.

6.3 Terms of further assurances

The Facility Agent (acting on the instructions of the Majority Lenders) may specify the terms of any document to be executed by the Borrower or the Guarantor under Clause 6.1, and those terms may include any covenants, powers and provisions which the Facility Agent (acting on the instructions of the Majority Lenders) may require.

6.4 Obligation to comply with notice

The Borrower or the Guarantor shall comply with a notice under Clause 6.1 by the date specified in the notice.

6.5 Limited liability company action

At the same time as the Borrower or the Guarantor delivers to the Facility Agent any document executed under Clause 6.1(a), the Borrower or, as the case may be, the Guarantor shall also deliver to the Facility Agent a certificate signed by an officer of the Borrower or, as the case may be, the Guarantor, which shall:

- (a) set out the text of a resolution of the Borrower's or the Guarantor's applicable governing body specifically authorising the execution of the document specified by the Facility Agent (acting on the instructions of the Majority Lenders) unless the execution of the relevant document is authorised by the existing resolutions and general power of attorney of the Borrower or, as the case may be, the Guarantor; and
- (b) state that either the resolution was duly passed by the member or board of directors, as applicable, validly convened and held throughout and is valid under the Borrower's or, as the case may be, the Guarantor's limited liability company agreement or other constitutional documents.

7 EXPENSES

7.1 Reimbursement of expenses

The Borrower shall reimburse the Facility Agent on demand for all reasonable costs, fees and expenses (including, but not limited to, legal fees and expenses) and taxes thereon incurred by the Facility Agent or any other Finance Party in connection with the negotiation, preparation and execution of this First Supplemental Agreement and any other documents required thereunder.

8 NOTICES

8.1 General

The provisions of clause 36 (*Notices*) of the Facility Agreement, as amended by this First Supplemental Agreement, shall apply to this First Supplemental Agreement as if they were expressly incorporated in this First Supplemental Agreement with any necessary modifications.

9 SUPPLEMENTAL

9.1 Counterparts

This First Supplemental Agreement may be executed in any number of counterparts.

9.2 Third party rights

No person who is not a party to this First Supplemental Agreement has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this First Supplemental Agreement.

10 LAW AND JURISDICTION

10.1 Governing law

This First 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.

10.2 Incorporation of the Facility Agreement provisions

The provisions of clause 47 (*Enforcement*) of the Facility Agreement, as amended by this First Supplemental Agreement, shall apply to this First Supplemental Agreement as if they were expressly incorporated in this First Supplemental Agreement with any necessary modifications.

This First Supplemental Agreement has been duly executed as a Deed on the date stated at the beginning of this First Supplemental Agreement.

SCHEDULE 1

LENDERS

Lender

Address for Communication

EnTrustPermal ICAV, for and on behalf of
Blue Ocean Fund

EnTrustPermal ICAV

c/o EnTrustPermal Partners Offshore LP
375 Park Avenue
New York, NY 10152

Facsimile: +1 212 888 0751

Email: sengh@entrustpermal.com
/odonnerstein@entrustpermal.com/
bkahne@entrustpermal.com

Attention: Svein Engh / Omer Donnerstein / Bruce Kahne

Blue Ocean Onshore Fund LP

Blue Ocean Onshore Fund LP
c/o EnTrust Partners LLC
375 Park Avenue
New York, NY 10152

Facsimile: +1 212 888 0751

Email: sengh@entrustpermal.com
/odonnerstein@entrustpermal.com/
bkahne@entrustpermal.com

Attention: Svein Engh / Omer Donnerstein / Bruce Kahne

SCHEDULE 2

CONDITIONS PRECEDENT DOCUMENTS

The following are the documents referred to in Clause 3.2:

- 1 In respect of the Obligors only, documents of the kind specified in paragraphs 1.1 to 1.5 of Schedule 2, Part A of the Facility Agreement as amended and supplemented by this First Supplemental Agreement (as applicable) and, in respect of each of the Approved Managers and K&T Marine, an up-to-date certificate of incumbency.
- 2 A duly executed original of this First Supplemental Agreement and any documents required pursuant thereto.
- 3 Documentary evidence that the agent for service of process named in clause 47 of the Facility Agreement has accepted its appointment in respect of this First Supplemental Agreement.
- 4 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 First Supplemental Agreement (including without limitation) all necessary governmental and other official approvals and consents in such pertinent jurisdictions as the Facility Agent (acting on the instructions of the Majority Lenders) deems appropriate.
- 5 Favourable legal opinions from lawyers appointed by the Facility Agent (acting on the instructions of the Majority Lenders) on such matters concerning the laws of Marshall Islands and such other relevant jurisdictions as the Facility Agent may (acting on the instructions of the Majority Lenders) require.
- 6 Any further opinions, consents, agreements and documents in connection with this First Supplemental Agreement or any Finance Document which the Facility Agent (acting on the instructions of the Majority Lenders) may request by notice to the Borrower prior to the Effective Date.

SCHEDULE 3

CONDITIONS SUBSEQUENT DOCUMENTS

The following are the documents referred to in Clause 3.3:

- 1 Evidence satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) that the Merger has taken place and that, immediately after the Merger, each Shareholder and each New Shareholder is, or will be, the legal and/or beneficial owner of its respective Relevant Shareholding.
- 2 Such documents and other evidence in such form as is requested by the Facility Agent in order for the Finance Parties to comply with all necessary “know your customer” or “client acceptance” or other similar identification procedures (including, but not limited to, specimen signatures of all the members or directors, as the case may be, and other officers of the New Holding Company) in relation to the transactions contemplated in the Finance Documents.
- 3 A certified true copy of the amended and restated limited liability company agreement and the certificate of limited liability company interest in respect of the Guarantor specifying the members/holders of the membership interests in the Guarantor.
- 4 A certified true copy of the Articles of Association and the Bylaws of the New Holding Company, as amended following the Merger.
- 5 A certified true copy of the duly executed Merger Documents.
- 6 A certificate of the Borrower stating the percentage of ownership of shares and common (voting power) being held by each of the Shareholders and the New Shareholders in the New Holding Company.
- 7 Evidence of the change of the name of the New Holding Company (if applicable).
- 8 A certified copy of each of the new Management Agreements together with such documentation as may be required by the Facility Agent in respect of any amendments to the existing Manager’s Undertakings.

SCHEDULE 4

FORM OF EFFECTIVE DATE NOTICE

To: **LEONIDAS MARINE LLC**
c/o Technomar Shipping Inc.
3-5 Menandrou Street
145 61 Kifisia
Athens, Greece
Fax: +30 210 8084224

[●] 2018

Dear Sirs

We refer to the first supplemental agreement (the “**First Supplemental Agreement**”) dated [●] 2018 made between, *inter alios*, (i) yourselves as Borrower, (ii) the financial institutions listed in Schedule 1 therein as Lenders and (iii) ourselves as Facility Agent and Security Agent.

Words and expressions defined in the First Supplemental Agreement shall have the same meaning when used in this letter.

We write to confirm that we have received written notification from the Majority Lenders that the conditions precedent in Schedule 2 of the First Supplemental Agreement [(other than those conditions precedent set out in clauses [●], in respect of which the Majority Lenders have deferred the same provided that they are received within five (5) Business Days of the Effective Date)] have been fulfilled and that accordingly the Effective Date is [●] 2018.

Yours faithfully

for and on behalf of
WILMINGTON TRUST, NATIONAL ASSOCIATION
(as Facility Agent on behalf of the Finance Parties)

BORROWER

EXECUTED as a DEED)
by **LEONIDAS MARINE LLC**)
acting by **Aikaterini Emmanouil**)
its duly authorised)
attorney-in-fact)
in the presence of:)

PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

GUARANTOR

EXECUTED as a DEED)
by **POSEIDON CONTAINERS HOLDINGS LLC**)
acting by **Aikaterini Emmanouil**)
its duly authorised)
attorney-in-fact)
in the presence of:)

PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

LENDERS

EXECUTED as a DEED)
by **BLUE OCEAN ONSHORE FUND LP**)
By: EnTrust Partners LLC,)
as its General Partner)
acting by)
in the presence of:)

Matthew A. Lux
Managing Director, Deputy General Counsel

EXECUTED as a DEED)
by **ENTRUSTPERMAL ICAV, for and on**)
behalf of BLUE OCEAN FUND)
By: EnTrustPermal Partners Offshore LP,)
as its Investment Advisor)
acting by)
in the presence of:)

Matthew A. Lux
Managing Director, Deputy General Counsel


FACILITY AGENT

EXECUTED as a DEED

by **WILMINGTON TRUST, NATIONAL ASSOCIATION**

acting by
in the presence of:



) 
)
) **Joshua G. James**
) **Vice President**


SECURITY AGENT

EXECUTED as a DEED

by **WILMINGTON TRUST, NATIONAL ASSOCIATION**

acting by
in the presence of:



) 
)
) **Joshua G. James**
) **Vice President**

COUNTERSIGNED this 24th day of October 2018 for and on behalf of the below companies each of which, by its execution hereof, confirms and acknowledges that it has read and understood the terms and conditions of this First 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 Borrower under the Facility Agreement and the other Finance Documents (each as amended and supplemented by this First Supplemental Agreement).

APPROVED MANAGERS



George Youroukos
President
for and on behalf of
TECHNOMAR SHIPPING INC.



Dimitrios Tsiaklagkanos
President
for and on behalf of
CONCHART COMMERCIAL INC.

COUNTERSIGNED this 24th day of October 2018 for and on behalf of the below company which, by its execution hereof, confirms and acknowledges that it has read and understood the terms and conditions of this First Supplemental Agreement, that it agrees in all respects to the same and that the Subordination Agreement to which it is a party shall remain in full force and effect in accordance with its terms.

SUBORDINATED CREDITOR



Georgios Giouroukos
Chief Executive Officer
for and on behalf of
K&T MARINE LLC

US\$52,625,589

FACILITY AGREEMENT

Dated 18 July 2017

for

**ATHENA MARINE LLC
APHRODITE MARINE LLC
ARIS MARINE LLC
ALEXANDER MARINE LLC**
as joint and several Borrowers

guaranteed by

POSEIDON CONTAINERS HOLDINGS LLC

arranged by

DVB BANK SE, Amsterdam Branch
as Arranger

with

DVB BANK SE, Amsterdam Branch
acting as Facility Agent

and

DVB BANK SE, Amsterdam Branch
acting as Security Agent

and

DVB BANK SE
acting as Account Bank

relating to
the refinancing of certain existing indebtedness
secured on m.vs. "NEWYORKER", "NIKOLAS", "MAIRA" and "MARY"

**WATSON FARLEY
&
WILLIAMS**

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PARTIES

- (1) **ATHENA MARINE LLC, APHRODITE MARINE LLC, ARIS MARINE LLC and ALEXANDER MARINE LLC**, each a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands as joint and several borrowers (the “**Borrowers**” and each a “**Borrower**”)
- (2) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro, Marshall Islands, MH96960 (the “**Guarantor**”)
- (3) **DVB BANK SE**, Amsterdam Branch as arranger (the “**Arranger**”)
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part B of Schedule 1 (*The Parties*) as lenders (the “**Original Lenders**”)
- (5) **DVB BANK SE**, Amsterdam Branch as agent of the other Finance Parties (the “**Facility Agent**”)
- (6) **DVB BANK SE**, Amsterdam Branch as security agent for the Creditor Parties (the “**Security Agent**”)
- (7) **DVB BANK SE**, acting through its office at Platz der Republik 6, 60325, Frankfurt/Main, Germany as account bank (the “**Account Bank**”)

OPERATIVE PROVISIONS

SECTION 1

INTERPRETATION

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**ABN Facility Agreement**” means the loan or credit facility agreement entered or to be entered into by any member of the Group with, inter alia, ABN Amro Bank N.V. to refinance the Existing ABN Amro Facility Agreement on the relevant Refinancing Date.

“**Account Bank**” means DVB Bank SE acting through its office at Platz der Republik 6, 60325, Frankfurt/Main, Germany.

“**Accounts**” means:

- (a) the Earnings Accounts; and
- (b) with the express written consent of the Facility Agent, any other accounts opened by a Borrower with the Account Bank, the Facility Agent or the Security Agent for the purpose of the Finance Documents.

“**Account Security**” means a document creating Security over any Account in agreed form.

“**Advance**” means a borrowing of all or any part of a Tranche under this Agreement.

“**Affiliate**” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“**Approved Broker**” means any firm or firms of insurance brokers approved in writing by the Facility Agent, acting with the authorisation of the Lenders.

“**Approved Classification**” means, in relation to a Vessel, as at the date of this Agreement, (i) in respect of Vessel A and Vessel B, ± AUT-UMS ICE INWATERSURVEY MON-SHAFT and (ii) in respect of Vessel C, ± AUT-UMS; ICE; INWATERSURVEY; LSF n=0,1%; MON-SHAFT and (iii) in respect of Vessel D, ± AUT-UMS; BWM-E - sequential; INWATERSURVEY; LASHING; MON-SHAFT; ROUTE DEPENDENT LASHING, each with the relevant Approved Classification Society or the equivalent classification with another Approved Classification Society.

“**Approved Classification Society**” means, in relation to a Vessel, as at the date of this Agreement, RINA or any other classification society approved in writing by the Facility Agent acting with the authorisation of the Lenders.

“**Approved Commercial Manager**” means, in relation to a Vessel, as at the date of this Agreement, Conchart Commercial Inc., a corporation incorporated and existing under the laws of the Marshall Islands, having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as commercial manager or any other person approved in writing by the Facility Agent, acting with the authorisation of the Lenders, as the commercial manager of that Vessel.

“**Approved Flag**” means, in relation to a Vessel, as at the date of this Agreement, the flag of Liberia, the Marshall Islands, Panama, Bahamas or Isle of Man or such other flag approved in writing by the Facility Agent acting with the authorisation of the Lenders.

“**Approved Manager**” means the Approved Commercial Manager and/or the Approved Technical Manager.

“**Approved Technical Manager**” means, in relation to a Vessel, as at the date of this Agreement, Technomar Shipping Inc., a corporation incorporated and existing under the laws of the Republic of Liberia, having its registered office at 80 Broad Street, Monrovia, Liberia and each with management office at 3-5 Menandrou Street, Kifissia 145 61, Athens, Greece as technical manager or any other person approved in writing by the Facility Agent, acting with the authorisation of the Lenders, as the technical manager of that Vessel.

“**Approved Valuer**” means any one of Clarkson Platou, Maritime Strategies International Ltd. (MSI), Kontiki Marine and Howe Robinson and any other firm or firms of independent sale and purchase shipbrokers approved in writing by the Facility Agent, acting with the authorisation of the Lenders.

“**Arrangement Fee**” means the fee set out in Clause 11.1 (*Arrangement fee*).

“**Assignable Charter**” means, in relation to a Vessel, any Charter in respect of that Vessel having a duration of 12 months or more (or capable of exceeding, by virtue of any optional extensions or renewals), a duration of 12 months) on terms approved in writing by the Facility Agent (acting with the authorisation of the Majority Lenders), such approval not to be unreasonably withheld.

“**Assignment Agreement**” means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, legalisation or registration.

“**Availability Period**” means, in relation to a Tranche, the period from and including the date of this Agreement to and including the date falling on the earlier of:

- (a) 15 July 2017 (or such later date as the Facility Agent may, acting upon the instructions of the Majority Lenders (acting in their sole and absolute discretion) agree with the Borrowers); and
- (b) the date on which that Available Tranche, or any part thereof, is fully borrowed, cancelled or terminated in accordance with the terms of this Agreement.

“**Available Commitment**” means a Lender’s Commitment minus:

- (a) the amount of its participation in the outstanding Loan; and
- (b) in relation to a proposed Drawdown, the amount of its participation in any Advance that is due to be made on or before that proposed Drawdown Date.

“**Available Tranche**” means, in relation to a Tranche, the aggregate for the time being of each Lender’s Available Commitment in respect of that Tranche.

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers.

“**Bail-In Legislation**” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and

- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“**Borrower**” means each of Borrower A, Borrower B, Borrower C and Borrower D and, in the plural, it means all of them.

“**Borrower A**” means Athena Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“**Borrower B**” means Aphrodite Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“**Borrower C**” means Aris Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“**Borrower D**” means Alexander Marine LLC, a limited liability company formed in the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, MH96960, Majuro, Marshall Islands;

“**Borrowers’ Minimum Liquidity Amount**” shall have the meaning set out in Clause 20.1 (*Borrowers’ Minimum liquidity*).

“**Break Costs**” means the amount (if any) by which:

(a)

- (i) the interest which a Lender should have received pursuant to the terms of this Agreement for the period from the date of receipt of all or any part of its participation in the Loan or an Unpaid Sum to the last day of the current Interest Period in relation to the Loan, the relevant part of the Loan or that Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period

exceeds

- (ii) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period; or

- (b) where a Lender is providing a fixed interest rate under Clause 8.3 (*Fixed rate of interest*) and only for the period for which the fixed rate of interest shall apply, together with any claim, expense, liability or loss incurred by a Lender 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 in connection with the Lender providing a fixed interest rate under Clause 8.3 (*Fixed rate of interest*) or that part which the Lender concerned determines is fairly attributable to this Agreement of the amount of the claim, expense, liability or loss incurred by it in terminating, or otherwise in connection with, a number of transactions for which this Agreement is one.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Amsterdam and Athens and:

- (a) (in relation only to any date for funding) Frankfurt;
- (b) (in relation only to any date for payment or purchase of dollars) New York; and
- (c) (in relation only to any date for the fixing of an interest rate using LIBOR) London.

“**Charter**” means, in relation to a Vessel, any charter relating to that Vessel, or other contract for its employment, whether or not already in existence.

“**Charterer**” means any person who, as charterer, is a party to any Charter and, in the case of any Assignable Charter, any person approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders, who as charterer, is a party to that Assignable Charter.

“**Charter Guarantee**” means, when applicable, any guarantee, bond, letter of credit or other instrument (whether or not already issued) supporting a Charter, the form of which shall not be subject to the Facility Agent’s prior approval.

“**Charterparty Assignment**” means, in relation to any Assignable Charter, the assignment creating Security over the rights of the relevant Borrower under that Assignable Charter and any Charter Guarantee relative thereto in agreed form.

“**Code**” means the US Internal Revenue Code of 1986.

“**Commercial Management Agreement**” means, in relation to a Vessel, the agreement entered into between the relevant Borrower and the Approved Commercial Manager regarding the commercial management of that Vessel.

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “Commitment” in Part B of Schedule 1 (*The Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

“**Compliance Certificate**” means a certificate in the form set out in Part A (*Compliance Certificate During the Waiver Period*) of Schedule 6 (in respect of the time frame from the date of this Agreement until the end of the Waiver Period) and Part B (*Compliance Certificate after the Waiver Period*) of Schedule 6 (in respect of the time from after the end of the Waiver Period and throughout the remainder of the Security Period) of Part A of Schedule 1 (*The Parties*) or in any other form agreed between the Guarantor, the Borrowers and the Facility Agent.

“**Confidential Information**” means all information relating to any Transaction Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 43 (*Confidentiality*); or
 - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate or Reference Bank Quotation.

“**Confidentiality Undertaking**” means a confidentiality undertaking in substantially the appropriate form recommended by the LMA from time to time or in any other form agreed between the Borrowers and the Facility Agent.

“**Corresponding Debt**” means any amount, other than any Parallel Debt, which an Obligor owes to a Creditor Party under or in connection with the Finance Documents.

“**Creditor Party**” means each Finance Party from time to time party to this Agreement, a Receiver or any Delegate.

“**Default**” means an Event of Default or a Potential Event of Default.

“**Delegate**” means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

“**Disruption Event**” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties or, if applicable, any Transaction Obligor; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party or, if applicable, any Transaction Obligor preventing that, or any other, Party or, if applicable, any Transaction Obligor:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties or, if applicable, any Transaction Obligor in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party or, if applicable, any Transaction Obligor whose operations are disrupted.

“**Document of Compliance**” has the meaning given to it in the ISM Code.

“**dollars**” and “**\$**” mean the lawful currency, for the time being, of the United States of America.

“**Drawdown**” means a drawdown of a Tranche or any part thereof.

“**Drawdown Date**” means the date of a Drawdown, being the date on which an Advance is to be made.

“**Drawdown Request**” means a notice substantially in the form set out in Part A of Schedule 3 (Requests).

“**Earnings**” means, in relation to a Vessel, all moneys whatsoever which are now, or later become, payable (actually or contingently) to a Borrower or the Security Agent and which arise out of or in connection with or relate to the use or operation of that Vessel, including (but not limited to):

- (a) the following, save to the extent that any of them is, with the prior written consent of the Facility Agent, (such consent not to be unreasonably withheld) pooled or shared with any other person:
 - (i) all freight, hire and passage moneys including, without limitation, all moneys payable under, arising out of or in connection with a Charter;
 - (ii) the proceeds of the exercise of any lien on sub-freights;
 - (iii) compensation payable to a Borrower or the Security Agent in the event of requisition of that Vessel for hire or use;
 - (iv) remuneration for salvage and towage services;
 - (v) demurrage and detention moneys;
 - (vi) without prejudice to the generality of sub-paragraph (i) above, damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of that Vessel;
 - (vii) all monies which are at any time payable to a Borrower in relation to general average contribution; and
- (b) if and whenever that Vessel is employed on terms whereby any moneys falling within sub-paragraphs (i) to (a)(vi) of paragraph (a) 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 that Vessel.

“**Earnings Account**” means:

- (a) in relation to Borrower A, an account in the name of Borrower A with the Account Bank with account number 2910055604;
- (b) in relation to Borrower B, an account in the name of Borrower B with the Account Bank with account number 2910055582;
- (c) in relation to Borrower C, an account in the name of Borrower C with the Account Bank with account number 2910055590; or

(d) in relation to Borrower D, an account in the name of Borrower D with the Account Bank with account number 2910055620, and in the plural, means both of them.

“**EEA Member Country**” means any member state of the European Union, Iceland, Liechtenstein and Norway.

“**Environmental Approval**” means any present or future permit, ruling, variance or other Authorisation required under Environmental Laws.

“**Environmental Claim**” means any claim by any governmental, judicial or regulatory authority or any other person which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any Environmental Law and, for this purpose, “**claim**” includes a claim for damages, compensation, contribution, injury, fines, losses and penalties or any other payment of any kind, including in relation to clean-up and removal, 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:

- (a) any release, emission, spill or discharge into any Vessel or into or upon the air, sea, land or soils (including the seabed) or surface water of Environmentally Sensitive Material within or from any Vessel; or
- (b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water from a vessel other than one of the Vessels and which involves a collision between any Vessel and such other vessel or some other incident of navigation or operation, in either case, in connection with which a Vessel is actually or potentially liable to be arrested, attached, detained or injuncted and/or a Vessel and/or any Transaction Obligor and/or any operator or manager of a Vessel 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, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water otherwise than from one of the Vessels and in connection with which a Vessel is actually or potentially liable to be arrested and/or where any Transaction Obligor and/or any operator or manager of a Vessel is at fault or allegedly at fault or otherwise liable to any legal or administrative action, other than in accordance with an Environmental Approval.

“**Environmental Law**” means any present or future law relating to pollution or protection of human health or the environment, to conditions in the workplace, to the carriage, generation, handling, storage, use, release or spillage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material.

“**Environmentally Sensitive Material**” means and includes all contaminants, oil, oil products, toxic substances 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.

“**EU Bail-In Legislation Schedule**” means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

“**Event of Default**” means any event or circumstance specified as such in Clause 26 (*Events of Default*).

“**Excess Cash Flow Notice**” shall have the meaning set out Clause 23.23 (*Excess Cash Flow*).

“Existing ABN Amro Facility Agreement” means the facility agreement dated 14 November 2016 entered into by, inter alia, ABN Amro Bank N.V. (as a lender, agent, arranger, swap bank and security trustee) and Zeus One Marine LLC, Ikaros Marine LLC, Tasman Marine LLC, Hudson Marine LLC and Drake Marine LLC (as joint and several borrowers) as amended and supplemented from time to time.

“Existing CACIB Facility Agreement” means the facility agreement dated 4 May 2011 entered into by, inter alia, Credit Agricole Corporate and Investment Bank (as a lender, agent, security trustee) and Hector Marine LLC, Hephaestus Marine LLC and Pericles Marine LLC (as joint and several borrowers) as amended and supplemented from time to time.

“Existing Lender” means DVB Bank SE (as lender) in the Existing Facility Agreement.

“Existing Facility Agreement” means the \$176,000,000 facility agreement dated 2 September 2010 (as amended and restated on 5 November 2010 by a first supplemental agreement, as amended and restated on 17 October 2011 by a second supplemental agreement and as amended and supplemented on 12 July 2012 by a third supplemental agreement, on 6 December 2012 by a fourth supplemental agreement, on 26 February 2015 by a fifth supplemental agreement, on 29 June 2015 by a sixth supplemental agreement and on 2 September 2016 by a seventh supplemental agreement) and entered into between the Borrowers and others as joint and several borrowers and DVB Bank SE (as lender) secured on, inter alia, the Vessels for the purposes stated therein.

“Existing Fleet Vessel” means any vessel (including the Vessels) wholly owned by the Guarantor (directly or indirectly) at any point during the Refinancing Period (each an **“Existing Fleet Vessel”**).

“Existing Group Facility Agreement” means:

- (a) the Existing ABN Amro Facility Agreement;
- (b) the Existing CACIB Facility Agreement; and
- (c) the Existing Unicredit Facility Agreement.

“Existing Indebtedness” means, at any date, the outstanding Financial Indebtedness of the Borrowers on that date under the Existing Facility Agreement.

“Existing Unicredit Facility Agreement” means the facility agreement dated 16 February 2011 entered into by, inter alia, Unicredit Bank AG (as Arranger, Agent, Security Agent, Bank, Swap Provider and Account Bank) and Achilleas Marine LLC, Leonidas Marine LLC and Hercules Marine LLC (as joint and several borrowers) as amended and supplemented from time to time.

“Facility” means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

“Facility Office” means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than 5 Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.

“FATCA” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

“FATCA Application Date” means:

- (a) in relation to a “withholdable payment” described in section 1473(l)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a “withholdable payment” described in section 1473(l)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

“FATCA Deduction” means a deduction or withholding from a payment under a Finance Document required by FATCA.

“FATCA Exempt Party” means a Party that is entitled to receive payments free from any FATCA Deduction.

“Finance Document” means:

- (a) this Agreement;
- (b) each Drawdown Request;
- (c) any Security Document;
- (d) any Subordination Deed;
- (e) any other document which is executed for the purpose of establishing any priority or subordination arrangement in relation to the Secured Liabilities; or
- (f) any other document designated as such by the Facility Agent and the Borrowers.

“Finance Party” means the Facility Agent, the Security Agent, the Arranger, the Account Bank or a Lender.

“Financial Indebtedness” means any indebtedness for or in relation to:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with IFRS, be treated as a balance sheet liability;

- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (a) to (f) above.

“**Funding Rate**” means any individual rate notified by a Lender to the Facility Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause 10.4 (*Cost of funds*).

“**General Assignment**” means, in relation to a Vessel, the general assignment creating Security in favour of the Security Agent over:

- (a) the Earnings, the Insurances and any Requisition Compensation in relation to that Vessel; and
- (b) any Assignable Charter and any Charter Guarantee (if applicable) relevant thereto in relation to that Vessel;

in agreed form.

“**Group**” means the Guarantor and its Subsidiaries (including but not limited to the Borrowers) from time to time during the Security Period and “**member of the Group**” shall be construed accordingly.

“**Group Facility Agreements**” means:

- (a) the ABN Facility Agreement; and
- (b) any other loan or credit facility agreement entered or to be entered into by any member of the Group with any other bank or financial institution or other creditor party refinancing any of the Existing Group Facility Agreements on the relevant Refinancing Date and being secured by, inter alia, any Existing Fleet Vessel.

“**Guarantee**” means the guarantee of the Guarantor contained in this Agreement.

“**Guarantor**” means Poseidon Containers Holdings LLC, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro, Marshall Islands, MH96960.

“**Holding Company**” means, in relation to a person, any other person in relation to which it is a Subsidiary.

“**IFRS**” means International Financial Reporting Standards promulgated by the International Accounting Standards Board, as amended from time to time, together with its pronouncements thereon from time to time.

“**Indemnified Person**” has the meaning given to it in Clause 14.2 (*Other indemnities*).

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

- (a) all policies and contracts of insurance, including entries of that Vessel in any protection and indemnity or war risks association, effected for the account of the relevant Borrower in relation to that Borrower’s Vessel, its Earnings (if applicable) or otherwise in relation to that Vessel whether before, on or after the date of this Agreement; and
- (b) all rights and other assets relating to, or derived from, any of such policies, contracts or entries, including any rights to a return of premium and any rights in relation to any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement.

“**Interest Payment Date**” has the meaning given to in paragraph 8.2 (*Payment of interest*).

“**Interest Period**” means, in relation to an Advance, the Loan or any part of the Loan, each period determined in accordance with Clause 8.3 (*Fixed rate of interest*), Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.4 (*Default interest*).

“**Interpolated Screen Rate**” means, in relation to an Advance, the Loan or any part of the Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Advance, the Loan or that part of the Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Advance, the Loan or that part of the Loan,

each as of the Specified Time for dollars.

“**IPO**” means the initial public offering of part or all of the share capital of the Guarantor and the subsequent listing of such share capital at a stock exchange acceptable to the Lenders.

“**ISM Code**” means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time.

“**ISPS Code**” means the International Ship and Port Facility Security (ISPS) Code as adopted by the International Maritime Organization’s (IMO) Diplomatic Conference of December 2002, as the same may be amended or supplemented from time to time.

“**ISSC**” means an International Ship Security Certificate issued under the ISPS Code.

“**K&T Loan Agreement**” means the loan facility agreement dated 4 May 2016 (as amended and supplemented from time to time) between K&T Marine LLC and the Guarantor relating to a loan facility of up to \$12,211,552.74 in agreed form.

“**Lender**” means:

- (a) any Original Lender; and

- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 27 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with this Agreement.

“**LIBOR**” means, in relation to an Advance, the Loan or any part of the Loan:

- (a) the applicable Screen Rate as of the Specified Time for dollars and for a period equal in length to the Interest Period of that Advance, the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

“**LLC Shares**”, in respect of a Borrower, shall be as defined within that Borrower’s limited liability company agreement.

“**LMA**” means the Loan Market Association.

“**Loan**” means the loan to be made available under the Facility or the aggregate principal amount outstanding for the time being of the borrowings under the Facility and a “**part of the Loan**” means an Advance, a Tranche or any other part of the Loan as the context may require.

“**Major Casualty**” means, in relation to a Vessel, any casualty to that Vessel in relation to 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) if no Advance has yet been made, a Lender or Lenders whose Commitments aggregate more than 66 $\frac{2}{3}$ per cent. of the Total Commitments; or
- (b) at any other time, a Lender or Lenders whose participations in the Loan aggregate more than 66 $\frac{2}{3}$ per cent. of the amount of the Loan then outstanding or, if the Loan has been repaid or prepaid in full, a Lender or Lenders whose participations in the Loan immediately before repayment or prepayment in full aggregate more than 66 $\frac{2}{3}$ per cent. of the Loan immediately before such repayment or prepayment.

“**Management Agreement**” means the Technical Management Agreement or the Commercial Management Agreement.

“**Manager’s Undertaking**” means, in relation to a Vessel, the letter of undertaking from the Approved Technical Manager and the letter of undertaking from the Approved Commercial Manager subordinating the rights of the Approved Technical Manager and the Approved Commercial Manager respectively against that Vessel and the relevant Borrower to the rights of the Finance Parties and assigning the rights and interests of the Approved Technical Manager and the Approved Commercial Manager in the Insurances of that Vessel to the Finance Parties in agreed form.

“**Margin**” means 2.85 per cent. per annum.

“**Market Value**” means, in relation to a Vessel or any other vessel, at any date, the market value of that Vessel or vessel determined in accordance with Clause 24.7 (*Provision of valuations*) and prepared:

- (a) unless otherwise specified, as at a date not more than 30 days (and, in respect of the valuation(s) obtained for purposes of Drawdown, 45 days) previously;
- (b) by an Approved Valuer or Approved Valuers;

- (c) with or without physical inspection of that Vessel or vessel (as the Facility Agent may require); and
- (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, free of any Charter,

Provided that for the purpose of determining the compliance with the financial covenants set out in Clause 20 the market value of a Vessel owned by a member of the Group (other than a Borrower) shall be determined in accordance with the relevant provisions of the credit facility agreement financing such Vessel.

"Material Adverse Effect" means in the reasonable opinion of the Majority Lenders a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of any Obligor; or
- (b) the ability of any Obligor to perform its obligations under any Finance Document; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or intended to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

"Maturity Date" means, in relation to each Tranche, 31 December 2020.

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

"Mortgage" means, in relation to a Vessel, a first priority or preferred (as the case may be) ship mortgage on that Vessel (together with, if applicable, the deed of covenants collateral thereto) in agreed form.

"Mortgaged Vessel" means each Vessel subject to a Mortgage at any relevant time.

"Obligor" means each Borrower and the Guarantor.

"Odysseus" means Odysseus Marine LLC, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands.

"Operating Expenses" in relation to a Vessel, means the appropriately and properly incurred costs and expenses of operating the Vessel including expenses for crewing, victualling, insuring, maintenance, accrued monthly dry-docking expenses (initiating one year before the next dry-docking of the relevant Vessel and actual dry-docking costs incurred and paid by any

Borrower in relation to its Vessel minus the total accrued monthly drydocking cost for that Vessel and the total cost of any intermediate or special survey incurred and paid by any Borrower for its Vessel and any repairs necessary for the seaworthiness and safe operation of the relevant Vessel), spares, management, operation and voyage (if payable by the relevant Borrower) of that Vessel.

“**Original Financial Statements**” means, in relation to the Guarantor, the audited consolidated financial statements of the Group for its financial year ended on 31 December 2016.

“**Original Jurisdiction**” means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement.

“**Overseas Regulations**” means the Overseas Companies Regulations 2009 (SI 2009/1801).

“**Parallel Debt**” means any amount which an Obligor owes to the Security Agent under Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or under that Clause as incorporated by reference or in full in any other Finance Document.

“**Participating Member State**” means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“**Party**” means a party to this Agreement.

“**Permitted Charter**” means, in relation to a Vessel:

- (a) a Charter:
 - (i) which is a time, voyage or consecutive voyage charter;
 - (ii) the duration of which does not exceed and is not capable of exceeding, by virtue of any optional extensions, 12 months;
 - (iii) which is entered into on *bona fide* arm’s length terms at the time at which the Vessel is fixed; and
 - (iv) in relation to which not more than two months’ hire is payable in advance; or
- (b) any other Charter (other than one covered by paragraph (a) above) which is approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

“**Permitted Financial Indebtedness**” means:

- (a) any Financial Indebtedness incurred under the Finance Documents;
- (b) any Financial Indebtedness that is subordinated to all Financial Indebtedness incurred under the Finance Documents pursuant to a Subordination Deed or otherwise and which is, in the case of any such Financial Indebtedness of an Obligor, the subject of Subordinated Debt Security.

“**Permitted Security**” means:

- (a) Security created by the Finance Documents;
- (b) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;

- (c) liens for unpaid master's and crew's wages in accordance with first class ship ownership and management practice;
- (d) liens for salvage;
- (e) liens for master's disbursements incurred in the ordinary course of trading; and
- (f) any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of any Vessel and not as a result of any default or omission by any Borrower and subject, in the case of liens for repair or maintenance, to Clause 23.17 (*Restrictions on chartering, appointment of managers etc.*).

"Potential Event of Default" means any event or circumstance specified in Clause 26 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Prohibited Person" means any person (whether designated by name or by reason of being included in a class of persons) against whom Sanctions are imposed.

"Protected Party" has the meaning given to it in Clause 12.1 (*Definitions*).

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market in which case the Quotation Day will be determined by the Facility Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

"Reference Bank Quotation" means any quotation supplied to the Facility Agent by a Reference Bank.

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request by the Reference Banks:

- (a) if:
 - (i) the Reference Bank is a contributor to the Screen Rate; and
 - (ii) it consists of a single figure,

as the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the Screen Rate are asked to submit to the relevant administrator; or

- (b) in any other case, as the rate at which the relevant Reference Bank could fund itself in dollars for the relevant period with reference to the unsecured wholesale funding market.

"Reference Banks" means the principal London offices of any three banks from the ICE LIBOR panel or such other entities as may be appointed by the Facility Agent in consultation with the Borrowers.

"Refinancing Date" means, in relation to any Existing Group Facility Agreement, the date on which that Existing Group Facility Agreement is refinanced by the creditor(s) under the relevant Group Facility Agreement.

“Refinancing Period” means the period commencing on the date of this Agreement and ending on the earlier of (i) 31 August 2017 (or such later period agreed by the Facility Agent acting with the authorisation of the Majority Lenders) and (ii) on the occurrence of a Termination Event.

“Related Fund” in relation to a fund (the **“first fund”**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

“Relevant Interbank Market” means the London interbank market.

“Relevant Jurisdiction” means, in relation to a Transaction Obligor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to any of the Transaction Security created, or intended to be created, by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

“Repayment Date” means each date on which a Repayment Instalment is required to be paid under Clause 6.1 (*Repayment of Loan*).

“Repayment Instalment” has the meaning given to it in Clause 6.1 (*Repayment of Loan*).

“Repeating Representation” means each of the representations set out in Clause 18 (*Representations*) except Clause 18.10 (*Insolvency*), Clause 18.11 (*No filing or stamp taxes*), Clause 18.12 (*Deduction of Tax*), Clause 18.17 (*No proceedings pending or threatened*) 18.17 and Clause 18.28 (*Financial Indebtedness*) and any representation of any Transaction Obligor made in any other Finance Document that is expressed to be a “Repeating Representation” or is otherwise expressed to be repeated.

“Representative” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

“Requisite Commitment Amount” means the amount of \$21,811,423 to be prepaid by the Borrowers pursuant to Clause 23.23 (*Excess Cash Flow*).

“Requisition” means in relation to a Vessel:

- (a) any expropriation, confiscation, requisition (excluding a requisition for hire or use which does not involve a requisition for title) or acquisition of that Vessel, whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration, which is effected (whether *de jure* or *de facto*) by any government or official authority or by any person or persons claiming to be or to represent a government or official authority unless it is within thirty (30) days redelivered to the full control of the relevant Borrower (or any other period as the Facility Agent may accept in writing); and
- (b) any capture or seizure of that Vessel (including any hijacking or theft) by any person whatsoever, unless it is within thirty (30) days (and, in respect of any hijacking or theft, forty five (45) days) redelivered to the full control of the relevant Borrower (or any other period the Facility Agent may accept in writing).

“**Requisition Compensation**” includes all compensation or other moneys payable to a Borrower by reason of any Requisition or any arrest or detention of the Vessel owned by it in the exercise or purported exercise of any lien or claim.

“**Resolution Authority**” means any body which has authority to exercise any Write-down and Conversion Powers.

“**Safety Management Certificate**” has the meaning given to it in the ISM Code.

“**Safety Management System**” has the meaning given to it in the ISM Code.

“**Sanctions**” means any sanctions, embargoes, freezing provisions, prohibitions or other restrictions relating to trading, doing business, investment, exporting, financing or making assets available (or other activities similar to or connected with any of the foregoing):

- (a) imposed by law or regulation of the United Kingdom, the Council of the European Union, the United Nations or its Security Council or the United States of America; or
- (b) otherwise imposed by any law or regulation.

“**Screen Rate**” means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for dollars for the relevant period displayed on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Borrowers.

“**Secured Liabilities**” means all present and future obligations and liabilities, (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Creditor Party under or in connection with each Finance Document.

“**Security**” means a mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

“**Security Assets**” means those assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

“**Security Cover Ratio**” means, at any relevant time, the aggregate of (i) the aggregate Market Value of the Mortgaged Vessels and (ii) the net realisable value of any additional security provided at that time under Clause 24.2 (*Provision of additional security; prepayment*), at that time expressed as a percentage of the amount of the Loan.

“**Security Document**” means:

- (a) any Shares Security;
- (b) any Mortgage;
- (c) any General Assignment;
- (d) any Charterparty Assignment;
- (e) any Account Security;
- (f) any Manager’s Undertaking;
- (g) any Subordinated Debt Security;

- (h) any other document (whether or not it creates Security) which is executed as security for the Secured Liabilities; or
- (i) any other document designated as such by the Facility Agent and the Borrowers.

“**Security Period**” means the period starting on the date of this Agreement and ending on the date on which the Facility Agent is satisfied that there is no outstanding Commitment in force and that the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full.

“**Security Property**” means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Creditor Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in relation to the Secured Liabilities to the Security Agent as trustee for the Creditor Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Security Agent as trustee for the Creditor Parties;
- (c) the Security Agent’s interest in any turnover trust created under the Finance Documents;
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Creditor Parties,

except:

- (i) rights intended for the sole benefit of the Security Agent; and
- (ii) any moneys or other assets which the Security Agent has transferred to the Facility Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement.

“**Selection Notice**” means a notice substantially in the form set out in Part B of Schedule 3 (Requests) given in accordance with Clause 9 (*Interest Periods*).

“**Servicing Party**” means the Facility Agent or the Security Agent.

“**Shares Security**” means, in relation to a Borrower, a document creating Security over the LLC Shares of that Borrower in agreed form.

“**Shortfall Amount**” means an amount (if any) which when aggregated with the excess Earnings applied towards prepayment of part of the Loan during the period commencing on 1 January 2019 and ending on 31 December 2019 pursuant to Clause 23.23 (*Excess Cash Flow*) is equal to \$1,000,000;

“**Specified Time**” means a day or time determined in accordance with Schedule 7 (*Timetables*).

“**Subordinated Creditor**” means:

- (a) an Obligor; or
- (b) K&T Marine LLC; or

(c) any other person who becomes a Subordinated Creditor in accordance with this Agreement.

“**Subordinated Debt Security**” means a Security over Subordinated Liabilities granted or to be granted by a Subordinated Creditor in favour of the Security Agent in an agreed form.

“**Subordination Deed**” means a subordination deed entered into or to be entered into by each Subordinated Creditor and the Security Agent in agreed form.

“**Subordinated Finance Document**” means:

- (a) a Subordinated Loan Agreement; and
- (b) any other document relating to or evidencing Subordinated Liabilities.

“**Subordinated Liabilities**” means all indebtedness owed or expressed to be owed by a Borrower to a Subordinated Creditor whether under the Subordinated Finance Documents or otherwise.

“**Subordinated Loan Agreement**” means:

- (a) a loan agreement to be made between (i) a Borrower or the Borrowers and (ii) a Subordinated Creditor; and
- (b) the K&T Loan Agreement.

“**Subsidiary**” means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

“**Tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“**Tax Credit**” has the meaning given to it in Clause 12.1 (*Definitions*).

“**Tax Deduction**” has the meaning given to it in Clause 12.1 (*Definitions*).

“**Tax Payment**” has the meaning given to it in Clause 12.1 (*Definitions*).

“**Technical Management Agreement**” means, in relation to a Vessel, the agreement entered into between the relevant Borrower and the Approved Technical Manager regarding the technical management of that Vessel.

“**Termination Event**” means any of the following events or circumstances:

- (a) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any borrower or other party providing security under any Existing Group Facility Agreement; or
 - (ii) the enforcement of any security interest over any assets of any borrower or any other party providing security under any Existing Group Facility Agreement; or
 - (iii) any analogous procedure or step is taken in any jurisdiction; or

- (b) any arrest or detention of any Existing Fleet Vessel securing the indebtedness under any Existing Group Facility Agreement or any exercise or purported exercise of any lien on any such Existing Fleet Vessel or any requisition of any such Existing Fleet Vessel, in each case by any creditor(s) under that Existing Group Facility Agreement.

“**Third Parties Act**” has the meaning given to it in Clause 1.5 (*Third party rights*).

“**Total Commitments**” means the aggregate of the Tranche A Commitments, Tranche B Commitments, Tranche C Commitments and Tranche D Commitments, being in aggregate \$52,625,589 at the date of this Agreement.

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

- (a) actual, constructive, compromised, agreed or arranged total loss of that Vessel; or
- (b) any Requisition of that Vessel unless that Vessel is returned to the full control of the relevant Borrower within 30 days of such Requisition (or such later period agreed by the Facility Agent acting with the authorisation of the Majority Lenders).

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

- (a) in the case of an actual loss of that Vessel, the date on which it occurred or, if that is unknown, the date when that Vessel was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of that Vessel, the earlier 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 relevant Borrower with that Vessel’s insurers in which the insurers agree to treat that Vessel as a total loss; and
- (c) in the case of any other type of total loss, the date (or the most likely date) on which it appears to the Facility Agent that the event constituting the total loss occurred.

“**Tranche**” means Tranche A, Tranche B, Tranche C or Tranche D and, in the plural, means both of them.

“**Tranche A**” means that part of the Loan made or to be made available to the Borrowers to finance in part the Existing Indebtedness in a principal amount of \$5,495,554.

“**Tranche B**” means that part of the Loan made or to be made available to the Borrowers to finance in part the Existing Indebtedness in a principal amount of \$5,495,554.

“**Tranche C**” means that part of the Loan made or to be made available to the Borrowers to finance in part the Existing Indebtedness in a principal amount of \$5,800,905.

“**Tranche D**” means that part of the Loan made or to be made available to the Borrowers to finance in part the Existing Indebtedness in a principal amount of \$35,833,576.

“**Transaction Document**” means:

- (a) a Finance Document;
- (b) any other document designated as such by the Facility Agent and the Borrowers.

“**Transaction Obligor**” means an Obligor, Odysseus, an Approved Manager or any other party who executes a Transaction Document (other than any Charterer, K&T Marine LLC and any Affiliate of the Guarantor which is a Subordinated Creditor).

“**Transaction Security**” means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

“**Transfer Certificate**” means a certificate in the form set out in Schedule 4 (*Transfer Certificate*) or any other form agreed between the Facility Agent and the Borrowers.

“**Transfer Date**” means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

“**UK Establishment**” means a UK establishment as defined in the Overseas Regulations.

“**Unpaid Sum**” means any sum due and payable but unpaid by a Transaction Obligor under the Finance Documents.

“**US**” means the United States of America.

“**US Tax Obligor**” means:

- (a) a Borrower which is resident for tax purposes in the US; or
- (b) a person some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

“**VAT**” means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

“**VAT Group**” means two or more companies or limited liability partnerships which register as a single taxable entity for VAT purposes.

“**Vessel**” means Vessel A, Vessel B, Vessel C or Vessel D and, in plural, means all of them.

“**Vessel A**” means the 2001-built sub-panamax container vessel of 2,506 TEU currently registered in the ownership of Borrower A with IMO No. 9209104 under the Panamanian flag with the name “NEWYORKER”.

“**Vessel B**” means the 2000-built sub-panamax container vessel of 2,506 TEU currently registered in the ownership of Borrower B with IMO No. 9203526 under the Panamanian flag with the name “NIKOLAS”.

“**Vessel C**” means the 2000-built sub-panamax container vessel of 2,506 TEU currently registered in the ownership of Borrower C with IMO No. 9203502 under the Panamanian flag with the name “MAIRA”.

“**Vessel D**” means the 2013-built post-panamax container vessel of 6,700 TEU currently registered in the ownership of Borrower D with IMO No. 9635664 under the Marshall Islands flag with the name “MARY”.

“**VMC Surcharge**” shall have the meaning set out in Clause 24.8 (*VMC Surcharge*).

“**VMC Surcharge Certificate**” means the certificate in the form set out in Schedule 9 (*VMC Surcharge Certificate*).

“**Waiver Period**” means the period commencing on the Drawdown Date and ending on (inclusive) 31 December 2019.

“**Write-down and Conversion Powers**” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

1.2 Construction

(a) Unless a contrary indication appears, a reference in this Agreement to:

- (i) the “**Account Bank**”, the “**Arranger**”, the “**Facility Agent**”, any “**Finance Party**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Creditor Party**”, the “**Security Agent**”, any “**Transaction Obligor**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (ii) “**assets**” includes present and future properties, revenues and rights of every description;
- (iii) a liability which is “**contingent**” means a liability which is not certain to arise and/or the amount of which remains unascertained;
- (iv) “**document**” includes a deed and also a letter, fax or telex;
- (v) “**expense**” means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Tax including VAT;
- (vi) a “**Finance Document**”, a “**Security Document**” or “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document, Security Document or Transaction Document or other agreement or instrument as amended or novated;

- (vii) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (viii) “**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;
 - (ix) “**proceedings**” means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;
 - (x) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
 - (xi) a “**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;
 - (xii) a provision of law is a reference to that provision as amended or re-enacted;
 - (xiii) a time of day is a reference to Amsterdam time;
 - (xiv) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
 - (xv) words denoting the singular number shall include the plural and vice versa; and
 - (xvi) “**including**” and “**in particular**” (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.
- (b) The determination of the extent to which a rate is “**for a period equal in length**” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
 - (c) Section, Clause and Schedule headings are for ease of reference only and are not to be used for the purposes of construction or interpretation of the Finance Documents.
 - (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under, or in connection with, any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (e) A Potential Event of Default is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived.

1.3 Construction of insurance terms

In this Agreement:

“**approved**” means, for the purposes of Clause 22 (*Insurance Undertakings*), approved in writing by the Facility Agent.

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

“**obligatory insurances**” means all insurances effected, or which each Borrower is obliged to effect, under Clause 22 (*Insurance Undertakings*) or any other provision of this Agreement or of another Finance Document.

“**policy**” 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) (1/10/83)(1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision.

“**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 23 of the Institute Time Clauses (Hulls)(1/10/83).

1.4 **Agreed forms of Finance Documents**

References in Clause 1.1 (*Definitions*) to any Finance Document being in “agreed form” are to that Finance Document:

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by the Borrowers and the Facility Agent); or
- (b) in any other form agreed in writing between the Borrowers and the Facility Agent acting with the authorisation of the Majority Lenders or, where Clause 42.2 (*All Lender matters*) applies, all the Lenders.

1.5 **Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Subject to Clause 42.3 (*Other exceptions*) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate, Affiliate or any other person described in paragraph (d) of Clause 14.2 (*Other indemnities*), paragraph (b) of Clause 29.11 (*Exclusion of liability*), Clause 29.22 (*Role of Reference Banks*), Clause 29.23 (*Third Party Reference Banks*) or paragraph (b) of Clause 30.11 (*Exclusion of liability*) may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

SECTION 2

THE FACILITY

2 THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders agree to make available to the Borrowers in four Tranches a dollar term loan facility in an aggregate amount not exceeding \$52,625,589.

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from a Transaction Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of the Loan or any other amount owed by a Transaction Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by that Transaction Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

3 PURPOSE

3.1 Purpose

The Borrowers shall apply all amounts borrowed by them under the Facility only for the purpose of refinancing the Existing Indebtedness.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4 CONDITIONS OF DRAWDOWN

4.1 Conditions precedent to delivery of a Drawdown Request

The Borrowers may not deliver a Drawdown Request unless the Facility Agent has received all of the documents and other evidence listed in Part A of Schedule 2 (*Conditions Precedent and Subsequent*) in form and substance satisfactory to the Facility Agent.

4.2 Conditions precedent to release of an Advance

The Facility Agent shall only be obliged to release an Advance to the Existing Lender if:

- (a) on that Drawdown Date and before that Advance is released:
 - (i) no Default (excluding, up through the relevant Refinancing Date, any Default having occurred and being continuing in connection with and under any of the Existing Group Facility Agreements) is continuing or would result from the proposed release;
 - (ii) the Repeating Representations to be made by each Transaction Obligor are true;
- (b) on that Drawdown Date, the Facility Agent has received all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent and Subsequent*) in form and substance satisfactory to the Facility Agent (acting on the instructions of all the Lenders).

4.3 Conditions subsequent

The Borrowers undertake to deliver or cause to be delivered to the Facility Agent within five Business Days after the Drawdown Date (or such later period agreed to by the Facility Agent), the additional documents and other evidence listed in Part C of Schedule 2 (*Conditions Precedent and Subsequent*) in form and substance satisfactory to the Facility Agent.

4.4 Notification of satisfaction of conditions precedent

- (a) The Facility Agent shall notify the Borrowers and the Lenders promptly upon being satisfied as to the satisfaction of the conditions precedent and subsequent referred to in Clause 4.1 (*Conditions precedent to delivery of a Drawdown Request*), Clause 4.2 (*Conditions precedent to release of an Advance*) and Clause 4.3 (*Conditions subsequent*).
- (b) Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.5 Waiver of conditions precedent

If the Lenders, at their discretion, permit an Advance to be released before any of the conditions precedent referred to in Clause 4 (*Conditions of Drawdown*) or Clause 4.2 (*Conditions precedent to release of an Advance*) has been satisfied, the Borrowers shall ensure that that condition is satisfied within five Business Days after the relevant Drawdown Date or such later date as the Facility Agent, acting with the authorisation of the Lenders, may agree in writing with the Borrowers.

SECTION 3

DRAWDOWN

5 DRAWDOWN

5.1 Delivery of a Drawdown Request

The Borrowers may utilise the Facility by delivery to the Facility Agent of a duly completed Drawdown Request not later than the Specified Time.

5.2 Completion of a Drawdown Request

- (a) Each Drawdown Request is irrevocable and will not be regarded as having been duly completed unless:
- (i) it identifies the Tranche to be utilised;
 - (ii) all four Tranches must be advanced simultaneously;
 - (iii) the proposed Drawdown Date is a Business Day within the relevant Availability Period;
 - (iv) the currency and amount of a Drawdown comply with Clause 5.3 (*Currency and amount*); and
 - (v) the proposed Interest Period complies with Clause 9 (*Interest Periods*).
- (b) Only up to four Drawdown Requests may be delivered, one in respect of each Tranche.

5.3 Currency and amount

- (a) The currency specified in a Drawdown Request must be dollars.
- (b) Each Tranche shall be advanced in a single Advance and the amount of the Advance under each Tranche shall not exceed the following maximum amount of such Tranche:
- (i) in respect of Tranche A, \$5,495,554;
 - (ii) in respect of Tranche B, \$5,495,554;
 - (iii) in respect of Tranche C, \$5,800,905; and
 - (iv) in respect of Tranche D, \$35,833,576.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met or, as the case may be, waived, each Lender shall make its participation in each Advance available by the relevant Drawdown Date through its Facility Office.
- (b) The amount of each Lender's participation in each Advance will be equal to the proportion borne by its Commitment to the Total Commitments immediately before making that Advance.
- (c) The Facility Agent shall notify each Lender of the amount of each Advance and the amount of its participation in that Advance by the Specified Time.

Cancellation of Commitments

The Commitments in respect of any Tranche which are unutilised at the end of the Availability Period for such Tranche shall then be cancelled.

REPAYMENT, PREPAYMENT AND CANCELLATION

6 REPAYMENT

6.1 Repayment of Loan

- (a) The Borrowers shall repay the Loan as follows:
- (i) Tranche A shall be repaid by 4 consecutive quarterly instalments each in an amount of \$266,667 and a balloon payment in the amount of \$4,428,886 payable together with the 4th and final instalment;
 - (ii) Tranche B shall be repaid by 4 consecutive quarterly instalments each in an amount of \$266,667 and a balloon payment in the amount of \$4,428,886 payable together with the 4th and final instalment;
 - (iii) Tranche C shall be repaid by 4 consecutive quarterly instalments each in an amount of \$266,667 and a balloon payment in the amount of \$4,734,237 payable together with the 4th and final instalment;
 - (iv) Tranche D shall be repaid by 4 consecutive quarterly instalments each in an amount of \$1,083,316 and a balloon payment in the amount of \$31,500,312 payable together with the 4th and final instalment,

and each such instalment (including any balloon payments) shall be a “**Repayment Instalment**”,

Provided that, if the amount advanced under a Tranche is less than the maximum amount of such Tranche, the amount of the Repayment Instalments relating to that Tranche shall be reduced proportionately.

- (b) The first Repayment Instalment in respect of each Tranche shall be repaid on 7 March 2020, each subsequent Repayment Instalment (including the last Repayment Instalment) in respect of each Tranche shall be payable at quarterly intervals thereafter with the last Repayment Instalment in respect of a Tranche being repaid no later than the Maturity Date.

6.2 Effect of cancellation and prepayment on scheduled repayments

- (a) If the Available Commitment in respect of any Tranche of any Lender is cancelled under Clause 7.1 (*Illegality*) then the Repayment Instalments in respect of that Tranche falling after that cancellation will be reduced pro rata by the amount of the Available Commitments in respect of that Tranche so cancelled.
- (b) If the whole or any part of any Available Commitment in respect of a Tranche is cancelled in accordance with Clause 7.2 (*Voluntary and automatic cancellation*) or if the whole or part of any Commitment in respect of a Tranche is cancelled pursuant to Clause 5.5 (*Cancellation of Commitments*), the Repayment Instalments in respect of that Tranche falling after that cancellation will be reduced pro rata by the amount of the Commitments so cancelled.
- (c) If any part of a Tranche is repaid or prepaid in accordance with Clause 7.1 (*Illegality*) then the Repayment Instalments in respect of that Tranche for each Repayment Date falling after that repayment or prepayment will be reduced pro rata by the amount of the Tranche repaid or prepaid.
- (d) If any part of a Tranche is prepaid in accordance with Clause 7.3 (*Voluntary prepayment of Loan*) then the amount of the Repayment Instalments in respect of that Tranche for each Repayment Date falling after that repayment or prepayment will be reduced in inverse chronological order by the amount of the Tranche repaid or prepaid.

6.3 **Maturity Date**

On the last Repayment Date (being no later than the Maturity Date), the Borrowers shall additionally pay to the Facility Agent for the account of the Finance Parties all other sums then accrued and owing under the Finance Documents including, without limitation, the VMC Surcharge calculated pursuant to Clause 24.8.

6.4 **Reborrowing**

Neither Borrower may reborrow any part of the Facility which is repaid.

7 **PREPAYMENT AND CANCELLATION**

7.1 **Illegality**

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in an Advance or the Loan or it becomes unlawful for that Lender to do so:

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the Borrowers, the Available Commitment of that Lender will be immediately cancelled; and
- (c) the Borrowers shall prepay that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Facility Agent has notified the Borrowers or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled or terminated in the amount of the participation prepaid.

7.2 **Voluntary and automatic cancellation**

- (a) The Borrowers may, if they give the Facility Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part of an Available Tranche. Any cancellation under this Clause 7.2 (*Voluntary and automatic cancellation*) shall reduce the Commitments of the Lenders rateably under that Tranche.
- (b) The unutilised Commitment (if any) of each Lender in respect of a Tranche shall be automatically cancelled at close of business on the date on which that Tranche is made available.

7.3 **Voluntary prepayment of Loan**

- (a) Subject to paragraph (b) below, the Borrowers may, if they give the Facility Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$1,000,000 or a multiple of that amount).
- (b) The Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which all Available Tranches are zero).
- (c) Paragraph (a) of this Clause 7.3 (*Voluntary prepayment of Loan*) shall not apply in any prepayments made pursuant to Clause 23.23 (*Excess Cash Flow*).

7.4 Mandatory prepayment on sale or Total Loss

If a Vessel is sold or becomes a Total Loss, the Borrowers shall prepay the Tranche applicable to that Vessel. Any surplus proceeds from that sale or insurance proceeds of that Vessel having become a Total Loss after the prepayment of that Tranche shall be credited to the Earnings Account in respect of that Vessel and shall constitute part of the Earnings for purposes of the Excess Cash Flow calculation under Clause 23.23 (*Excess Cash Flow*). Such prepayment and, if applicable, payment of any surplus proceeds into the Earnings Account in respect of that Vessel, shall be made:

- (a) in the case of a sale of that Vessel, on or before the date on which the sale is completed by delivery of that Vessel to the buyer; or
- (b) in the case of any other Total Loss, on the earlier of (i) the date falling 90 days after the Total Loss Date and (ii) the date of receipt by the Security Agent of the proceeds of insurance relating to such Total Loss.

7.5 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 (*Prepayment and Cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and all other amounts accrued under the Finance Documents and, subject to the fee provided for in Clause 11.2 (*Prepayment fee*) and any Break Costs, without premium or penalty.
- (c) Neither Borrower may reborrow any part of the Facility which is prepaid.
- (d) Neither Borrower shall repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrowers or the affected Lender, as appropriate.
- (g) If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

7.6 Application of prepayments

Any prepayment of any part of the Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality*)) shall be applied in inverse order of maturity to each Lender's participation in that part of the Loan.

7.7 Additional mandatory prepayment event

If the aggregate of the excess Earnings applied in prepayment of the Loan pursuant to Clause 23.23 (*Excess Cash Flow*) is less than \$1,000,000 for the duration of the period commencing from 1 January 2019 until the Cash Sweep Period ending on 31 December 2019, the Guarantor shall procure that part of the shareholders' equity (as provided in Clause 21.15 (*Guarantor's Equity Contribution*)) is injected to the Borrowers, and the Borrowers shall be obliged to utilise

such part of the equity to prepay the Shortfall Amount to the Lenders on the next Interest Payment Date falling due after receipt of the Excess Cash Flow Notice relevant to that Cash Sweep Period ending on 31 December 2019. Such Shortfall Amount shall be applied in or towards prepayment of the then outstanding Requisite Commitment Amount and then subsequently towards the Repayment Instalments and balloon payments in inverse order of maturity.

SECTION 5

COSTS OF DRAWDOWN

8 INTEREST

8.1 Calculation of interest

The rate of interest on the Loan or any part of the Loan for each Interest Period is the percentage rate per annum which is the aggregate of:

- (a) the Margin; and
- (b) LIBOR.

8.2 Payment of interest

- (a) The Borrowers shall pay accrued interest on the Loan or any part of the Loan on the last day of each Interest Period (each an “**Interest Payment Date**”).
- (b) If an Interest Period is longer than three Months, the Borrowers shall also pay interest then accrued on the Loan or the relevant part of the Loan on the dates falling at three Monthly intervals after the first day of the Interest Period.

8.3 Fixed rate of interest

- (a) The Borrowers may, by giving not less than five Business Days’ notice in writing, request that a fixed rate of interest shall apply on the whole of the Loan or a Tranche for a period of 12 months or more by giving to the Facility Agent a notice which shall specify the period for which the fixed rate of interest shall apply and shall be given at least five Business Days before the end of the then current Interest Period of the Loan or that Tranche (as applicable). The Facility Agent shall notify the Borrowers of the fixed rate of interest to apply (which shall be determined at the level of the actual refinancing rates available to the Lenders (as certified by them) for the relevant period to which such fixed rate is to apply plus the Margin) and the Borrowers shall either accept or refuse the offer promptly in writing and in any event within one Business Day. Such offer and acceptance shall be in a form that shall constitute a Finance Document. Once accepted, the Borrowers may not revoke their acceptance and the relevant fixed rate of interest shall apply to the Loan or a Tranche from the first day of the next Interest Period of the Loan or that Tranche (as applicable). If the Borrowers refuse the offer or fail to accept it within the time permitted for acceptance, the other provisions of this Clause 8 (*Interest*) shall continue to apply.
- (b) The Borrowers acknowledge and agree that in fixing the interest rate under this Clause 8.3 (*Fixed rate of interest*), a Lender may enter into internal or external interest rate swaps and that any claim, expense, liability or loss arising as a result of the early termination of such internal or external rate swap shall be for the account of the Borrowers.

8.4 Default interest

- (a) If a Transaction Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 2 per cent. per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted part of the Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Facility Agent. Any interest accruing under this Clause 8.4 (*Default interest*) shall be immediately payable by the Obligors on demand by the Facility Agent.

- (b) If an Unpaid Sum consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period relating to the Loan or that part of the Loan:
 - (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan or that part of the Loan; and
 - (ii) the rate of interest applying to that Unpaid Sum during that first Interest Period shall be 2 per cent. per annum higher than the rate which would have applied if that Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

8.5 Notification of rates of interest

- (a) The Facility Agent shall promptly notify the Lenders and the Borrowers of the determination of a rate of interest under this Agreement.
- (b) The Facility Agent shall promptly notify the Borrowers of each Funding Rate relating to the Loan, any part of the Loan or any Unpaid Sum.

9 INTEREST PERIODS

9.1 Selection of Interest Periods

- (a) The Borrowers may select the Interest Period for a Tranche as specified in the relevant Drawdown Request for that Tranche.
- (b) Subject to paragraph (g) below, the Borrowers may select each subsequent Interest Period in respect of that Tranche in a Selection Notice.
- (c) Each Selection Notice is irrevocable and must be delivered to the Facility Agent by the Borrowers not later than the Specified Time.
- (d) If the Borrowers fail to deliver a Selection Notice to the Facility Agent in accordance with paragraphs (b) and (c) above, the relevant Interest Period will, subject to Clause 9.2 (*Changes to Interest Periods*) and paragraph (g) below, be three Months.
- (e) Subject to this Clause 9 (*Interest Periods*), the Borrowers may select an Interest Period of three Months or any other longer period agreed between the Borrowers and the Facility Agent (acting on the instructions of all the Lenders in their absolute discretion).
- (f) An Interest Period in respect of a Tranche shall not extend beyond the Maturity Date.
- (g) In respect of a Repayment Instalment, the Borrowers may request in the relevant Selection Notice that an Interest Period for a part of a Tranche equal to such Repayment Instalment shall end on the Repayment Date relating to it and, subject to paragraph (e) above, select a longer Interest Period for the remaining part of that Tranche.
- (h) Subject to paragraph (i) below, the first Interest Period for a Tranche shall start on the Drawdown Date relevant to that Tranche and each subsequent Interest Period shall start on the last day of the preceding Interest Period.
- (i) Except for the purposes of paragraph (g) above and Clause 9.2 (*Changes to Interest Periods*) below, each Tranche shall have one Interest Period only at any time and all Tranches shall have the same Interest Period.

9.2 Changes to Interest Periods

- (a) In respect of a Repayment Instalment related to a Tranche, prior to determining the interest rate for a Tranche, the Facility Agent may establish an Interest Period for part of a Tranche equal to such Repayment Instalment to end on the Repayment Date relating to it and the remaining part of that Tranche shall have the Interest Period selected in the relevant Selection Notice, subject to Clause 9.1(e) (*Selection of Interest Periods*).
- (b) If after the Borrowers have selected and the Lenders have agreed an Interest Period longer than three Months, any Lender notifies the Facility Agent within two Business Days after the Specified Time relating to the relevant Drawdown Request or Selection Notice that it is not satisfied that deposits in dollars for a period equal to the Interest Period will be available to it in the Relevant Interbank Market when the Interest Period commences, the Facility Agent shall shorten the Interest Period to three Months.
- (c) If the Facility Agent makes any change to an Interest Period referred to in this Clause 9.2 (*Changes to Interest Periods*), it shall promptly notify the Borrowers and the Lenders.

9.3 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10 CHANGES TO THE CALCULATION OF INTEREST

10.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of the Loan or any part of the Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:
 - (i) dollars; or
 - (ii) the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Screen Rate, the applicable LIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for dollars or the relevant Interest Period there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 10.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

10.2 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if LIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about noon on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

10.3 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 10 per cent. of the Loan or the relevant part of the Loan as appropriate) (the “**Relevant Lender**”) that the cost to it of funding its participation in the Loan or that part of the Loan from whatever source it may reasonably select would be in excess of LIBOR then Clause 10.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

10.4 Cost of funds

- (a) If this Clause 10.4 (*Cost of funds*) applies, the rate of interest on each Lender’s share of the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin; and
 - (ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause 10.4 (*Cost of funds*) applies and the Facility Agent or the Borrowers so require, the Facility Agent and the Borrowers shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 42.4 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrowers, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
- (e) If this Clause 10.4 (*Cost of funds*) applies pursuant to Clause 10.3 (*Market disruption*) and:
- (i) a Lender’s Funding Rate is less than LIBOR; or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,
- the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

10.5 Notification to Borrowers

If Clause 10.4 (*Cost of funds*) applies the Facility Agent shall, as soon as is practicable, notify the Borrowers.

10.6 Break Costs

- (a) The Borrowers shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by the Borrowers on a day other than the last day of an Interest Period for the Loan, the relevant part of the Loan or that Unpaid Sum.

- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent or a written demand by the Borrowers, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11 FEES

11.1 Arrangement fee

The Borrowers shall pay to the Arranger an irrevocable arrangement fee in the amount of \$150,000 (\$50,000 of which shall be due and payable on the date of this Agreement and the remaining \$100,000 of which shall be due and payable on the earlier of (a) the Maturity Date and (b) the date on which the Requisite Commitment Amount has been prepaid pursuant to Clause 23.23 (*Excess Cash Flow*)). In the event that the Loan is not advanced, the arrangement fee shall be due and payable on at the end of the Availability Period.

11.2 Prepayment fee

- (a) Subject to paragraph (b) below, the Borrowers must pay to the Facility Agent for each Lender proportionately in accordance with each Lender's participation on the Loan a prepayment fee on the date of prepayment of all or any part of the Loan.
- (b) The amount of the prepayment fee is:
 - (i) if the prepayment occurs on or before the second anniversary of the Drawdown Date, two per cent. of the amount prepaid; and
 - (ii) if the prepayment occurs after the second anniversary of the Drawdown Date, one per cent. of the amount prepaid.
- (c) No prepayment fee shall be payable under this Clause if the prepayment is made under Clause 7.1 (*Illegality*), 7.4 (*Mandatory prepayment on sale or Total Loss*), 23.23 (*Excess Cash Flow*) or due to a refinancing with any Affiliate of a Lender.

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

12 TAX GROSS UP AND INDEMNITIES

12.1 Definitions

(a) In this Agreement:

“**Protected Party**” means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

“**Tax Payment**” means either the increase in a payment made by an Obligor to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 12 (*Tax Gross Up and Indemnities*) reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

(a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrowers shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrowers and that Obligor.

(c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 Tax indemnity

(a) The Obligors shall (within three Business Days of demand by the Facility Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

- (b) Paragraph (a) above shall not apply:
- (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or
 - (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Obligors.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3 (*Tax indemnity*), notify the Facility Agent.

12.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was received; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

12.5 Stamp taxes

The Obligors shall pay and, within three Business Days of demand, indemnify each Creditor Party against any cost, loss or liability which that Creditor Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

12.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this sub-paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.6 (VAT) to any Party shall, at any time when that Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or representative or head) of that group or unity at the relevant time (as the case may be).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party’s VAT registration and such other information as is reasonably requested in connection with such Finance Party’s VAT reporting requirements in relation to such supply.

12.7 **FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within 10 Business Days of a reasonable request by another Party:
- (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party; and

- (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to sub-paragraph (i) of paragraph (a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything and sub-paragraph (iii) of paragraph (a) above shall not oblige any other Party to do anything which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with sub-paragraphs (i) or (ii) of paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If the Borrower is a US Tax Obligor, or the Facility Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within 10 Business Days of:
 - (i) where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where the Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
 - (iii) the date of a request from the Facility Agent,supply to the Facility Agent:
 - (i) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (ii) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.

- (h) The Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

12.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify each Obligor and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

13 INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*), the Borrowers shall, within three Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
 - (ii) compliance with any law or regulation made,
- in each case after the date of this Agreement; or
- (iii) the implementation, application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.
- (b) In this Agreement:
- (i) **“Basel III”** means:
 - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
 - (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
 - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

- (ii) **“CRD IV”** means:
 - (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012;
 - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and
 - (C) any other law or regulation which implements Basel III.
- (iii) **“Increased Costs”** means:
 - (A) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
 - (B) an additional or increased cost; or
 - (C) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

13.2 **Increased cost claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrowers.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent or the Borrowers, provide a certificate confirming the amount of its Increased Costs.

13.3 **Exceptions**

Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);
- (d) compensated for by any payment made pursuant to Clause 14.3 (*Mandatory Cost*); or
- (e) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14 **OTHER INDEMNITIES**

14.1 **Currency indemnity**

- (a) If any sum due from an Obligor under the Finance Documents (a **“Sum”**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **“First Currency”**) in which that Sum is payable into another currency (the **“Second Currency”**) for the purpose of:
 - (i) making or filing a claim or proof against that Obligor; or

- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings, that Obligor shall, as an independent obligation, on demand, indemnify each Creditor Party to which that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other indemnities

- (a) Each Obligor shall, on demand, indemnify each Creditor Party against any cost, loss or liability incurred by it as a result of:
 - (i) the occurrence of any Event of Default;
 - (ii) a failure by a Transaction Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 32 (*Sharing among the Finance Parties*);
 - (iii) funding, or making arrangements to fund, its participation in an Advance or the Loan requested by the Borrowers in a Drawdown Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Creditor Party alone); or
 - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrowers.
- (b) Each Obligor shall, on demand, indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate (each such person for the purposes of this Clause 14.2 (*Other indemnities*) an “**Indemnified Person**”), against any cost, loss or liability incurred by that Indemnified Person pursuant to or in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry, in connection with or arising out of the entry into and the transactions contemplated by the Finance Documents, having the benefit of any Security constituted by the Finance Documents or which relates to the condition or operation of, or any incident occurring in relation to, any Vessel unless such cost, loss or liability is caused by the gross negligence or wilful misconduct of that Indemnified Person.
- (c) Without limiting, but subject to any limitations set out in paragraph (b) above, the indemnity in paragraph (b) above shall cover any cost, loss or liability incurred by each Indemnified Person in any jurisdiction:
 - (i) arising or asserted under or in connection with any law relating to safety at sea, the ISM Code, any Environmental Law or any Sanctions; or
 - (ii) in connection with any Environmental Claim.

- (d) Any Affiliate or any officer or employee of a Finance Party or of any of its Affiliates may rely on this Clause 14.2 (*Other indemnities*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

14.3 **Mandatory Cost**

Each Borrower shall, on demand by the Facility Agent, pay to the Facility Agent for the account of the relevant Lender, such amount which any Lender certifies in a notice to the Facility Agent to be its good faith determination of the amount necessary to compensate it for complying with:

- (a) in the case of a Lender lending from a Facility Office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank or any other authority or agency which replaces all or any of its functions) in respect of loans made from that Facility Office; and
- (b) in the case of any Lender lending from a Facility Office in the United Kingdom, any reserve asset, special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England (or any other governmental authority or agency) and/or paying any fees to the Financial Conduct Authority and/or the Prudential Regulation Authority (or any other governmental authority or agency which replaces all or any of their functions),

which, in each case, is referable to that Lender's participation in the Loan.

14.4 **Indemnity to the Facility Agent**

Each Obligor shall, on demand, indemnify the Facility Agent against:

- (a) any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of:
- (i) investigating any event which it reasonably believes is a Default; or
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents; and
- (b) any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 33.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Finance Documents.

14.5 **Indemnity to the Security Agent**

- (a) Each Obligor shall, on demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them:
- (i) in relation to or as a result of:
 - (A) any failure by a Borrower to comply with its obligations under Clause 15 (*Costs and Expenses*);
 - (B) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

- (C) the taking, holding, protection or enforcement of the Finance Documents and the Transaction Security;
 - (D) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
 - (E) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
 - (F) any action by any Transaction Obligor which vitiates, reduces the value of, or is otherwise prejudicial to, the Transaction Security; and
 - (G) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents.
- (ii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property or the performance of the terms of this Agreement or the other Finance Documents (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Creditor Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.5 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

15 COSTS AND EXPENSES

15.1 Transaction expenses

The Obligors shall, on demand, pay the Facility Agent, the Security Agent and the Arranger the amount of all costs and expenses (including legal fees) reasonably incurred by any Creditor Party in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) any other Finance Documents executed after the date of this Agreement.

15.2 Amendment costs

If:

- (a) a Transaction Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 33.9 (*Change of currency*); or
- (c) a Transaction Obligor requests, and the Security Agent agrees to, the release of all or any part of the Security Assets from the Transaction Security,

the Obligors shall, on demand, reimburse each of the Facility Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by each Creditor Party in responding to, evaluating, negotiating or complying with that request or requirement.

15.3 Enforcement and preservation costs

The Obligors shall, on demand, pay to each Creditor Party the amount of all costs and expenses (including legal fees) incurred by that Creditor Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against that Creditor Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

SECTION 7

GUARANTEE

16 GUARANTEE AND INDEMNITY

16.1 Guarantee and indemnity

The Guarantor irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each Transaction Obligor other than the Guarantor of all such other Transaction Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever a Transaction Obligor other than the Guarantor does not pay any amount when due under or in connection with any Finance Document, the Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Transaction Obligor other than the Guarantor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 16 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

16.2 Continuing guarantee

This Guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Transaction Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

16.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Transaction Obligor or any security for those obligations or otherwise) is made by a Creditor Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Clause 16 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

16.4 Waiver of defences

The obligations of the Guarantor under this Clause 16 (*Guarantee and Indemnity*) and in respect of any Transaction Security will not be affected or discharged by an act, omission, matter or thing which, but for this Clause 16.4 (*Waiver of defences*) would reduce, release or prejudice any of its obligations under this Clause 16 (*Guarantee and Indemnity*) or in respect of any Transaction Security (without limitation and whether or not known to it or any Creditor Party) including:

- (a) anytime, waiver or consent granted to, or composition with, any Transaction Obligor or other person;
- (b) the release of any other Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect or delay in perfecting, or refusal or neglect to take up or enforce, or delay in taking or enforcing any rights against, or security over assets of, any Transaction Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Transaction Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

16.5 Immediate recourse

The Guarantor waives any right it may have of first requiring any Creditor Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person (including without limitation to commence any proceedings under any Finance Document or to enforce any Transaction Security) before claiming or commencing proceedings under this Clause 16 (*Guarantee and Indemnity*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

16.6 Appropriations

Until all amounts which may be or become payable by the Transaction Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Creditor Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Creditor Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Clause 16 (*Guarantee and Indemnity*).

16.7 Deferral of Guarantor's rights

All rights which the Guarantor at any time has (whether in respect of this Guarantee, a mortgage or any other transaction) against the Borrower, any other Transaction Obligor or their respective assets shall be fully subordinated to the rights of the Creditor Parties under the Finance Documents and until the end of the Security Period and unless the Facility Agent otherwise directs, the Guarantor will not exercise any rights which it may have (whether in respect of any Finance Document to which it is a Party or any other transaction) by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 16 (*Guarantee and Indemnity*):

- (a) to be indemnified by a Transaction Obligor;
- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Transaction Obligor's obligations under the Finance Documents;

- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Creditor Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Creditor Party;
- (d) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under Clause 16.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Transaction Obligor; and/or
- (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Creditor Party.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Creditor Parties by the Transaction Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Creditor Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct for application in accordance with Clause 33 (*Payment Mechanics*).

16.8 Additional security

This Guarantee and any other Security given by the Guarantor is in addition to and is not in any way prejudiced by, and shall not prejudice, any other guarantee or Security or any other right of recourse now or subsequently held by any Creditor Party or any right of set-off or netting or right to combine accounts in connection with the Finance Documents.

16.9 Applicability of provisions of Guarantee to other Security

Clauses 16.2 (*Continuing guarantee*), 16.3 (*Reinstatement*), 16.4 (*Waiver of defences*), 16.5 (*Immediate recourse*), 16.5, 16.6 (*Appropriations*), 16.7 (*Deferral of Guarantor's rights*) and 16.8 (*Additional security*) shall apply, with any necessary modifications, to any Security which the Guarantor creates (whether at the time at which it signs this Agreement or at any later time) to secure the Secured Liabilities or any part of them.

SECTION 8

JOINT AND SEVERAL LIABILITY OF BORROWERS

17 JOINT AND SEVERAL LIABILITY OF THE BORROWERS

17.1 Joint and several liability

All liabilities and obligations of the Borrowers under this Agreement shall, whether expressed to be so or not, be joint and several.

17.2 Waiver of defences

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 any other Borrower;
- (b) any Lender or the Security Agent entering into any rescheduling, refinancing or other arrangement of any kind with the other Borrower;
- (c) any Lender or the Security Agent releasing the other Borrower or any Security created by a Finance Document; or
- (d) any time, waiver or consent granted to, or composition with the other Borrower or other person;
- (e) the release of the other Borrower or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (f) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the other Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (g) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the other Borrower or any other person;
- (h) any amendment, novation, supplement, extension, restatement (however fundamental, and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (i) any unenforceability, illegality or invalidity of any obligation or any person under any Finance Document or any other document or security; or
- (j) any insolvency or similar proceedings.

17.3 Principal Debtor

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 no Borrower shall, in any circumstances, be construed to be a surety for the obligations of the other Borrower under this Agreement.

17.4 Borrower restrictions

- (a) Subject to paragraph (b) below, during the Security Period no Borrower shall:
- (i) claim any amount which may be due to it from the other Borrower whether in respect of a payment made under, or matter arising out of, this Agreement or any Finance Document, or any matter unconnected with this Agreement or any Finance Document; or
 - (ii) take or enforce any form of security from the other Borrower for such an amount, or in any way seek to have recourse in respect of such an amount against any asset of the other Borrower; or
 - (iii) set off such an amount against any sum due from it to the other Borrower; or
 - (iv) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving the other Borrower; or
 - (v) exercise or assert any combination of the foregoing.
- (b) If during the Security Period, the Facility Agent, by notice to a Borrower, requires it to take any action referred to in paragraph (a) above in relation to the other Borrower, that Borrower shall take that action as soon as practicable after receiving the Facility Agent's notice.

17.5 Deferral of Borrowers' rights

Until all amounts which may be or become payable by the Borrowers under or in connection with the Finance Documents have been irrevocably paid in full and unless the Facility Agent otherwise directs, no Borrower will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

- (a) to be indemnified by the other Borrower; or
- (b) to claim any contribution from the other Borrower in relation to any payment made by it under the Finance Documents.

SECTION 9

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

18 REPRESENTATIONS

18.1 General

Each Obligor makes the representations and warranties set out in this Clause 18 (*Representations*) to each Finance Party on the date of this Agreement.

18.2 Status

- (a) It is a limited liability company duly formed and validly existing in good standing under the law of its Original Jurisdiction.
- (b) It and each Transaction Obligor has the power to own its assets and carry on its business as it is being conducted.

18.3 LLC Shares and ownership

- (a) In the case of each Borrower, its limited liability company interest is unitized into a maximum of 500 LLC Shares, all of which have been issued to the Guarantor, other than in respect of Borrower D, in which case all 500 authorized LLC Shares have been issued to Odysseus.
- (b) In the case of the Guarantor, its limited liability company interest is unitized and no limitation on the number of units is established within its limited liability company agreement. The legal title to and beneficial interest in the limited liability company interests in each Borrower is held free of any Security other than Permitted Security or any other claim by (other than in respect of Borrower D) the Guarantor and, in respect of Borrower D, Odysseus.
- (c) Its ultimate beneficial ownership and control is maintained by those person(s) advised to the Facility Agent in writing on or about the date of this Agreement.
- (d) None of the LLC Shares in a Borrower is subject to any option to purchase, pre-emption rights or similar rights.

18.4 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations.

18.5 Validity, effectiveness and ranking of Security

- (a) Each Finance Document to which it is a party does now or, as the case may be, will upon execution and delivery create the Security it purports to create over any assets to which such Security, by its terms, relates, and such Security will, when created or intended to be created, be valid and effective.
- (b) No third party has or will have any Security (except for Permitted Security) over any assets that are the subject of any Transaction Security granted by it.
- (c) The Transaction Security granted by it to the Security Agent or any other Creditor Party has or will when created or intended to be created have first ranking priority or such other priority it is expressed to have in the Finance Documents and is not subject to any prior ranking or *pari passu* ranking security.
- (d) No concurrence, consent or authorisation of any person is required for the creation of or otherwise in connection with any Transaction Security.

18.6 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, each Transaction Document to which it is a party do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any member of any Obligor; or
- (c) any agreement or instrument binding upon it or any other Obligor or any other Obligor's assets or constitute a default or termination event (however described) under any such agreement or instrument.

18.7 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise:
 - (i) its entry into, performance and delivery of, each Transaction Document to which it is or will be a party and the transactions contemplated by those Transaction Documents; and
 - (ii) in the case of a Borrower, the registration of its Vessel under an Approved Flag.
- (b) No limit on its powers will be exceeded as a result of the borrowing, granting of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

18.8 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
- (b) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect.

18.9 Governing law and enforcement

- (a) The choice of governing law of each Transaction Document to which it is a party will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in relation to a Transaction Document to which it is a party in the jurisdiction of the governing law of that Transaction Document will be recognised and enforced in its Relevant Jurisdictions.

18.10 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 26.8 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 26.9 (*Creditors' process*),

has been taken or, to its knowledge, threatened in relation to a Transaction Obligor (other than an Approved Manager); and none of the circumstances described in Clause 26.7 (*Insolvency*) applies to a Transaction Obligor.

18.11 No filing or stamp taxes

Under the laws of its Relevant Jurisdictions it is not necessary that the Finance Documents to which it is a party be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by those Finance Documents, except registration of each Mortgage at the Ships Registry where title to each Vessel is registered in the ownership of the relevant Borrower, which registration and fees will be made and paid promptly after the date of the relevant Mortgage.

18.12 Deduction of Tax

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to which it is a party.

18.13 No default

- (a) No Event of Default and, on the date of this Agreement and on the Drawdown Date, no Default is continuing or might reasonably be expected to result from the making of any Drawdown or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject.

18.14 No misleading information

- (a) Any factual information provided by Transaction Obligor for the purposes of this Agreement was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) The financial projections contained in any such information have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from any such information and no information has been given or withheld that results in any such information being untrue or misleading in any material respect.

18.15 Financial Statements

- (a) The Original Financial Statements were prepared in accordance with IFRS consistently applied.
- (b) The Original Financial Statements fairly present the Guarantor's consolidated financial condition as at the end of the relevant financial year and results of operations during the relevant financial year.
- (c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group), since the date of the Original Financial Statements.
- (d) Each Obligor's most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*):

- (i) have been prepared in accordance with Clause 19.4 (*Requirements as to financial statements*); and
 - (ii) fairly represent its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Guarantor).
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*) there has been no material adverse change in an Obligor's business, assets or financial condition (or the business or consolidated financial condition of the Group, in the case of the Guarantor).

18.16 *Pari passu* ranking

Its payment obligations under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

18.17 No proceedings pending or threatened

- (a) No litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any other Transaction Obligor.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or any other Transaction Obligor.

18.18 Validity and completeness of the Transaction Documents

- (a) Each of the Transaction Documents to which any Charterer and each Transaction Obligor is a party constitutes legal, valid, binding and enforceable obligations of that Charterer and each Transaction Obligor.
- (b) The copies of the Transaction Documents delivered to the Facility Agent before the date of this Agreement are true and complete copies.
- (c) No amendments or additions to the Transaction Documents have been agreed nor has any Charterer or any Transaction Obligor waived any of its respective rights under the Transaction Documents.

18.19 No rebates etc.

There is no agreement or understanding to allow or pay any rebate, premium, inducement, commission, discount or other benefit or payment (however described) to a Borrower or any other member of the Group or a third party in connection with the purchase by that Borrower of the relevant Vessel, other than as disclosed to the Facility Agent in writing on or before the date of this Agreement.

18.20 Valuations

- (a) All information supplied by it or on its behalf to an Approved Valuer for the purposes of a valuation delivered to the Facility Agent in accordance with this Agreement was true and accurate as at the date it was supplied or (if appropriate) as at the date (if any) at which it is stated to be given.

- (b) It has not omitted to supply any information to an Approved Valuer which, if disclosed, would adversely affect any valuation prepared by such Approved Valuer.
- (c) There has been no change to the factual information provided pursuant to paragraph (a) above in relation to any valuation between the date such information was provided and the date of that valuation which, in either case, renders that information untrue or misleading in any material respect.

18.21 No breach of laws

It has not breached any law or regulation which breach has a Material Adverse Effect.

18.22 No Charter

No Vessel is subject to any Charter other than a Permitted Charter.

18.23 Compliance with Environmental Laws

All Environmental Laws relating to the ownership, operation and management of each Vessel (as now conducted and as reasonably anticipated to be conducted in the future) and the terms of all Environmental Approvals have been complied with.

18.24 No Environmental Claim

No Environmental Claim has been made or threatened against any Transaction Obligor or any Vessel.

18.25 No Environmental Incident

No Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred.

18.26 ISM and ISPS Code compliance

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

18.27 Taxes paid

- (a) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes.

18.28 Financial Indebtedness

- (a) The Borrower has no Financial Indebtedness outstanding other than Permitted Financial Indebtedness incurred in the ordinary course of its business of trading, chartering and operating the Vessel owned by it.
- (b) The Guarantor has no Financial Indebtedness outstanding other than Permitted Financial Indebtedness and any Financial Indebtedness incurred in the ordinary course of its business (including, without limitation, any guarantees the Guarantor has issued securing the obligations of any of its present or future Subsidiaries and any other guarantee having been previously granted by the Guarantor as at the date of this Agreement and disclosed to the Facility Agent).
- (c) No Borrower has acquired or invested in any additional assets and/or investments other than its Vessels.

18.29 Overseas companies

No Transaction Obligor has delivered particulars, whether in its name stated in the Finance Documents or any other name, of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or, if it has so registered, it has provided to the Facility Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

18.30 Good title to assets

It has good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

18.31 Ownership

- (a) Each Borrower is the sole legal and beneficial owner of all rights and interests which any Charter creates in favour of that Borrower.
- (b) Each Borrower is the sole legal and beneficial owner of the relevant Vessel, her Earnings and her Insurances.
- (c) With effect on and from the date of its creation or intended creation, each Transaction Obligor will be the sole legal and beneficial owner of any asset that is the subject of any Transaction Security created or intended to be created by such Transaction Obligor.
- (d) The constitutional documents of each Transaction Obligor do not and could not restrict or inhibit any transfer of the limited liability interests of a Borrower on creation or enforcement of the security conferred by the Security Documents.

18.32 Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in Greece (other than the Guarantor) and it has no “establishment” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

18.33 Place of business

No Transaction Obligor has a place of business in any countries other than Greece or, in respect of the Guarantor the United States of America.

18.34 No employee or pension arrangements

No Transaction Obligor (other than the Approved Manager) has any employees or any liabilities under any pension scheme.

18.35 Sanctions

- (a) No Transaction Obligor:
 - (i) and no director or officer, or to the best of its knowledge employee, of a Transaction Obligor, is a Prohibited Person;
 - (ii) is owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Person; or
 - (iii) owns or controls a Prohibited Person.

- (b) No proceeds of the Loan shall be made available, directly or indirectly, to or for the benefit of a Prohibited Person nor shall they be otherwise directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions.

18.36 US Tax Obligor

No Transaction Obligor is a US Tax Obligor.

18.37 Repetition

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of each Drawdown Request and the first day of each Interest Period.

19 INFORMATION UNDERTAKINGS

19.1 General

The undertakings in this Clause 19 (*Information Undertakings*) remain in force throughout the Security Period unless the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders), may otherwise permit.

19.2 Financial statements

(a) Each Borrower shall supply to the Facility Agent in sufficient copies for all the Lenders:

- (i) as soon as they become available, but in any event within 180 days after the end of each of its respective financial years, its unaudited financial statements for that financial year (such annual financial statements to be supplemented to include updated details of all off-balance sheet and employment commitments); and
- (ii) as soon as the same become available, but in any event within 45 days after the end of each 3-month period (ending on 30 September, 31 March and 30 June) of each of its financial years, its unaudited financial statements for that financial quarter (commencing with the financial statements for the 3-month period ending on 30 June 2017) together with the Excess Cash Flow Notice and the VMC Surcharge Certificate.

(b) The Borrowers shall supply to the Facility Agent in sufficient copies for all the Lenders:

- (i) as soon as they become available, but in any event within 180 days after the end of each of the respective financial years of the Guarantor, the audited consolidated financial statements of the Guarantor for that financial year (such annual consolidated financial statements to be supplemented to include updated details of all off-balance sheet and employment commitments);
- (ii) as soon as the same become available, but in any event within 45 days after the end of each 3-month period (ending on 30 September, 31 March and 30 June) of each of the Guarantor's financial years, the unaudited consolidated financial statements of the Guarantor for that financial quarter, (commencing with the financial statements for the 3-month period ending on 30 June 2017); and
- (iii) as soon as possible, but in no event later than 90 days after the end of each financial year, a cash flow forecast of the Guarantor for the respective financial year (commencing with the financial year ending on 31 December 2018),

Provided that in the case of the unaudited financial statements to be provided under sub-paragraph (b)(ii) above, such unaudited financial statements shall not be required in relation to a quarter ending at the financial year-end in addition to the audited financial statements to be provided under paragraph (b)(i) above.

19.3 Compliance Certificate

- (a) Each Obligor shall supply to the Facility Agent, with each set of financial statements delivered pursuant to Clause 19.2 (*Financial statements*), and in the case of the Guarantor a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 20 (*Financial Covenants*) substantially in the form attached in Schedule 6 to this Agreement as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by the chief financial officer or the Guarantor.

19.4 Requirements as to financial statements

- (a) Each set of financial statements delivered by a Borrower pursuant to Clause 19.2 (*Financial statements*) shall be certified by a senior officer of the Borrower or chief financial officer of the company as fairly presenting its financial condition and operations as at the date as at which those financial statements were drawn up.
- (b) The Borrowers shall procure that each set of financial statements delivered pursuant to Clause 19.2 (*Financial statements*) is prepared using IFRS accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in IFRS, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of that Obligor) deliver to the Facility Agent:
 - (i) a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether Clause 20 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

19.5 Information: miscellaneous

Each Obligor shall and shall procure that each other Obligor shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):

- (a) Immediately upon the Facility Agent's request, all documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) which are current, threatened or pending against it, and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against it and which might have a Material Adverse Effect;

- (d) promptly, its constitutional documents where these have been amended or varied;
- (e) promptly, such further information and/or documents regarding:
 - (i) each Vessel, goods transported on each Vessel, its Earnings or its Insurances;
 - (ii) the Security Assets;
 - (iii) compliance of the Transaction Obligors with the terms of the Finance Documents;
 - (iv) the financial condition, business and operations of any Obligor,as any Finance Party (through the Facility Agent) may reasonably request; and
- (f) promptly, such further information and/or documents as any Finance Party (through the Facility Agent) may reasonably request so as to enable such Finance Party to comply with any laws applicable to it or as may be required by any regulatory authority.

19.6 Notification of Default

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor shall, notify the Facility Agent (i) of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor); and (ii) promptly upon becoming aware of the same, of any breach of any Sanctions applicable to any Vessel, any Transaction Obligor or any party to any Transaction Document or any Assignable Charter.
- (b) Promptly upon a request by the Facility Agent, each Borrower shall supply to the Facility Agent a certificate signed by a senior officer on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

19.7 Use of websites

- (a) Each Obligor may satisfy its obligation under the Finance Documents to which it is a party to deliver any information in relation to those Lenders (the “**Website Lenders**”) which accept this method of communication by posting this information onto an electronic website designated by the Borrowers and the Facility Agent (the “**Designated Website**”) if:
 - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the relevant Obligor and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the relevant Obligor and the Facility Agent.

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the Facility Agent shall notify the Obligors accordingly and each Obligor shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event each Obligor shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Obligors or any of them and the Facility Agent.

- (c) An Obligor shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
- (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended;
or
 - (v) if that Obligor becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If an Obligor notifies the Facility Agent under sub-paragraph (i) or (v) of paragraph (c) above, all information to be provided by the Obligors under this Agreement after the date of that notice shall be supplied in paper form unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Obligors shall comply with any such request within 10 Business Days.

19.8 “Know your customer” checks

- (a) If:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of a Transaction Obligor (or of a Holding Company of a Transaction Obligor) (including, without limitation, a change of ownership of a Transaction Obligor) after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges a Finance Party (or, in the case of sub-paragraph (iii) above, any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by a Servicing Party (for itself or on behalf of any other Finance Party) or any Lender (for itself or, in the case of the event described in sub-paragraph (iii) above, on behalf of any prospective new Lender) in order for such Finance Party or, in the case of the event described in sub-paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of a Servicing Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Servicing Party (for itself) in order for that Servicing Party to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

20 FINANCIAL COVENANTS

20.1 Borrowers' Minimum liquidity

The Borrowers will ensure that, commencing from the Drawdown Date and at all times thereafter during the Security Period, they shall maintain Cash in an amount of not less than \$1,250,000 in aggregate in the Earnings Accounts (and in particular \$300,000 in respect of Vessel A, Vessel B and Vessel C in the Earnings Account of Borrower A, Borrower B and Borrower C respectively and \$350,000 in respect of Vessel D the Earning Account of Borrower D) which shall be pledged pursuant to the relevant Account Security and which shall remain blocked and may not be withdrawn (the "**Borrowers' Minimum Liquidity Amount**").

20.2 Guarantor's financial covenants

The Guarantor shall maintain from the Drawdown Date and at all times during the Security Period (and, in respect of paragraphs (a) and (b) below, as of 1 January 2020 and at all times thereafter during the Security Period):

- (a) the Value Adjusted Leverage Ratio shall not exceed 75 per cent.;
- (b) the minimum Net Worth shall not be less than \$50,000,000;
- (c) the Book Leverage Ratio shall not exceed during the period commencing on:
 - (i) the Drawdown Date and ending on 31 December 2018 (inclusive), 85 per cent.; and
 - (ii) 1 January 2019 and at all times thereafter, 75 per cent.; and
- (d) Liquidity in an amount of not less than \$350,000 per Fleet Vessel (for the avoidance of doubt, such Liquidity shall be covered under Clause 20.1 (*Borrowers' Minimum liquidity*) in respect of the Vessels and no additional Liquidity shall be required in respect of the Vessels under this Clause);

The expressions used in this Clause shall be construed in accordance with IFRS, and for purposes of this Agreement:

"Book Leverage Ratio" means the ratio of Total Consolidated Long Term Debt to Total Assets, as shown in the applicable Financial Statements of the Guarantor for any accounting period and determined in accordance with IFRS.

"Cash" means cash in hand which is not subject to any charge back or other Security and to which the Borrowers have free, immediate and direct access including (i) any cash standing to the credit of the earnings account and/or the retention accounts or any other accounts in the name of any other member of the Group (whether subject to Security or not) and (ii) any minimum liquidity amounts required to be maintained by the lenders financing the vessels owned by any such other members of the Group in any earnings accounts or retention accounts of such other members of the Group (whether subject to Security or not).

"Financial Statements" means the Financial Statements of the Guarantor and the Borrowers provided in accordance with Clause 19.2 (*Financial statements*).

"Fleet Vessels" means any vessel (including the Vessels) from time to time wholly owned by the Guarantor (directly or indirectly) (each a "**Fleet Vessel**").

"Fleet Market Value" means in relation to a Fleet Vessel, the Market Value of such Fleet Vessel.

“**Liquidity**” means, in respect of each period during which Financial Statements are delivered by the Guarantor, Cash, as shown in the applicable Financial Statements of the Guarantor, for such accounting period and determined in accordance with IFRS.

“**Net Worth**” means equity payments already advanced in respect of the Fleet Vessel less accumulated dividends plus retained earnings of the Fleet Vessels, as each such term is defined in the applicable Financial Statements for the Guarantor determined in accordance with IFRS.

“**Total Assets**” means, in respect of the Guarantor, the amount of total assets of the Guarantor at any time on a consolidated basis which would be included in the applicable Financial Statements for the Guarantor as total assets determined in accordance with IFRS.

“**Total Consolidated Long Term Debt**” means, in respect of the Guarantor, the amount of total liabilities of the Guarantor (as such term is defined in the applicable Financial Statements of the Guarantor) at any time on a consolidated basis which would be included in the applicable Financial Statements of the Guarantor as total long term debt in accordance with IFRS including the current portion of long term debt (as such term is defined in the applicable Financial Statements for the Guarantor).

“**Value Adjusted Leverage Ratio**” means the ratio of Total Consolidated Long Term Debt to Value Adjusted Total Assets, as shown in the applicable Financial Statement of the Guarantor for any accounting period and determined in accordance with IFRS.

“**Value Adjusted Total Assets**” means the Total Assets of the Guarantor adjusted in each case for the difference of the book value of the Fleet Vessels (as evidenced in the most recent Financial Statements) and the Fleet Market Value.

20.3 Most favoured nation

Each Borrower and the Guarantor undertake to procure that, (i) during the Waiver Period in respect of items listed in sub-paragraphs (b), (d) and (f) and (ii) throughout the duration of the Security Period in respect of items listed in sub-paragraphs (a), (c) and (e), the Creditor Parties shall receive no less favourable treatment under this Agreement than that provided or to be provided under any Group Facility Agreement (by way of amendment or supplement to, or refinancing of, that Group facility Agreement) in relation to:

- (a) any amendment to a maturity date under any such Group Facility Agreement as a result of which the maturity date will fall before 31 December 2020 (save for the part of the loan made available under the ABN Facility Agreement which expires in June 2018);
- (b) the existence of any amortization principal payment profile/schedule until 31 December 2019 (inclusive);
- (c) the provisions relevant to the calculation of the Excess Cash Flow and generally the cash sweep mechanism;
- (d) the waiver of the security cover ratio at the Borrowers' level;
- (e) the financial covenants relevant to the Value Adjusted Leverage Ratio, Book Leverage Ratio and minimum Net Worth of the Guarantor; and
- (f) any increase to the aggregate of any amounts to be paid in respect of interest solely related to margin (howsoever defined) for the duration of the Waiver Period (calculated as at the date of that Group Facility Agreement).

Accordingly, should any member of the Group or the Guarantor provide to any other creditor more favourable treatment in relation to (a) to (f) above (and, in relation to subparagraphs (b), (d) and (f) for the duration of the Waiver Period) than those which the Creditor Parties

have been provided with under this Agreement or any other Finance Document, each Borrower and the Guarantor shall promptly advise the Facility Agent of those arrangements and covenants and shall, upon the Facility Agent's request, enter into such documentation supplemental to the Finance Documents as the Lenders may require in order to achieve parity with the creditors under such relevant Group Facility Agreement.

20.4 Group Facility Agreement security cover ratios

Each Borrower and the Guarantor undertake to procure that, after the termination of the Waiver Period and throughout the remainder of the Security Period, in the event that the exiting security cover ratio at the end of the Waiver Period in respect of any Group Facility Agreement, is amended pursuant to any supplemental agreement, refinancing arrangements or otherwise, to be more favourable to the creditors under that Group Facility Agreement(s) than to the Finance Parties under this Agreement, the Borrowers and the Guarantor shall provide prior written notice to the Facility Agent of those arrangements and shall, upon the Facility Agent's request, enter into such documentation supplemental to the Finance Documents as the Lenders may require in order to achieve parity in connection with the security cover ratio with the creditors under such Group Facility Agreement.

21 GENERAL UNDERTAKINGS

21.1 General

The undertakings in this Clause 21 (*General Undertakings*) remain in force throughout the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit (and in the case of Clause 21.11 (*Disposals*), 21.14 (*Financial Indebtedness*), 21.20(b)(ii) (*Other transactions*) and 21.25 (*Constitutional documents*) such permission not to be unreasonably withheld).

21.2 Authorisations

Each Obligor shall, and shall procure that each other Transaction Obligor will (where applicable), promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction and the state of the applicable Approved Flag at any time of each Vessel to enable it to:

- (i) perform its obligations under the Transaction Documents to which it is a party;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence in any Relevant Jurisdiction or in the state of the Approved Flag at any time of each Vessel or any Transaction Document to which it is a party; and
- (iii) own and operate the relevant Vessel (in the case of a Borrower).

21.3 Compliance with laws

Each Obligor shall comply in all respects with all laws and regulations to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

21.4 Environmental compliance

Each Obligor shall, and shall procure that each Approved Manager will:

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

21.5 Environmental claims

Each Obligor shall, and shall procure that each Approved Manager will, promptly upon becoming aware of the same, inform the Facility Agent in writing of:

- (a) any Environmental Claim against any Transaction Obligor which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any Transaction Obligor, where the claim, if determined against that Transaction Obligor, has a Material Adverse Effect.

21.6 Taxation

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor will, pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
 - (i) such payment is being contested in good faith;
 - (ii) adequate reserves are maintained for those Taxes and the costs required to contest them have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 19.2 (*Financial statements*); and
 - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have a Material Adverse Effect.
- (b) The Obligors shall procure that no other Transaction Obligor will, change its residence for Tax purposes.

21.7 Overseas companies

Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly inform the Facility Agent if it delivers to the Registrar particulars required under the Overseas Regulations of any UK Establishment and it shall comply with any directions given to it by the Facility Agent regarding the recording of any Transaction Security on the register which it is required to maintain under The Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009.

21.8 *Pari passu* ranking

Each Obligor shall, and shall procure that each other Transaction Obligor will, ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents to which such Obligor or Transaction Obligor is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

21.9 Title

Each Borrower shall hold the legal title to, and own the entire beneficial interest in:

- (a) the Vessel owned by it, its Earnings and its Insurances; and
- (b) with effect on and from its creation or intended creation, any other assets which are the subject of any Transaction Security created or intended to be created by that Borrower.

21.10 Negative pledge

- (a)
 - (i) No Borrower shall create any form of Security over any of its assets or revenues other than Permitted Security; and
 - (ii) The Guarantor shall not create any form of Security over any of its assets or revenues other than Permitted Security unless it is reasonably incurred in the normal course of its business of acquiring and financing vessels to be owned by the Guarantor or any of its present or future Subsidiaries.
- (b) No Obligor shall:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any Obligor or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Permitted Security.

21.11 Disposals

Subject to Clause 23.17 (*Restrictions on chartering, appointment of managers etc.*), no Borrower shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset (including without limitation each Vessel, its Earnings or its Insurances).

21.12 Merger

No Obligor shall, enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction (save for an IPO).

21.13 Change of business

- (a) Each Obligor shall procure that no substantial change is made to the general nature of the business of that Obligor from that carried on at the date of this Agreement.
- (b) No Borrower shall engage in any business other than the ownership and operation of its Vessel.

21.14 Financial Indebtedness

- (a) No Obligor shall:
- (i) in the case of a Borrower, incur or permit to be outstanding any Financial Indebtedness except (A) Financial Indebtedness incurred in the normal course of its business of trading, chartering and operating the Vessel owned by it and (B) Permitted Financial Indebtedness; and
 - (ii) in the case of the Guarantor, incur or permit to be outstanding Financial Indebtedness except for (A) Financial Indebtedness incurred in the ordinary course of its business (including, without limitation, the issuance of guarantees securing the obligations of any of its future or present Subsidiaries and any guarantee previously granted by the Guarantor as at the date of this Agreement and disclosed to the Facility Agent, (B) Permitted Financial Indebtedness and (C) Financial Indebtedness incurred under the K&T Loan Agreement.
- (b) No Borrower shall acquire or invest in any additional assets and/or investments other than its Vessel.

21.15 Guarantor's Equity Contribution

- (a) The Guarantor shall procure that an equity contribution of \$8,000,000 is paid in to the Group utilising funds to be advanced to the Guarantor pursuant to the K&T Loan Agreement.
- (b) The contribution shall be effected through quarterly payments commencing as of 31 August 2017, each in an amount being the lesser of (i) such amount set out in Schedule 8 (*Equity Contribution Dates and Amounts*) and (ii) the maximum amount the Guarantor would be entitled to request in its utilisation request under the K&T Loan Agreement at the relevant time if all conditions precedent thereunder were satisfied, on such dates as set out in Schedule 8 (*Equity Contribution Dates and Amounts*) (or as otherwise requested by the Borrowers and agreed by the Facility Agent from time to time).
- (c) In the event that the equity contribution is less than \$8,000,000 on 31 December 2019, then the Guarantor will contribute the difference between the actual capital contribution and \$8,000,000 in the form of equity injection by 31 December 2019.
- (d) The Guarantor shall procure that such contribution of \$8,000,000 (in addition to the \$5,000,000 contribution injected as a condition precedent under Part A of Schedule 2 (*Conditions Precedent and Subsequent*)) shall be utilised in or towards payment of the Shortfall Amount and, as the case may, any cash flow shortfall in connection with the Existing Fleet Vessels, including, but not limited to, any operating expenses or any other cash flow shortfall in connection with their operation, trading and financing under this Agreement or, as the case may be, under any Group Facility Agreement entered into during the Refinancing Period (as necessary).

21.16 Expenditure

No Borrower shall incur any expenditure, except for expenditure reasonably incurred in the ordinary course of owning, operating, maintaining and repairing its Vessel.

21.17 Share capital

No Borrower shall:

- (a) purchase, cancel or redeem any of its LLC Shares;
- (b) increase or reduce its LLC Shares; and
- (c) issue any further LLC Shares except to the Guarantor (and, in respect of Borrower D, Odyssey), as members of the respective Borrowers, and provided such new LLC Shares are made subject to the terms of the relevant Shares Security immediately upon the issue of such new LLC Shares in a manner satisfactory to the Facility Agent and the terms of the relevant Shares Security are complied with.

21.18 Dividends

- (a) No Borrower shall make or pay any dividend or other distribution (in cash or in kind) in respect of its LLC Shares following the occurrence of an Event of Default which is continuing or where the making or payment of such dividend or distribution would result in the occurrence of an Event of Default or at any time when any part of the Requisite Commitment Amount or the Arrangement Fee remains outstanding.
- (b) The Guarantor shall not make or pay any dividend or other distribution (in cash or in kind) in respect of its LLC Shares following the occurrence of an Event of Default which is continuing or where the making or payment of such dividend or distribution would result in the occurrence of an Event of Default.

21.19 Accounts

No Borrower shall open or maintain any account with any bank or financial institution except its Accounts.

21.20 Other transactions

No Borrower shall:

- (a) be the creditor in respect of any loan or any form of credit to any person other than another Transaction Obligor and where such loan or form of credit creates Permitted Financial Indebtedness;
- (b) give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person other than (i) any guarantee or indemnity given under the Finance Documents or (ii) any guarantee and indemnity issued in the ordinary course of its business of trading, chartering and operating the Vessel owned by it having an aggregate maximum value of \$1,000,000 in respect of each Borrower or such higher value as may be requested by the relevant Borrower and approved in writing by the Facility Agent;
- (c) enter into any material agreement other than:
 - (i) the Transaction Documents;
 - (ii) any other agreement expressly allowed under any other term of this Agreement or in the ordinary course of the Borrower's business of trading, operating and chartering the vessel owned by it; and
- (d) without the prior written consent of the Facility Agent, such consent not to be unreasonably withheld or delayed, enter into any transaction on terms which are, in any respect, less favourable to that Borrower than those which it could obtain in a bargain made at arms' length provided always that such consent in writing of the Facility Agent shall not be required unless an Event of Default has occurred and is continuing; or
- (e) 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.

21.21 Unlawfulness, invalidity and ranking; Security imperilled

No Obligor shall, and the Obligors shall procure that no other Transaction Obligor will, do (or fail to do) or cause or permit another person to do (or omit to do) anything which is likely to:

- (a) make it unlawful for a Transaction Obligor to perform any of its obligations under the Transaction Documents;

- (b) cause any obligation of a Transaction Obligor under the Transaction Documents to cease to be legal, valid, binding or enforceable;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Transaction Security to rank after, or lose its priority to, any other Security; and
- (e) imperil or jeopardise the Transaction Security.

21.22 Separate corporate existence

Each Borrower shall maintain separate corporate existence and identity, shall keep separate records, books and accounts and shall not co-mingle its assets nor become a member of a VAT Group.

21.23 Accounting reference date

No Obligor shall change its year end accounting reference date.

21.24 Securitisation

Each Obligor shall, and the Obligors shall procure that each other Transaction Obligor will, assist the Facility Agent and/or any Lender in achieving a successful securitisation (or similar transaction) in respect of the Facility and the Finance Documents to which such other Transaction Obligor is a party and such Transaction Obligor's reasonable costs for providing such assistance shall be met by the relevant Lender.

21.25 Constitutional documents

Without prejudice to Clause 21.17 (*Share capital*) and the terms of any Shares Security, no Obligor shall allow any amendment or variation to its constitutional documents unless such amendment or variation would clearly be immaterial to this Agreement and the other Finance Documents.

21.26 Group Facility Agreement

The Guarantor undertakes to ensure that (i) each Group Facility Agreement secured on the Existing Fleet Vessels is duly executed by the parties to it and (ii) the loan made or to be made available under each Group Facility Agreement is drawn by the relevant borrower in each case on or before the last day of the Refinancing Period, unless the relevant creditor(s) under the relevant Existing Group Facility Agreement have given their written consent to an extension of drawdown under the relevant Group Facility Agreement past the last day of the Refinancing Period **Provided that** the Facility Agent (acting with the authorisation of the Majority Lenders) has also given its prior written consent to such corresponding extension of the Refinancing Period.

21.27 Further assurance

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly, and in any event within the time period specified by the Security Agent do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)):
 - (i) to create, perfect, vest in favour of the Security Agent or protect the priority of the Security or any right of any kind created or intended to be created under or evidenced by the Finance Documents to which such Transaction Obligor is a party (which may

include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of any of the Creditor Parties provided by or pursuant to the Finance Documents or by law;

- (ii) to confer on the Security Agent or confer on the Creditor Parties Security over any property and assets of that Transaction Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Finance Documents;
 - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Transaction Security or to exercise any power specified in any Finance Document in respect of which the Security has become enforceable; and/or
 - (iv) to enable or assist the Security Agent to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Obligor shall, and shall procure that each other Transaction Obligor (as and if applicable) will take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Creditor Parties by or pursuant to the Finance Documents.
- (c) At the same time as an Obligor delivers to the Security Agent any document executed by itself or another Transaction Obligor pursuant to this Clause 21.27 (*Further assurance*), that Obligor shall deliver, or shall procure that such other Transaction Obligor will deliver, to the Security Agent a certificate signed by an officer of that Obligor or that Transaction Obligor which shall:
- (i) set out the text of a resolution of that Obligor's or Transaction Obligor's directors specifically authorising the execution of the document specified by the Security Agent; and
 - (ii) 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 or officers and is valid under that Obligor's or Transaction Obligor's articles of association or other constitutional documents.

22 INSURANCE UNDERTAKINGS

22.1 General

The undertakings in this Clause 22 (*Insurance Undertakings*) remain in force on and from the Drawdown Date and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

22.2 Maintenance of obligatory insurances

Each Borrower shall keep the Vessel owned by it insured at its expense against:

- (a) hull and machinery plus freight interest and hull interest and/or increased value and any other usual marine risks (including excess risks);
- (b) war risks (including the London Blocking and Trapping addendum or its equivalent);

- (c) protection and indemnity risks (including liability for oil pollution for an amount of no less than \$1,000,000,000 and excess war risk P&I cover) on standard Club Rules, covered by a Protection and Indemnity association which is a member of the International Group of Protection and Indemnity Associations (or, if the International Group ceases to exist, any other leading protection and indemnity association or other leading provider of protection and indemnity insurance) (including, without limitation, the proportion (if any) of any collision liability not covered under the terms of the hull cover);
- (d) freight, demurrage and defence;
- (e) any other risks against which the Facility Agent acting on the instructions of the Majority Lenders considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for that Borrower to insure and which are specified by the Facility Agent by notice to the Borrowers.

22.3 Terms of obligatory insurances

Each Borrower shall effect such insurances:

- (a) in dollars;
- (b) in the case of hull and machinery and war risks, in an amount on an agreed value basis at least the greater of:
 - (i) 120 per cent, of the Tranche relating to that Vessel; and
 - (ii) the Market Value of that Vessel;
- (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 under basic protection and indemnity club entry and in the international marine insurance market (such amount currently being \$1,000,000,000);
- (d) in the case of protection and indemnity risks, in respect of the full tonnage of its Vessel;
- (e) in the case of the hull and machinery insurance, on the basis that the deductible is not higher than the Major Casualty figure;
- (f) if applicable, in the case where a Vessel is insured on a fleet policy, on the basis that each vessel insured on that fleet policy is deemed to be insured on an individual basis;
- (g) on approved terms; and
- (h) through Approved Brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations.

22.4 Further protections for the Finance Parties

In addition to the terms set out in Clause 22.3 (*Terms of obligatory insurances*), each Borrower shall procure that the obligatory insurances shall:

- (a) subject always to paragraph (b), name that Borrower as the sole named insured unless the interest of every other named insured (including the Approved Manager as co-assured) is limited:
 - (i) in respect of any obligatory insurances for hull and machinery and war risks;
 - (A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and

(B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and

(ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

and every other named insured has undertaken in writing to the Security Agent (in such form as it requires) that any deductible shall be apportioned between that Borrower and every other named insured in proportion to the gross claims made or paid by each of them and that it shall do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;

- (b) whenever the Facility Agent requires, name (or be amended to name) the Security Agent as additional named insured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Agent, but without the Security Agent being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (c) name the Security Agent as loss payee with such directions for payment as the Facility Agent may specify;
- (d) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Agent shall be made without set off, counterclaim or deductions or condition whatsoever;
- (e) provide that the obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Agent or any other Finance Party; and
- (f) provide that the Security Agent may make proof of loss if that Borrower fails to do so.

22.5 **Renewal of obligatory insurances**

Each Borrower shall:

- (a) at least 10 days before the expiry of any obligatory insurance:
 - (i) notify the Facility Agent of the Approved Brokers (or other insurers) and any protection and indemnity or war risks association through or with which that Borrower proposes to renew that obligatory insurance and of the proposed terms of renewal; and
 - (ii) obtain the Facility Agents' approval to the matters referred to in sub-paragraph (i) of paragraph (a) above;
- (b) at least 14 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Facility Agent's approval pursuant to paragraph (a) above; and
- (c) procure that the Approved Brokers and/or the approved war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Facility Agent in writing of the terms and conditions of the renewal.

22.6 Copies of policies; letters of undertaking

Each Borrower shall ensure that the Approved Brokers provide the Security Agent with:

- (a) *proforma* copies of all policies relating to the obligatory insurances which they are to effect or renew (to be provided annually, upon the renewal of such policies and at any time upon reasonable request by the Facility Agent); and
- (b) a letter or letters or undertaking in a form required by the Facility Agent (to be provided upon reasonable request by the Facility Agent) and including undertakings by the Approved Brokers that:
 - (i) 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 22.4 (*Further protections for the Finance Parties*);
 - (ii) they will hold such policies, and the benefit of such insurances, to the order of the Security Agent in accordance with such loss payable clause;
 - (iii) they will advise the Security Agent immediately of any material change to the terms of the obligatory insurances;
 - (iv) they will, if they have not received notice of renewal instructions from the relevant Borrower or its agents, notify the Security Agent not less than 14 days before the expiry of the obligatory insurances;
 - (v) if they receive instructions to renew the obligatory insurances, they will promptly notify the Facility Agent of the terms of the instructions;
 - (vi) they will not set off against any sum recoverable in respect of a claim relating to the Vessel owned by that Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Vessel 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
 - (vii) they will arrange for a separate policy to be issued in respect of the Vessel owned by that Borrower forthwith upon being so requested by the Facility Agent.

22.7 Copies of certificates of entry

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Vessel owned by it is entered provide the Security Agent with:

- (a) a certified copy of the certificate of entry for that Vessel;
- (b) a letter or letters of undertaking in such form as may be required by the Facility Agent acting on the instructions of Majority Lenders; and
- (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 that Vessel.

22.8 Deposit of original policies

Each Borrower shall ensure that all policies relating to obligatory insurances are deposited with the Approved Brokers through which the insurances are effected or renewed.

22.9 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 Facility Agent or the Security Agent.

22.10 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.

22.11 Compliance with terms of insurances

- (a) No 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.
- (b) Without limiting paragraph (a) above, each Borrower shall:
- (i) 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 sub-paragraph (iii) of paragraph (b) of Clause 22.6 (*Copies of policies; letters of undertaking*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Facility Agent has not given its prior approval;
 - (ii) not make any changes relating to the classification or classification society or manager or operator of the Vessel owned by it approved by the underwriters of the obligatory insurances;
 - (iii) make (and promptly supply copies to the Facility Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Vessel owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
 - (iv) not employ the Vessel 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.

22.12 Alteration to terms of insurances

Neither Borrower shall make or agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance.

22.13 Settlement of claims

Each Borrower shall:

- (a) not settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty; and
- (b) do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

22.14 Provision of copies of communications

Each Borrower shall provide the Security Agent, immediately upon the Facility Agent's request, with copies of all written communications between that Borrower and:

- (a) the Approved Brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters,

which relate directly or indirectly to:

- (i) 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) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

22.15 Provision of information

Each Borrower shall promptly provide the Facility Agent (or any persons which it may designate) with any information which the Facility Agent (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 22.16 (*Mortgagee's interest, additional perils and mortgagee's rights insurances*) or dealing with or considering any matters relating to any such insurances,

and the Borrowers shall, forthwith upon demand, indemnify the Facility Agent in respect of all fees and other expenses incurred by or for the account of the Facility Agent in connection with any such report as is referred to in paragraph (a) above.

22.16 Mortgagee's interest, additional perils and mortgagee's rights insurances

The Security Agent shall be entitled from time to time to effect, maintain and renew:

- (a) a mortgagee's interest insurance in an amount equal to 120 per cent. of the Loan;
- (b) a mortgagee's interest additional perils insurance in an amount equal to 120 per cent. of the Loan;
- (c) a mortgagee's rights insurance in an amount equal to 110 per cent. of the Loan,

and the Borrowers shall upon demand fully indemnify the Finance Parties 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.

23 POST-DELIVERY VESSEL UNDERTAKINGS

23.1 General

The undertakings in this Clause 23 (*Post-Delivery Vessel Undertakings*) remain in force on and from the Drawdown Date and throughout the rest of the Security Period except as the Facility

Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit in writing (and in the case of Clauses 23.3, 23.4, 23.5 and 23.17 such permission not to be unreasonably withheld).

23.2 Vessel's names and registration

Each Borrower shall, in respect of the Vessel owned by it:

- (a) keep that Vessel registered in its name under the relevant Approved Flag from time to time at its port of registration;
- (b) not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperilled; and
- (c) not change the name of that Vessel.

23.3 Repair and classification

Each Borrower shall keep the Vessel owned by it in a good and safe condition and state of repair:

- (a) consistent with first class ship ownership and management practice; and
- (b) so as to maintain its Approved Classification free of overdue recommendations and conditions.

23.4 Modifications

Neither Borrower shall make any modification or repairs to, or replacement of, any Vessel or equipment installed on it which would or might materially and adversely alter the structure, type or performance characteristics of that Vessel or materially reduce its value.

23.5 Removal and installation of parts

- (a) Subject to paragraph (b) below, neither Borrower shall remove any material part of the Vessel owned by it, or any item of equipment installed on that Vessel unless:
 - (i) 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;
 - (ii) the replacement part or item is free from any Security in favour of any person other than the Security Agent; and
 - (iii) the replacement part or item becomes, on installation on that Vessel, the property of that Borrower and subject to the security constituted by the Mortgage on that Vessel.
- (b) A Borrower may install equipment owned by a third party if the equipment can be removed without any risk of damage to the Vessel owned by that Borrower.

23.6 Surveys

Each Borrower shall submit the Vessel owned by it regularly to all periodic or other surveys which may be required for classification purposes and, if so required by the Facility Agent, provide the Facility Agent, with copies of all survey reports.

23.7 Inspection

- (a) Each Borrower shall permit the Security Agent (acting through surveyors or other persons appointed by it for that purpose) to board the Vessel owned by it at all reasonable times, without interfering with the Vessel's trading schedule, to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections.

- (b) The cost of all inspections under this Clause 23.7 (*Inspection*) shall be for the account of the Borrowers once annually and at any time for as long as an Event of Default has occurred and is continuing.

23.8 Prevention of and release from arrest

- (a) Each Borrower shall, in respect of the Vessel owned by it, promptly discharge:
 - (i) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against that Vessel, its Earnings or its Insurances;
 - (ii) all Taxes, dues and other amounts charged in respect of that Vessel, its Earnings or its Insurances; and
 - (iii) all other outgoings whatsoever in respect of that Vessel, its Earnings or its Insurances.
- (b) Each Borrower shall as soon as reasonably practicable upon receiving notice of the arrest of the Vessel owned by it or of its detention in exercise or purported exercise of any lien or claim, take all steps necessary to procure its release by providing bail or otherwise as the circumstances may require.

23.9 Compliance with laws etc.

Each Borrower shall:

- (a) comply, or procure compliance with all laws or regulations:
 - (i) relating to its business generally; and
 - (ii) relating to the Vessel owned by it, its ownership, employment, operation, management and registration,including, but not limited to, the ISM Code, the ISPS Code, all Environmental Laws, all Sanctions and the laws of the relevant Approved Flag;
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals;
- (c) without limiting paragraph (a) above, not employ the Vessel owned by it nor allow its employment, operation or management in any manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and all Sanctions; and
- (d) not appoint any manager or agent to manage the Vessel owned by it (other than an Approved Manager) unless such party undertakes to procure that any agreement entered into relating to the management, employment or operation of that Vessel contains a clause in which the counterparty undertakes to comply with all Sanctions.

23.10 ISPS Code

Without limiting paragraph (a) of Clause 23.9 (*Compliance with laws etc.*), each Borrower shall:

- (a) procure that the Vessel owned by it and the company responsible for that Vessel's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain an ISSC and an IAPPC for that Vessel; and

- (c) notify the Facility Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

23.11 Green scrapping

- (a) Each Borrower shall use reasonable endeavours (including the implementation of internal policies) to ensure that any scrapping of the Vessel owned by it is carried out in accordance with the IMO Convention for the Safe and Environmentally Sound Recycling of Ships.
- (b) Each Borrower shall use reasonable endeavours to obtain (in its first survey) and to maintain (in subsequent surveys) a green passport notification (based on the inventory of hazardous materials) for the Vessel owned by it from the Approved Classification Society.

23.12 Sanctions and Vessel trading

Without limiting Clause 23.9 (*Compliance with laws etc.*), each Borrower shall procure:

- (a) that the Vessel owned by it shall not be used by or for the benefit of a Prohibited Person;
- (b) that the Vessel owned by it shall not be used in trading in any manner contrary to Sanctions (or which could be contrary to Sanctions if Sanctions were binding on each Transaction Obligor); and
- (c) that the Vessel owned by it shall not be traded in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in its Insurances.

23.13 Trading in war zones

In the event of hostilities in any part of the world (whether war is declared or not including, without limitation, any civil war), each Borrower shall not cause or permit the Vessel owned by it to be employed in carrying any goods which may be declared to be contraband of war or which may render the Vessel liable to confiscation, seizure, detention or destruction, nor shall any Borrower permit its Vessel to enter any area which is declared a war zone by any governmental authority or by that Vessel's insurers unless that employment or voyage is either (a) consented to in advance and in writing by the underwriters of that Vessel's war risks insurances and fully covered by those insurances or (b) (to the extent not covered by those insurances) covered by additional insurance taken out by the relevant Borrower at the Borrower's expense, which additional insurance shall be deemed to be part of the Insurances assigned under the relevant General Assignment.

23.14 Monitoring

- (a) Each Borrower shall (or shall procure that any Charterer and the Approved Technical Manager shall) allow the Security Agent (or its agents), at any time and from time to time, to access all information pertaining to the Vessel owned by it (including the movement of that Vessel) using any and all available means.
- (b) All costs incurred by the Security Agent (and any of its agents) under paragraph (a) of Clause 23.14 (*Monitoring*) above shall be for the account of the Lenders.

23.15 Provision of information

Without prejudice to Clause 19.5 (*Information: miscellaneous*) each Borrower shall in respect of the Vessel owned by it promptly provide the Facility Agent with any information which it requests regarding:

- (a) that Vessel, its employment, position and engagements;
- (b) its Earnings and payments and amounts due to its master and crew;

- (c) any expenditure incurred, or likely to be incurred, in connection with the operation, maintenance or repair of that Vessel and any payments made by it in respect of that Vessel;
- (d) any towages and salvages; and
- (e) its compliance, the Approved Manager's compliance and the compliance of that Vessel with the ISM Code and the ISPS Code, and, upon the Facility Agent's request, that Borrower shall promptly provide copies of class records, any inspection reports obtained for that Vessel, any current Charter relating to that Vessel, any current guarantee of any such Charter, that Vessel's Safety Management Certificate and any relevant Document of Compliance.

23.16 Notification of certain events

Each Borrower shall, in respect of the Vessel owned by it, immediately notify the Facility Agent by fax, confirmed forthwith by letter, of:

- (a) any casualty to that Vessel which is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which that Vessel has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requisition of that Vessel for hire;
- (d) any requirement or recommendation made in relation to that Vessel by any insurer or classification society or by any competent authority which is not immediately complied with;
- (e) any arrest or detention of that Vessel, any exercise or purported exercise of any lien on that Vessel or the Earnings;
- (f) any intended dry docking of that Vessel;
- (g) any Environmental Claim made against that Borrower or in connection with that Vessel, or any Environmental Incident;
- (h) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, the Approved Manager or otherwise in connection with that Vessel; or
- (i) 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 that Borrower shall keep the Facility Agent advised in writing on a regular basis and in such detail as the Facility Agent shall require as to that Borrower's, any such Approved Manager's or any other person's response to any of those events or matters.

23.17 Restrictions on chartering, appointment of managers etc.

No Borrower shall, in relation to the Vessel owned by it:

- (a) let that Vessel on demise charter for any period;
- (b) enter into any time, voyage or consecutive voyage charter in respect of that Vessel other than a Permitted Charter;
- (c) change, cancel or terminate any Assignable Charter unless that Borrower undertakes in writing to the Facility Agent that that Assignable Charter will be replaced within 30 days after its cancellation or termination with a charter subject to terms acceptable to the Facility Agent;

- (d) change, cancel or terminate a Management Agreement;
- (e) appoint a manager of that Vessel other than an Approved Manager or agree to any alteration to the terms of an Approved Manager's appointment;
- (f) de activate or lay up that Vessel; or
- (g) put that Vessel into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed US\$1,000,000 (or the equivalent in any other currency) unless that person has first given to the Security Agent and in terms satisfactory to it a written undertaking not to exercise any lien on that Vessel or its Earnings for the cost of such work or for any other reason.

23.18 Notice of Mortgage

Each Borrower shall keep the relevant Mortgage registered against the Vessel owned by it as a valid first priority or preferred (as the case may be) mortgage, carry on board that Vessel a certified copy of the relevant Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of that Vessel a framed printed notice stating that that Vessel is mortgaged by that Borrower to the Security Agent.

23.19 Sharing of Earnings

No Borrower shall enter into any agreement or arrangement for the sharing of any Earnings.

23.20 Notification of compliance

Each Borrower shall promptly provide the Facility Agent from time to time with evidence (in such form as the Facility Agent requires) that it is complying with this Clause 23 (*Post-Delivery Vessel Undertakings*).

23.21 Nuclear materials

No Borrower shall permit the Vessel owned by it to carry any nuclear material or any nuclear waste.

23.22 Operating Expenses

The actual daily Operating Expenses of each Vessel shall not exceed \$6,200 per day in respect of Vessel A, Vessel B and Vessel C and \$7,500 per day in respect of Vessel D (as each such amount may be increased by up to 3 per cent, per annum (the first such increase taking effect from 1 January 2018 onwards)) or otherwise, an aggregate amount of \$26,100 per day in respect of all the Vessels (as such aggregate amount may be respectively increased pursuant to this Clause).

23.23 Excess Cash Flow

If on an Excess Cash Flow Date, the aggregate of the daily Earnings (for the avoidance of doubt, (i) not inclusive of the required aggregate Borrowers' Minimum Liquidity Amount being held in the Borrower's Earnings Accounts in respect of all Mortgaged Vessels or any commission or brokerage fees not otherwise included in the Operating Expenses and (ii) inclusive of any surplus sale or insurance proceeds from any sale or Total Loss of a Vessel after the prepayment of the relevant Tranche under Clause 7.4 (*Mandatory prepayment on sale or Total Loss*)) of the Mortgaged Vessels for the preceding Cash Sweep Period exceeds the aggregate of:

- (a) the aggregate of the Operating Expenses in respect of the Mortgaged Vessels, for such Cash Sweep Period; and

- (b) the sums incurred by the Borrowers in respect of the payment of principal of, and accrued interest on, the Loan and any accrued costs and expenses pursuant to this Agreement, during such three-month period ending on the last day of the preceding Cash Sweep Period, the Borrowers shall pay such excess amount (the “**Excess Cash Flow**”), as evidenced in the relevant Excess Cash Flow Notice, to the Facility Agent, on the next Interest Payment Date falling due after receipt of such relevant Excess Cash Flow Notice, such Excess Cash Flow to be applied in prepayment of the then outstanding Repayment Instalments (including any balloon payments) in inverse order of maturity.

This Clause shall only be applicable for the duration of the Excess Cash Flow Period.

In this Clause 23.23 (*Excess Cash Flow*):

“**Cash Sweep Period**” means, in relation to each Vessel, each three-month period commencing on 1 January, 1 April, 1 July and 1 October in each financial year of the Borrowers.

“**Excess Cash Flow Date**” means the last day of each Cash Sweep Period; and

“**Excess Cash Flow Notice**” means a certificate to be provided by the Borrowers to the Facility Agent pursuant to Clause 19.2 (*Financial statements*) within 45 days from each Excess Cash Flow Date evidencing the Excess Cash Flow available on such date.

“**Excess Cash Flow Period**” means the period commencing on the Drawdown Date and at all times thereafter up until both (a) the Requisite Commitment Amount and (b) the amount of \$100,000 representing part of the Arrangement Fee have each been paid in full by the Borrowers.

24 SECURITY COVER

24.1 Minimum required security cover

Clause 24.2 (*Provision of additional security; prepayment*) applies if, at any time commencing on 1 January 2020 and throughout the remainder of the Security Period, the Facility Agent notifies the Borrowers that:

- (a) the aggregate Market Value of the Vessels (as determined in accordance with Clause 24.7 (*Provision of valuations*)); plus
- (b) the net realisable value of additional Security previously provided under this Clause 24.1 (*Minimum required security cover*), is below 133 per cent, of the Loan.

24.2 Provision of additional security; prepayment

- (a) If the Facility Agent serves a notice on the Borrowers under Clause 24.1 (*Minimum required security cover*), the Borrowers shall, on or before the date falling one Month after the date on which the Facility Agent’s notice is served (the “**Prepayment Date**”), prepay such part of the Loan as shall eliminate the shortfall.
- (b) The Borrowers may, instead of making a prepayment as described in paragraph (a) above, provide, or ensure that a third party has provided, additional security which, in the opinion of the Facility Agent acting on the instructions of the Majority Lenders:
- (c) has a net realisable value at least equal to the shortfall; and
- (d) is documented in such terms as the Facility Agent may approve or require, before the Prepayment Date; and conditional upon such security being provided in such manner, it shall satisfy such prepayment obligation.

24.3 Value of additional vessel security

The net realisable value of any additional security which is provided under Clause 24.2 (*Provision of additional security; prepayment*) and which consists of Security over a vessel shall be the Market Value of the vessel concerned.

24.4 Valuations binding

Any valuation under this Clause 24 (*Security Cover*) shall be binding and conclusive as regards each Borrower.

24.5 Provision of information

- (a) Each Borrower shall promptly provide the Facility Agent and any Approved Valuer acting under this Clause 24 (*Security Cover*) with any information which the Facility Agent or the Approved Valuer may request for the purposes of the valuation.
- (b) If a Borrower fails to provide the information referred to in paragraph (a) above by the date specified in the request, the valuation may be made on any basis and assumptions which the Approved Valuer or the Facility Agent considers prudent.

24.6 Prepayment mechanism

Any prepayment pursuant to Clause 24.2 (*Provision of additional security; prepayment*) shall be made in accordance with the relevant provisions of Clause 7 (*Prepayment and Cancellation*) and shall be treated as a voluntary prepayment pursuant to Clause 7.3 (*Voluntary prepayment of Loan*).

24.7 Provision of valuations

- (a) Commencing as of the Drawdown Date, the Facility Agent shall be entitled to test the security requirements under Clause 24.1 (*Minimum required security cover*) by reference to valuations in respect of the Vessels from the required number of Approved Valuers quarterly and in the case of any sale of a Vessel pursuant to Clause 7.4 (*Mandatory prepayment on sale or Total Loss*) (each at the cost of the Borrowers) and on dates to be selected by the Facility Agent.
- (b) The Facility Agent shall at the request of all the Lenders additionally be entitled to test the security cover requirement under Clause 24.1 (*Minimum required security cover*) by reference to a valuation in respect of each Vessel from the required number of Approved Valuers at any time and each such valuation shall be at the expense of the Lenders except where the Borrowers are by means of such valuation(s) shown to be in breach of Clause 24.1 (*Minimum required security cover*).
- (c) Subject to paragraph (d) below, the Market Value of any Vessel shall be determined by reference to one valuation of that Vessel as given by an Approved Valuer selected and appointed by the Facility Agent and such valuation shall be addressed to the Facility Agent.
- (d) If requested by the Borrowers in relation to paragraph (c) above, a second Approved Valuer shall be selected by the Borrowers, appointed by the Facility Agent and such valuation shall be addressed to the Facility Agent, and the Market Value of any Vessel shall be the arithmetic average of the two valuations.
- (e) If one such valuation in respect of a Vessel obtained pursuant to paragraphs (c) and (d) above differs by at least 10 per cent. from the other valuation, then a third valuation for that Vessel shall be obtained from an Approved Valuer, selected by the Borrowers and appointed by the Facility Agent and such valuation shall be addressed to the Facility Agent and the Market Value of that Vessel shall be the arithmetic average of all three such valuations.

- (f) The Facility Agent may at any time after a Default has occurred and is continuing obtain valuations of any Vessel and any other vessel over which additional security has been created in accordance with Clause 24.2 (*Provision of additional security; prepayment*) from Approved Valuers to enable the Facility Agent to determine the Market Value of that Vessel and any other vessel.
- (g) All valuations referred to in paragraph (a), (b), (c), (d), (e) and (f) above and the valuations required to determine the Fleet Market Value at all required times (starting from the Drawdown Date) pursuant to Clause 20.2 (*Guarantor's financial covenants*), shall be obtained at the cost and expense of the Borrowers quarterly throughout the Security Period (in addition to any set of valuations required in respect of the Vessels for purposes of Drawdown and in the case of any sale or Total Loss of a Vessel pursuant to Clause 7.4 (*Mandatory prepayment on sale or Total Loss*)) and the Borrowers shall within three Business Days of demand by the Facility Agent pay to the Facility Agent all costs and expenses incurred by it in obtaining any such valuation(s).

24.8 VMC Surcharge

If at any time the Security Cover Ratio does not exceed 100 per cent, of the Loan, then a surcharge of one per cent, shall accrue on a quarterly basis on the shortfall amount from the date on which the Facility Agent receives the valuation(s) evidencing the shortfall in the Security Cover Ratio until the date on which the shortfall is remedied (the “**VMC Surcharge**”). The Borrowers shall provide a VMC Surcharge Certificate to the Facility Agent evidencing the VMC Surcharge at the relevant time together with the quarterly financial statements provided pursuant to Clause 19.2 (*Financial statements*) on a quarterly basis. Such VMC Surcharge shall be due and payable by the Borrowers pursuant to Clause 6.3 (*Maturity Date*) on the Maturity Date.

25 ACCOUNTS AND APPLICATION OF EARNINGS

25.1 Account bank

Subject to Clause 25.7 (*Location of Earnings Accounts*), each Earnings Account must be held with the Account Bank.

25.2 Accounts

- (a) Each Borrower must operate each Account in accordance with this Clause 25 (*Accounts and Application of Earnings*) and the provisions of the relevant Account Security.
- (b) Account Security must be provided in respect of any Account opened after the date of this Agreement.

25.3 Payment of Earnings

Each Borrower shall ensure that, subject only to the provisions of the relevant General Assignment, all the Earnings in respect of the Vessel owned by it are paid in to the relevant Earnings Account.

25.4 Application of Earnings

The Borrowers shall transfer from the Earnings Accounts to the Facility Agent:

- (a) on each Repayment Date, the amount of the Repayment Instalment then due on the Repayment Date; and

- (b) on the last day of each Interest Period, the amount of interest then due on that date; and
 - (c) on any day on which an amount is otherwise due from any Borrower under a Finance Document, an amount necessary to meet that due amount,
- and each Borrower irrevocably authorizes and instructs:
- (i) the Account Bank to make those transfers in accordance with the instructions of the Facility Agent (copied to the Security Agent, who, as security taker under the Account Security, agrees for itself and on behalf of the other pledgees that such transfers may be made);
 - (ii) the Facility Agent to apply the transferred amounts in payment of the relevant Repayment Instalment, interest amount or other amount due,

and any balance on each Earnings Account thereafter shall be available to the Borrowers, unless there is an Event of Default which is continuing.

25.5 Shortfall in Earnings

- (a) If the credit balance on the Earnings Accounts is insufficient for the required amount to be transferred under Clause 25.4 (*Application of Earnings*), the Borrowers shall make up the amount of the insufficiency.
- (b) The Borrowers may not make up all or any part of the insufficiency by utilising the Borrowers' Minimum Liquidity Amount in any Earnings Account.

25.6 Application of funds

Until an Event of Default occurs, the Facility Agent shall on each Repayment Date and on each Interest Payment Date distribute to the Finance Parties in accordance with Clause 33.2 (*Distributions by the Facility Agent*) so much of the then balance on the Earnings Accounts as equals:

- (a) the Repayment Instalment due on that Repayment Date; and
 - (b) the amount of interest payable on that Interest Payment Date,
- in discharge of the Borrowers' liability for that Repayment Instalment or that interest.

25.7 Location of Earnings Accounts

Each Borrower shall promptly:

- (a) comply with any requirement of the Facility Agent as to the location or relocation of its Accounts (or any of them); and
- (b) execute any documents which the Facility Agent specifies to create or maintain in favour of the Security Agent Security over (and/or rights of set-off, consolidation or other rights in relation to) the each Account.

25.8 Miscellaneous Accounts provisions

No Finance Party is responsible or liable to any Obligor for:

- (a) any non-payment of any liability of an Obligor which could be paid out of moneys standing to the credit of an Earnings Account; or

- (b) any withdrawal wrongly made, if made in good faith.

26 EVENTS OF DEFAULT

26.1 General

Each of the events or circumstances set out in this Clause 26 (*Events of Default*) is an Event of Default except for Clause 26.19 (*Acceleration*) and Clause 26.20 (*Enforcement of security*).

26.2 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless payment is made within two Business Days of its due date.

26.3 Specific obligations

A breach occurs of Clause 4.5 (*Waiver of conditions precedent*), Clause 20 (*Financial Covenants*), Clause 21.9 (*Title*), Clause 21.10 (*Negative pledge*), Clause 21.21 (*Unlawfulness, invalidity and ranking; Security imperilled*), Clause 22.2 (*Maintenance of obligatory insurances*), Clause 22.3 (*Terms of obligatory insurances*), Clause 22.5 (*Renewal of obligatory insurances*), Clause 23.8 (*Prevention of and release from arrest*), Clause 23.9 (*Compliance with laws etc.*) in relation to Sanctions or Clause 24 (*Security Cover*).

26.4 Other obligations

- (a) A Transaction Obligor does not comply with any provision of the Finance Documents to which it is a party (other than those referred to in Clause 26.2 (*Non-payment*) and Clause 26.3 (*Specific obligations*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days of the Facility Agent giving notice to the Borrowers or (if earlier) any relevant Transaction Obligor becoming aware of the failure to comply.

26.5 Misrepresentation

Any representation or statement made or deemed to be made by a Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made or repeated and is not remedied within five Business Days of the Facility Agent giving notice to the Borrowers.

26.6 Cross default

- (a) Any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described) **Provided that** in the case of any Financial Indebtedness created under (i) any guarantee and indemnity of the Guarantor, a demand is made by the relevant creditor(s) under such guarantee and indemnity or (ii) any guarantee and indemnity of the Guarantor securing the obligations of any Subsidiary, the Financial Indebtedness of that Subsidiary is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of that Subsidiary's payment default and always provided that the relevant creditor has exercised any of its enforcement rights (the "**Action**") in connection with that payment default and, in the reasonable opinion of the Facility Agent, that Action may adversely affect the ability of the Guarantor to comply with its obligations under Clause 16 (*Guarantee and Indemnity*).

- (c) Any commitment for any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is cancelled or suspended by a creditor of any Transaction Obligor (other than an Approved Manager) as a result of an event of default (however described).
- (d) Any creditor of any Transaction Obligor (other than an Approved Manager) becomes entitled to declare any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) due and payable prior to its specified maturity as a result of an event of default (however described) **Provided that** in the case of any Financial Indebtedness created under any guarantee and indemnity of the Guarantor and a demand is made by the relevant creditor(s) under such guarantee and indemnity.
- (e) No Event of Default will occur under this Clause 26.6 (*Cross default*) in respect of any Borrower if the failure to comply is capable of remedy and is remedied within five Business Days of the Facility Agent giving notice to the Borrowers or the Borrowers becoming aware of the failure to comply with this Clause 26.6 (*Cross default*). In relation to a cross-default for the Guarantor, no Event of Default will occur under this Clause if failure to comply is capable of remedy and is remedied within two weeks of the Facility Agent giving notice to the Borrowers or the Borrowers becoming aware of the failure to comply with this Clause 26.6 (*Cross default*).

26.7 Insolvency

- (a) A Transaction Obligor (other than an Approved Manager):
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is declared to be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or
 - (iv) obtains or receives a deferral or suspension of payments, a rescheduling or re-organisation of debt (or certain debt) or an arrangement with all or a substantial proportion (by number or value) of creditors or of any class of them in respect of such deferral, suspension, rescheduling or re-organisation, strictly by court order or by the filing of documents with a court; or
- (b) A moratorium is officially declared (and, if applicable, registered with appropriate authorities) in respect of any indebtedness of any Transaction Obligor,

Provided however that should a Transaction Obligor, by any reason, including without limitation, any actual or anticipated financial difficulties, commences, with prior written notice to the Facility Agent, negotiations with one or more of its creditors (including any Finance Party in its capacity as such) with a view to rescheduling, deferring, re-organising or suspending, any of its indebtedness, the existence of such negotiations or the entering, as a result of such negotiations, into any agreement or contract with one or more of its creditors (including any Finance Party in its capacity as such) setting the terms of any rescheduling, deferral, re-organisation or suspension of its indebtedness, shall not in itself constitute an Event of Default.

26.8 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other similar legal procedure or similar legal step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation of any Transaction Obligor (other than an Approved Manager);
 - (ii) a composition, compromise or assignment or arrangement with any creditor of any Transaction Obligor (other than an Approved Manager);

- (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Transaction Obligor (other than an Approved Manager) or any of that Transaction Obligor's assets (other than an Approved Manager); or
 - (iv) enforcement of any Security over any assets of any Transaction Obligor (other than an Approved Manager), or any analogous similar legal procedure or similar legal step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

26.9 Creditors' process or Vessel arrest

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor and is not discharged within 21 days (or such later period agreed by the Facility Agent acting with the authorisation of the Majority Lenders in their absolute discretion) unless (i) the Borrowers provide evidence acceptable to the Facility Agent that that expropriation, attachment, sequestration, distress or execution or any analogous process is being contested in good faith on substantial grounds and (ii) the Facility Agent, in its reasonable opinion, considers that the relevant Obligor has adequate reserves or the financial ability to satisfy any such claims and, in the case of an arrest or detention of a Vessel, that Vessel is not redelivered to the full control of the relevant Borrower, on or before the date falling 21 days (or such later period agreed by the Facility Agent acting with the authorisation of the Majority Lenders in their absolute discretion) after the date of the arrest or detention.

26.10 Ownership of the Obligors

There is any change in the ultimate beneficial ownership or control of an Obligor from that advised to the Facility Agent at the date of this Agreement or there is any change in the direct legal or beneficial ownership or control of a Borrower from the Guarantor owning the LLC Shares of each Borrower and the voting rights attaching to those LLC Shares on the date of this Agreement.

26.11 Unlawfulness, invalidity and ranking

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation of a Transaction Obligor under the Finance Documents is not or ceases to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force and effect or to be continuing or is or purports to be determined or any Transaction Security is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) Any Transaction Security proves to have ranked after, or loses its priority to, any other Security.

26.12 Security imperilled; flag instability

- (a) Any Security created or intended to be created by a Finance Document is in any way imperilled or in jeopardy.
- (b) The state of the Approved Flag of any Vessel is or becomes involved in hostilities or civil war or there is a seizure of power in such state by unconstitutional means, or any other event

occurs in relation to that Vessel, the relevant Mortgage or its Approved Flag and in the reasonable opinion of the Facility Agent such event is likely to have a Material Adverse Effect unless the relevant Borrower, within 14 days of the occurrence of such event (or such longer period as may be agreed by the Facility Agent acting with the authorisation of the Lenders) re-registers that Vessel on an alternative flag approved pursuant to Clause 23.2 (*Vessel's names and registration*) and subject to:

- (i) that Vessel remaining subject to security securing the Security created by a first priority or preferred ship mortgage on that Vessel and, if appropriate, a first or second (as the case may be) priority deed of covenant collateral to that mortgage (or equivalent first priority security) on substantially the same terms as the relevant Mortgage and on such other terms and in such other form as the Facility Agent, acting with the authorisation of the Lenders, shall reasonably approve or require; and
- (ii) the execution of such other documentation amending and supplementing the Finance Documents, as the Facility Agent, acting with the authorisation of the Lenders, shall reasonably approve or require.

26.13 Cessation of business

Any Transaction Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

26.14 Expropriation

The authority or ability of any Transaction Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets other than any Requisition.

26.15 Repudiation and rescission of agreements

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document (other than an Assignable Charter) or any of the Transaction Security or evidences an intention to rescind or repudiate a Transaction Document (other than an Assignable Charter) or any Transaction Security.

26.16 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened, or any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body is made, in relation to any of the Transaction Documents or the transactions contemplated in any of the Transaction Documents or against any member of the Group or its assets which has a Material Adverse Effect.

26.17 Material adverse change

Any event or circumstance occurs which has a Material Adverse Effect.

26.18 Termination of Assignable Charter

Any Assignable Charter is terminated, cancelled or rescinded other than by effluxion of time unless such Assignable Charter is substituted within 30 days of termination, cancellation or rescission by another charter subject to terms acceptable to the Facility Agent.

26.19 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrowers:

- (a) cancel the Total Commitments, whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon it shall become immediately due and payable; and/or
- (c) declare that all or part of the Loan be payable on demand, whereupon it shall immediately become payable on demand by the Facility Agent acting on the instructions of the Majority Lenders,

and the Facility Agent may serve notices under paragraphs (a), (b) and (c) above simultaneously or on different dates and the Security Agent may take any action referred to in Clause 26.20 (*Enforcement of security*) if no such notice is served or simultaneously with or at any time after the service of any of such notice.

26.20 Enforcement of security

On and at any time after the occurrence of an Event of Default which is continuing the Security Agent may, and shall if so directed by the Majority Lenders, take any action which, as a result of the Event of Default or any notice served under Clause 26.19 (*Acceleration*), the Security Agent is entitled to take under any Finance Document or any applicable law or regulation.

SECTION 10

CHANGES TO PARTIES

27 CHANGES TO THE LENDERS

27.1 Assignments and transfers by the Lenders

Subject to this Clause 27 (*Changes to the Lenders*), a Lender (the “Existing Lender”) may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

under the Finance Documents to another person other than an individual or to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “New Lender”).

27.2 Conditions of assignment or transfer

- (a) The consent of the Borrowers (or any other Transaction Obligor) is required for an assignment or transfer by an Existing Lender, such consent not to be unreasonably withheld. The consent of the Facility Agent is required for an assignment or transfer by an Existing Lender, such consent not to be unreasonably withheld.

- (b) An assignment will only be effective on:

- (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Creditor Parties as it would have been under if it were an Original Lender; and
- (ii) performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.

- (c) A transfer will only be effective if the procedure set out in Clause 27.5 (*Procedure for transfer*) is complied with.

- (d) If:

- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
- (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, a Transaction Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross Up and Indemnities*) or under that Clause as incorporated by reference or in full in any other Finance Document or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (d) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.

- (e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that:
 - (i) the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender; and
 - (ii) it has received a copy of each of the Security Documents which are governed by German law and which are account pledges, is aware of the contents of such account pledges and expressly consents to the declarations of the Security Agent made on behalf of the New Lender (as future pledgee) in such account pledges.

27.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of \$10,000.

27.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Transaction Obligor;
 - (iii) the performance and observance by any Transaction Obligor of its obligations under the Transaction Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties and the Creditor Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its related entities throughout the Security Period.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 27 (*Changes to the Lenders*); or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Transaction Obligor of its obligations under the Transaction Documents or otherwise.

27.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate. Upon execution by the Facility Agent, the Security Agent shall also execute the Transfer Certificate.
- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 27.9 (*Pro rata interest settlement*), on the Transfer Date:
- (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security, each of the Transaction Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
 - (ii) each of the Transaction Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Transaction Obligor and the New Lender have assumed and/or acquired the same in place of that Transaction Obligor and the Existing Lender;
 - (iii) the Facility Agent, the Security Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the Arranger and the Existing Lenders shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a “Lender”.

27.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement. Upon execution by the Facility Agent, the Security Agent shall also execute the Assignment Agreement.
- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

- (c) Subject to Clause 27.9 (*Pro rata interest settlement*), on the Transfer Date:
- (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 27.6 (*Procedure for assignment*) to assign their rights under the Finance Documents (but not, without the consent of the relevant Transaction Obligor or unless in accordance with Clause 27.5 (*Procedure for transfer*), to obtain a release by that Transaction Obligor from the obligations owed to that Transaction Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*).

27.7 **Copy of Transfer Certificate or Assignment Agreement to Borrowers**

The Facility Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrowers a copy of that Transfer Certificate or Assignment Agreement.

27.8 **Security over Lenders’ rights**

In addition to the other rights provided to Lenders under this Clause 27 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
 - (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,
- except that no such charge, assignment or Security shall:
- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by a Transaction Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

27.9 **Pro rata interest settlement**

If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a “*pro rata* basis” to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 27.5 (*Procedure for transfer*) or any assignment pursuant to Clause 27.6

(*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 27.9 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.
- (c) In this Clause 27.9 (*Pro rata interest settlement*) references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.

28 CHANGES TO THE TRANSACTION OBLIGORS

28.1 Assignment or transfer by Transaction Obligors

No Transaction Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

28.2 Release of security

- (a) If a disposal of any asset subject to security created by a Security Document is made in the following circumstances:
 - (i) the disposal is permitted by the terms of any Finance Document;
 - (ii) all the Lenders agree to the disposal;
 - (iii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or
 - (iv) the disposal is being effected by enforcement of a Security Document,

the Security Agent may release the asset(s) being disposed of from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).

- (b) If the Security Agent is satisfied that a release is allowed under this Clause 28.2 (*Release of security*) (at the request and expense of the Borrowers) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Transaction Obligor under the Finance Documents.

SECTION 11

THE FINANCE PARTIES

29 THE FACILITY AGENT, THE ARRANGER AND THE REFERENCE BANKS

29.1 Appointment of the Facility Agent

- (a) Each of the Arranger and the Lenders appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arranger and the Lenders authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

29.2 Instructions

- (a) The Facility Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in a Finance Document;
 - (ii) where a Finance Document requires the Facility Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Facility Agent's own position in its personal capacity as opposed to its role of Facility Agent for the relevant Finance Parties.

- (e) If giving effect to instructions given by the Majority Lenders would in the Facility Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 42 (*Amendments and Waivers*), the Facility Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Facility Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where it has not received any instructions as to the exercise of that discretion the Facility Agent shall do so having regard to the interests of all the Finance Parties.
- (g) The Facility Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 29.2 (*Instructions*) in the absence of instructions, the Facility Agent shall not be obliged to take any action (or refrain from taking action) even if it considers acting or not acting to be in the best interests of the Finance Parties. The Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Finance Parties.
- (i) The Facility Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

29.3 Duties of the Facility Agent

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to Clause 27.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrowers*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Facility Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent, the Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

29.4 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

29.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Facility Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) Neither the Facility Agent nor the Arranger shall be bound to account to other Finance Party for any sum or the profit element of any sum received by it for its own account.

29.6 Application of receipts

Except as expressly stated to the contrary in any Finance Document, any moneys which the Facility Agent receives or recovers in its capacity as Facility Agent shall be applied by the Facility Agent in accordance with Clause 33.5 (*Application of receipts; partial payments*).

29.7 Business with the Group

The Facility Agent and the Arranger may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

29.8 Rights and discretions

- (a) The Facility Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,
- as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 26.2 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and

- (iii) any notice or request made by any Borrower (other than a Drawdown Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Arranger is obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

29.9 Responsibility for documentation

Neither the Facility Agent nor the Arranger is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Arranger, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or

- (c) any determination as to whether any information provided or to be provided to any Finance Party or Creditor Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

29.10 No duty to monitor

The Facility Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

29.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to paragraph (e) of Clause 33.11 (*Disruption to Payment Systems etc.*) or any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Facility Agent may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent or the Arranger to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party, on behalf of any Finance Party and each Finance Party confirms to the Facility Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Arranger.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent’s liability, any liability of the Facility Agent arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

29.12 Lenders’ indemnity to the Facility Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent’s gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 33.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent’s negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.

29.13 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Facility Agent may resign by giving 30 days’ notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Facility Agent.

- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent may appoint a successor Facility Agent.
- (d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 29 (*The Facility Agent, the Arranger and the Reference Banks*) and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Facility Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Facility Agent shall, at its own cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Facility Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.4 (*Indemnity to the Facility Agent*) and this Clause 29 (*The Facility Agent, the Arranger and the Reference Banks*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Facility Agent. Any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Borrowers.
- (i) The consent of the Borrowers (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Facility Agent.
- (j) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
 - (i) the Facility Agent fails to respond to a request under Clause 12.7 (*FATCA Information*) and a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Facility Agent pursuant to Clause 12.7 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or

(iii) the Facility Agent notifies the Borrowers and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

29.14 Confidentiality

- (a) In acting as Facility Agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Facility Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Facility Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

29.15 Relationship with the other Finance Parties

- (a) Subject to Clause 27.9 (*Pro rata interest settlement*), the Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Each Finance Party shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Finance Party shall deal with the Security Agent exclusively through the Facility Agent and shall not deal directly with the Security Agent.
- (c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 36.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 36.2 (*Addresses*) and sub-paragraph (ii) of paragraph (a) of Clause 36.5 (*Electronic communication*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

29.16 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Facility Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Facility Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

29.17 Facility Agent's management time

Any amount payable to the Facility Agent under Clause 14.4 (*Indemnity to the Facility Agent*), Clause 15 (*Costs and Expenses*) and Clause 29.12 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Facility Agent under Clause 11 (*Fees*).

29.18 Deduction from amounts payable by the Facility Agent

If any Party owes an amount to the Facility Agent under the Finance Documents, the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

29.19 Reliance and engagement letters

Each Creditor Party confirms that each of the Arranger and the Facility Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or the Facility Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence

reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

29.20 Full freedom to enter into transactions

Without prejudice to Clause 29.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Facility Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
 - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
 - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrowers or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Facility Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

29.21 Capital Markets

- (a) For the period between the date of this Facility Agreement and until the Maturity Date should any member of the Group initiate, engage in, or otherwise enter into any public offering or private placement of any equity or debt securities or a combination thereof, or alternatively should a member of the Group pursue a structured financing not limited to asset backed securities, (collectively the “**Covered Transactions**”), then the Facility Agent or any of its affiliates shall have the right, but not the obligation, to be retained by the member of the Group as a lead underwriter, co-manager, placement agent, or similar role as the case may be, in connection with such Covered Transactions.
- (b) The role of the Facility Agent (or its affiliate as applicable) in such Covered Transactions will be subject to an appropriate underwriting or placement agreement based on market terms and conditions mutually agreeable to the Facility Agent (or its affiliate as applicable) and the member of the Group, and the Facility Agent (or its affiliate as applicable) shall be entitled to obtain customary fees in connection with such role.

29.22 Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Facility Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 29.22 (*Role of Reference Banks*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

29.23 Third Party Reference Banks

A Reference Bank which is not a Party may rely on Clause 29.22 (*Role of Reference Banks*), Clause 42.3 (*Other exceptions*) and Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

30 THE SECURITY AGENT

30.1 Trust

- (a) The Security Agent declares that it holds the Security Property on trust for the Creditor Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 30 (*The Security Agent*) and the other provisions of the Finance Documents.
- (b) Each other Finance Party authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

30.2 Parallel Debt (Covenant to pay the Security Agent)

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of an Obligor:
 - (i) shall become due and payable at the same time as its Corresponding Debt;
 - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For purposes of this Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent:
 - (i) is the independent and separate creditor of each Parallel Debt;
 - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
 - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).

- (d) The Parallel Debt of an Obligor shall be:
- (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Corresponding Debt has increased, and the Corresponding Debt of an Obligor shall be:
 - (A) decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged; and
 - (B) increased to the extent that its Parallel Debt has increased,
- in each case provided that the Parallel Debt of an Obligor shall never exceed its Corresponding Debt.
- (e) All amounts received or recovered by the Security Agent in connection with this Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 33.5 (*Application of receipts; partial payments*).
- (f) This Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) shall apply, with any necessary modifications, to each Finance Document.

30.3 Enforcement through Security Agent only

The Creditor Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

30.4 Instructions

- (a) The Security Agent shall:
- (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by:
 - (A) all Lenders (or the Facility Agent on their behalf) if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders (or the Facility Agent on their behalf); and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or the Facility Agent on their behalf) (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears

in a Finance Document, any instructions given to the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.

- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in a Finance Document;
 - (ii) where a Finance Document requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Creditor Parties.
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 30.28 (*Application of receipts upon enforcement*);
 - (B) Clause 30.29 (*Permitted Deductions*); and
 - (C) Clause 30.30 (*Prospective liabilities*).
- (e) If giving effect to instructions given by the Majority Lenders would in the Security Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 42 (*Amendments and Waivers*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
- (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to sub-paragraph (iv) of paragraph (a) above,
- the Security Agent shall do so having regard to the interests of all the Creditor Parties.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 30.4 (*Instructions*), in the absence of instructions, the Security Agent may (but shall not be obliged to) take such action in the exercise of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.
- (i) The Security Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

30.5 Duties of the Security Agent

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

30.6 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor.
- (b) The Security Agent shall not be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account.

30.7 Business with the Group

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

30.8 Rights and discretions

- (a) The Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

- (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing, as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the other Finance Parties through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to any Finance Party.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Creditor Parties) that:
- (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iii) any notice or request made by a Borrower (other than a Drawdown Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (d) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Facility Agent or the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Security Agent's gross negligence or wilful misconduct.
- (h) Unless a Finance Document expressly provides otherwise the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under the Finance Documents.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power,

authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

30.9 Responsibility for documentation

None of the Security Agent, any Receiver or Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Arranger, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Creditor Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

30.10 No duty to monitor

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

30.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate), none of the Security Agent nor any Receiver or Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or

- (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Security Agent, that Receiver or that Delegate (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,
- on behalf of any Finance Party and each Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

30.12 Lenders’ indemnity to the Security Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the Security Agent’s, Receiver’s or Delegate’s gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Finance Documents (unless the Security Agent, Receiver or Delegate has been reimbursed by a Transaction Obligor pursuant to a Finance Document).

- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.

30.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent may appoint a successor Security Agent.
- (d) The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer, by way of a document expressed as a deed, of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged, by way of a document executed as a deed, from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 30.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of Clause 14.5 (*Indemnity to the Security Agent*) and this Clause 30 (*The Security Agent*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Security Agent. Any fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrowers.
- (h) The consent of the Borrowers (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Agent.

30.14 Confidentiality

- (a) In acting as Security Agent for the Finance Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Security Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Security Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

30.15 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

30.16 Security Agent's management time

- (a) Any amount payable to the Security Agent under Clause 14.5 (*Indemnity to the Security Agent*), Clause 15 (*Costs and Expenses*) and Clause 30.12 (*Lenders' indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Security Agent under Clause 11 (*Fees*).
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default;

- (ii) the Security Agent being requested by a Transaction Obligor the Majority Lenders to undertake duties which the Security Agent and the Borrowers agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
 - (iii) the Security Agent and the Borrowers agreeing that it is otherwise appropriate in the circumstances,
- the Borrowers shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.
- (c) If the Security Agent and the Borrowers fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrowers or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrowers) and the determination of any investment bank shall be final and binding upon the Parties.

30.17 Reliance and engagement letters

Each Creditor Party confirms that the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Security Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

30.18 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Transaction Obligor to any of the Security Assets;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Transaction Obligor to take, any step to perfect its title to any of the Security Assets or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

30.19 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Security Assets;

(ii) to require any other person to maintain any insurance; or

(iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders request it to do so in writing and the Security Agent fails to do so within 14 days after receipt of that request.

30.20 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

30.21 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Creditor Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of any such delegate or sub delegate.

30.22 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
- (i) if it considers that appointment to be in the interests of the Creditor Parties; or
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,
- and the Security Agent shall give prior notice to the Borrowers and the Finance Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.

- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

30.23 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Transaction Obligor may have to any of the Security Assets and shall not be liable for or bound to require any Transaction Obligor to remedy any defect in its right or title.

30.24 Releases

Upon a disposal of any of the Security Assets pursuant to the enforcement of the Transaction Security by a Receiver, a Delegate or the Security Agent, the Security Agent is irrevocably authorised (at the cost of the Obligors and without any consent, sanction, authority or further confirmation from any other Creditor Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

30.25 Winding up of trust

If the Security Agent, with the approval of the Facility Agent determines that:

- (a) all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and
(b) no Creditor Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Transaction Obligor pursuant to the Finance Documents,

then

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
(ii) any Security Agent which has resigned pursuant to Clause 30.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

30.26 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

30.27 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement and the other Finance Documents. Where there are any inconsistencies between (i) the Trustee Acts 1925 and 2000 and (ii) the provisions of this Agreement and any other Finance Document, the provisions of this Agreement and any other Finance Document shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement and any other Finance Document shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

30.28 Application of receipts upon enforcement

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document, under Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or in connection with the realisation or enforcement of all or any part of the Security Property (for the purposes of this Clause 30 (*The Security Agent*), the “**Recoveries**”) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the remaining provisions of this Clause 30 (*The Security Agent*), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) other than pursuant to Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or any Receiver or Delegate;
- (b) in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Creditor Parties, for application towards the discharge of all sums due and payable by any Transaction Obligor under any of the Finance Documents in accordance with Clause 33.5 (*Application of receipts; partial payments*);
- (c) if none of the Transaction Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Transaction Obligor; and
- (d) the balance, if any, in payment or distribution to the relevant Transaction Obligor.

30.29 Permitted Deductions

- (a) The Security Agent may, in its discretion:
 - (i) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
 - (ii) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).
- (b) For the purposes of sub-paragraph (i) of paragraph (a) above, if the Security Agent has become entitled to require a sum to be paid to it on demand, that sum shall be treated as due and payable, even if no demand has yet been served.

30.30 Prospective liabilities

Following acceleration, the Security Agent may, in its discretion, or at the request of the Facility Agent, hold any Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later payment to the Facility Agent for application in accordance with Clause 33.5 (*Application of receipts; partial payments*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent or, in the case of paragraph (b) only, the Facility Agent, reasonably considers, in each case, might become due or owing at any time in the future.

30.31 Investment of proceeds

Prior to the payment of the proceeds of the Recoveries to the Facility Agent for application in accordance with Clause 33.5 (*Application of receipts; partial payments*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this Clause 30.31 (*Investment of proceeds*).

30.32 Currency conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

30.33 Good discharge

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Facility Agent on behalf of the Creditor Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Facility Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

30.34 Amounts received by Obligors

If any of the Obligors receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, that Obligor will hold the amount received or recovered on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement.

30.35 Application and consideration

In consideration for the covenants given to the Security Agent by each Obligor in relation to Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) the Security Agent agrees with each Obligor to apply all moneys from time to time paid by such Obligor to the Security Agent in accordance with the foregoing provisions of this Clause 30 (*The Security Agent*).

30.36 Full freedom to enter into transactions

Without prejudice to Clause 30.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Security Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);

- (b) to deal in and enter into and arrange transactions relating to:
 - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
 - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrowers or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Security Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

31 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

32 SHARING AMONG THE FINANCE PARTIES

32.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from a Transaction Obligor other than in accordance with Clause 33 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due to it under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 33 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 33.5 (*Application of receipts; partial payments*).

32.2 **Redistribution of payments**

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Transaction Obligor and distribute it among the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 33.5 (*Application of receipts; partial payments*) towards the obligations of that Transaction Obligor to the Sharing Finance Parties.

32.3 **Recovering Finance Party’s rights**

On a distribution by the Facility Agent under Clause 32.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from a Transaction Obligor, as between the relevant Transaction Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Transaction Obligor.

32.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and
- (b) as between the relevant Transaction Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Transaction Obligor.

32.5 **Exceptions**

- (a) This Clause 32 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Transaction Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

SECTION 12

ADMINISTRATION

33 PAYMENT MECHANICS

33.1 Payments to the Facility Agent

- (a) On each date on which a Transaction Obligor or a Lender is required to make a payment under a Finance Document, that Transaction Obligor or Lender shall make an amount equal to such payment available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Facility Agent) and with such bank as the Facility Agent, in each case, specifies.

33.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 33.3 (*Distributions to a Transaction Obligor*) and Clause 33.4 (*Clawback and pre-funding*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London), as specified by that Party or, in the case of an Advance, to such account of such person as may be specified by the Borrowers in a Drawdown Request.

33.3 Distributions to a Transaction Obligor

The Facility Agent may (with the consent of the Transaction Obligor or in accordance with Clause 34 (*Set-Off*)) apply any amount received by it for that Transaction Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Transaction Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

33.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

- (c) If the Facility Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrowers before receiving funds from the Lenders then if and to the extent that the Facility Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrowers:
- (i) the Facility Agent shall notify the Borrowers of the Lender's identity and the Borrowers shall on demand refund it to the Facility Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrowers shall on demand pay to the Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

33.5 Application of receipts; partial payments

- (a) If the Facility Agent or the Security Agent (as applicable) receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction Obligor under the Finance Documents, the Facility Agent or the Security Agent (as applicable) shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of, and any other amounts owing to, the Facility Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any accrued interest and fees due but unpaid to the Lenders under this Agreement;
 - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid to the Lenders under this Agreement; and
 - (iv) **fourthly**, in or towards payment pro rata of any other sum due to any Finance Party but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary, or instruct the Security Agent to vary (as applicable) the order set out in sub-paragraphs (ii) to (iv) of paragraph (a) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by a Transaction Obligor.

33.6 No set-off by Transaction Obligors

All payments to be made by a Transaction Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

33.7 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

33.8 Currency of account

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from a Transaction Obligor under any Finance Document.

- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

33.9 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the Borrowers); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Borrowers) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

33.10 Currency Conversion

- (a) For the purpose of, or pending any payment to be made by any Servicing Party under any Finance Document, such Servicing Party may convert any moneys received or recovered by it from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

33.11 Disruption to Payment Systems etc.

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by the Borrowers that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by the Borrowers, consult with the Borrowers with a view to agreeing with the Borrowers such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Borrowers in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Borrowers shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties and any Transaction Obligors as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 42 (*Amendments and Waivers*);

- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 33.11 (*Disruption to Payment Systems etc.*); and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

34 SET-OFF

A Finance Party may set off any matured obligation due from a Transaction Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Transaction Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

35 BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each Party acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

36 NOTICES

36.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

36.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents are:

- (a) in the case of the Borrowers, that specified in Schedule 1 (*The Parties*);
- (b) in the case of each Lender or any other Obligor, that specified in Schedule 1 (*The Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or before the date on which it becomes a Party;

- (c) in the case of the Facility Agent, that specified in Schedule 1 (*The Parties*); and
 - (d) in the case of the Security Agent, that specified in Schedule 1 (*The Parties*),
- or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

36.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,and, if a particular department or officer is specified as part of its address details provided under Clause 36.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to a Servicing Party will be effective only when actually received by that Servicing Party and then only if it is expressly marked for the attention of the department or officer of that Servicing Party specified in Schedule 1 (*The Parties*) (or any substitute department or officer as that Servicing Party shall specify for this purpose).
- (c) All notices from or to a Transaction Obligor shall be sent through the Facility Agent unless otherwise specified in any Finance Document.
- (d) Any communication or document made or delivered to the Borrowers in accordance with this Clause will be deemed to have been made or delivered to each of the Transaction Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

36.4 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 36.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

36.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5.00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 36.5 (*Electronic communication*).

36.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Facility Agent, accompanied by a certified English translation prepared by a translator approved by the Facility Agent and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

37 CALCULATIONS AND CERTIFICATES

37.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

37.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

37.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

38 PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

39 REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Creditor Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of a Creditor Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

40 SETTLEMENT OR DISCHARGE CONDITIONAL

Any settlement or discharge under any Finance Document between any Finance Party and any Transaction Obligor shall be conditional upon no security or payment to any Finance Party by any Transaction Obligor or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.

41 IRREVOCABLE PAYMENT

If the Facility Agent considers that an amount paid or discharged by, or on behalf of, a Transaction Obligor or by any other person in purported payment or discharge of an obligation of that Transaction Obligor to a Creditor Party under the Finance Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Transaction Obligor or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Finance Documents.

42 AMENDMENTS AND WAIVERS

42.1 Required consents

- (a) Subject to Clause 42.2 (*All Lender matters*) and Clause 42.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and, in the case of an amendment, the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 42 (*Amendments and Waivers*).
- (c) Without prejudice to the generality of Clause 29.8 (*Rights and discretions*), the Facility Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

42.2 All Lender matters

Subject to Clause 42.4 (*Replacement of Screen Rate*), an amendment of or waiver or consent in relation to any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of “Majority Lenders” in Clause 1.1 (*Definitions*);
- (b) a postponement to or extension of the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;

- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
- (f) a change to any Transaction Obligor;
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) this Clause 42 (*Amendments and Waivers*);
- (i) any change to Clause 2 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Drawdown*), Clause 6.2 (*Effect of cancellation and prepayment on scheduled repayments*), Clause 7.4 (*Mandatory prepayment on sale or Total Loss*), Clause 8 (*Interest*), paragraph (a) of Clause 24.7 (*Provision of valuations*), Clause 25 (*Accounts and Application of Earnings*), Clause 27 (*Changes to the Lenders*), Clause 32 (*Sharing among the Finance Parties*), Clause 46 (*Governing Law*) or Clause 47 (*Enforcement*);
- (j) any release of, or material variation to, any Transaction Security, guarantee, indemnity or subordination arrangement set out in a Finance Document (except in the case of a release of Transaction Security as it relates to the disposal of an asset which is the subject of the Transaction Security and where such disposal is expressly permitted by the Majority Lenders or otherwise under a Finance Document);
- (k) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (i) the guarantee and indemnity granted under Clause 16 (*Guarantee and Indemnity*);
 - (ii) the Security Assets; or
 - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed,
 (except in the case of sub-paragraphs (i), (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- (l) the release of the guarantee and indemnity granted under Clause 16 (*Guarantee and Indemnity*) any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document, shall not be made, or given, without the prior consent of all the Lenders.

42.3 Other exceptions

An amendment or waiver which relates to the rights or obligations of a Servicing Party or the Arranger or a Reference Bank (each in their capacity as such) may not be effected without the consent of that Servicing Party, the Arranger or that Reference Bank, as the case may be.

42.4 Replacement of Screen Rate

- (a) Subject to Clause 42.3 (*Other exceptions*), if the Screen Rate is not available for dollars, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to dollars, in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that benchmark rate) may be made with the consent of the Majority Lenders and the Obligors.

- (b) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within 5 Business Days (unless the Borrowers and the Facility Agent agree to a longer time period in relation to any request) of that request being made:
 - (i) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
 - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

42.5 Obligor Intent

Without prejudice to the generality of Clauses 1.2 (*Construction*) and 17.2 (*Waiver of defences*) each Obligor expressly confirms that it intends that any guarantee contained in this Agreement or any other Finance Document and any Security created by any Finance Document shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

43 CONFIDENTIALITY

43.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 43.2 (*Disclosure of Confidential Information*) and Clause 43.3 (*Disclosure to numbering service providers*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

43.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction including a securitisation under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 29.15 (*Relationship with the other Finance Parties*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraph (i) or (ii) of paragraph (b) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation including any applicable data protection laws;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 27.8 (*Security over Lenders' rights*);
- (viii) who is a Party, a member of the Group or any related entity of a Transaction Obligor;
- (ix) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
- (x) with the written consent of the Borrowers;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to sub-paragraphs (i), (ii) and (iii) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to sub-paragraph (iv) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to sub-paragraphs (v), (vi) and (vii) of paragraph (b) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- (c) to any person appointed by that Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered in to a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrowers and the relevant Finance Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Transaction Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

43.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Transaction Obligors the following information:
 - (i) names of Transaction Obligors;
 - (ii) country of domicile of Transaction Obligors;
 - (iii) place of incorporation of Transaction Obligors;
 - (iv) date of this Agreement;
 - (v) Clause 46 (*Governing Law*);
 - (vi) the names of the Facility Agent and the Arranger;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amount of Total Commitments;
 - (ix) currency of the Facility;
 - (x) type of Facility;
 - (xi) ranking of Facility;
 - (xii) Maturity Date for Facility;
 - (xiii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xii) above; and
 - (xiv) such other information agreed between such Finance Party and the Borrowers,to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Transaction Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

- (c) Each Obligor represents, that none of the information set out in sub-paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Facility Agent shall notify the Guarantor and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility and/or one or more Transaction Obligors; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Transaction Obligors by such numbering service provider.

43.4 Entire agreement

This Clause 43 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

43.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

43.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrowers:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (v) of paragraph (b) of Clause 43.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 43 (*Confidentiality*).

43.7 Continuing obligations

The obligations in this Clause 43 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

44 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

44.1 Confidentiality and disclosure

- (a) The Facility Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Facility Agent may disclose:
- (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrowers pursuant to Clause 8.5 (*Notification of rates of interest*); and
 - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The Facility Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The Facility Agent's obligations in this Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.5 (*Notification of rates of interest*) **provided that** (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Facility Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

44.2 Related obligations

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 44.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

44.3 No Event of Default

No Event of Default will occur under Clause 26.4 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

45 COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

GOVERNING LAW AND ENFORCEMENT

46 GOVERNING LAW

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

47 ENFORCEMENT

47.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Obligors accept that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Obligor will argue to the contrary.
- (c) This Clause 47.1 (*Jurisdiction*) is for the benefit of the Creditor Parties only. As a result, no Creditor Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Creditor Parties may take concurrent proceedings in any number of jurisdictions.

47.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
 - (i) irrevocably appoints Saville & Co. at its registered office for the time being, presently at One Carey Lane, London EC2V 8AE, England as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrowers (on behalf of all the Obligors) must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1

THE PARTIES

PART A

THE OBLIGORS

Name of Borrowers	Place of Incorporation	Registration number (or equivalent, if any)	Address for Communication
ATHENA MARINE LLC	Marshall Islands	961764	c/o Approved Technical Manager
APHRODITE MARINE LLC	Marshall Islands	961769	3-5 Menandrou Street 145 61 Kifissia
ARIS MARINE LLC	Marshall Islands	961770	Greece
ALEXANDER MARINE LLC	Marshall Islands	961945	(fax no: +30 210 80 84 224)

THE GUARANTOR

Name of Guarantor	Place of Incorporation	Registration number (or equivalent, if any)	Address for Communication
POSEIDON CONTAINERS HOLDINGS LLC	Marshall Islands	961853	c/o Approved Technical Manager 3-5 Menandrou Street 145 61 Kifissia Greece (fax no: +30 210 80 84 224)

PART B

THE ORIGINAL LENDERS

Name of Original Lender	Commitment	Address for Communication
DVB Bank SE, Amsterdam Branch	\$52,625,589	WTC Schiphol Tower F 6 th Floor Attn: Transaction Management Schiphol Boulevard 255 1118 BH Schiphol The Netherlands Fax: +31 88 399 8178 Email: TLS.TM.Amsterdam@dvbbank.com with copy to DVB Bank SE 3, Moraitini Street & 1, Palea Leof. Posidonos, Bldg. K4 Delta Paleo Faliro 175 61 Athens Email: D-Shipping Athens@dvbbank.com

PART C

THE SERVICING PARTIES

Name of Facility Agent

DVB Bank SE, Amsterdam Branch

Address for Communication

WTC Schiphol Tower F
6th Floor
Attn: Transaction Management
Schiphol Boulevard 255
1118 BH Schiphol
The Netherlands

Fax: +31 88 399 8178
Email: TLS.TM.Amsterdam@dvbbank.com

with copies to:

DVB Bank SE, Athens Branch
3, Moraitini Street &
1, Palea Leof. Posidonos, Bldg. K4
Delta Paleo Faliro
175 61 Athens

Email: D-Shipping Athens@dvbbank.com

and

DVB Bank SE, London Branch
Park House
16-18 Finsbury Circus
London EC2M 7EB

only in relation to loan administration
Email: TLS.LA.LONDON@DVBBANK.COM

Name of Security Agent

DVB Bank SE, Amsterdam Branch

Address for Communication

WTC Schiphol Tower F
6th Floor
Attn: Transaction Management
Schiphol Boulevard 255
1118 BH Schiphol
The Netherlands

Fax: +31 88 399 8178
Email: TLS.TM.Amsterdam@dvbbank.com

with copies to:

DVB Bank SE, Athens Branch
3, Moraitini Street &
1, Palea Leof. Posidonos, Bldg. K4
Delta Paleo Faliro
175 61 Athens

Email: D-Shipping Athens@dvbbank.com

and

DVB Bank SE, London Branch
Park House
16-18 Finsbury Circus
London EC2M 7EB
only in relation to loan administration
Email: TLS.LA.LONDON@DVBBANK.COM

SCHEDULE 2

CONDITIONS PRECEDENT AND SUBSEQUENT

PART A

CONDITIONS PRECEDENT TO INITIAL DRAWDOWN REQUEST

1 Transaction Obligors

- 1.1 A copy of the constitutional documents of each Transaction Obligor.
- 1.2 A copy of a resolution of the board of directors or members (as appropriate) of each Transaction Obligor:
 - (a) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (b) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, a Drawdown Request and each Selection Notice) to be signed and/or despatched by it under, or in connection with, the Finance Documents to which it is a party.
- 1.3 An original of the power of attorney of any Transaction Obligor authorising a specified person or persons to execute the Finance Documents to which it is a party.
- 1.4 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above.
- 1.5 A copy of a resolution signed by the Guarantor and, in respect of Borrower D, Odysseus, as the holder of the LLC Shares in the relevant Borrower(s), approving the terms of, and the transactions contemplated by, the Finance Documents to which the Borrowers are parties.
- 1.6 A certificate of each Transaction Obligor that is incorporated outside the UK (signed by a director) certifying either that (i) it has not delivered particulars of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or (ii) it has a UK Establishment and specifying the name and registered number under which it is registered with the Registrar of Companies.
- 1.7 A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document relating to it specified in this Part A of Schedule 2 (*Conditions Precedent and Subsequent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- 1.8 Evidence of satisfactory capital/shareholding structure of the Obligors.

2 Finance Documents and Other Transaction Documents

- 2.1 A duly executed original of the Subordination Deed and copies of each Subordinated Finance Document.
- 2.2 A duly executed original of any Finance Document not otherwise referred to in this Schedule 2 (*Conditions Precedent and Subsequent*).

2.3 A duly executed original of any other document required to be delivered by each Finance Document if not otherwise referred to in this Schedule 2 (*Conditions Precedent and Subsequent*).

3 Security Documents

3.1 A duly executed original of the Account Security and the Shares Security in respect of each Borrower (and of each document to be delivered under each of them) including confirmation of the appointment of any process agent under the relevant Account Security.

3.2 A duly executed original of the Subordinated Debt Security.

4 Legal opinions

4.1 A legal opinion of Watson, Farley & Williams, legal advisers to the Arranger, the Facility Agent and the Security Agent in England, substantially in the form distributed to the Original Lenders before signing this Agreement.

4.2 If a Transaction Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Arranger, the Facility Agent and the Security Agent in the relevant jurisdiction, substantially in the form distributed to the Original Lenders before signing this Agreement.

5 Other documents and evidence

5.1 A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary or desirable (if it has notified the Borrowers accordingly) in connection with the entry into and performance of the transactions contemplated by any Transaction Document or for the validity and enforceability of any Transaction Document.

5.2 The Original Financial Statements of each Borrower and the Guarantor.

5.3 The original of any mandates or other documents required in connection with the opening or operation of each Earnings Account.

5.4 Such evidence as the Facility Agent may require for the Finance Parties to be able to satisfy each of their “know your customer” or similar identification procedures in relation to the transactions contemplated by the Finance Documents (including, without limitation, identification of the ultimate beneficial owners holding 25 per cent. or more of the LLC Shares of any Borrower).

5.5 Evidence satisfactory to the Facility Agent that the shareholders’ equity of \$5,000,000 has been paid in to the Guarantor.

PART B

CONDITIONS PRECEDENT TO DISBURSEMENT OF A TRANCHE

1 **Transaction Obligors**

A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each corporate and copy document provided by it under Part A of Schedule 2 (*Conditions Precedent and Subsequent*) remains correct, complete and in full force and effect as at the Drawdown Date.

2 **Borrowers**

A certificate of an authorised signatory of each Borrower certifying that each copy document which it is required to provide under this Part B of Schedule 2 (*Conditions Precedent and Subsequent*) is correct, complete and in full force and effect as at the Drawdown Date.

3 **Other funds**

Evidence that all sums then due (if any) to the Existing Lender, other than the sums to be financed on the Drawdown Date of each Tranche, have been paid to the Existing Lender and that all existing Securities securing the Existing Indebtedness have been, or shall be discharged, on the Drawdown Date.

4 **Vessel and other security**

4.1 A duly executed and dated original of the Mortgage and the General Assignment in respect of each Vessel and of each document to be delivered under or pursuant to each of them.

4.2 Documentary evidence that the Mortgage in respect of each Vessel has been duly registered or recorded (as the case may be) as a valid first preferred or priority (as the case may be) ship mortgage in accordance with the laws of the jurisdiction of the relevant Approved Flag.

4.3 Documentary evidence that each Vessel:

(a) is definitively and permanently registered in the name of the relevant Borrower under the relevant Approved Flag.

(b) is in the absolute and unencumbered ownership of the relevant Borrower save as contemplated by the Finance Documents;

(c) maintains the Approved Classification with the Approved Classification Society free of all overdue recommendations and conditions of the Approved Classification Society; and

4.4 is insured in accordance with the provisions of this Agreement and all requirements in this Agreement in respect of insurances have been complied with together with, if required by the Facility Agent, a insurance report satisfactory to the Lenders from an independent insurance consultant acceptable to the Facility Agent.

4.5 Copies of each Vessel's Safety Management Certificate (together with any other details of the applicable Safety Management System which the Facility Agent requires) and of any other documents required under the ISM Code and the ISPS Code in relation to each Vessel including without limitation an ISSC.

- 4.6 The Commercial Management Agreement and the Technical Management Agreement in respect of each Vessel, both on terms acceptable to the Facility Agent acting with the authorisation of all of the Lenders, together with:
- (a) a Manager's Undertaking in respect of each Vessel for each of the Approved Technical Manager and the Approved Commercial Manager; and
- (b) copies of the Approved Technical Manager's Document of Compliance.
- 4.7 Valuation(s) of each Vessel obtained from Approved Valuers showing the Market Value of each Vessel and dated not more than 45 days prior to the Drawdown Date.

5 Legal opinions

Draft agreed form legal opinions of the legal advisers to the Arranger, the Facility Agent and the Security Agent in the jurisdiction of the Approved Flag of each Vessel and such other relevant jurisdictions as the Facility Agent may require.

6 Other documents and evidence

- 6.1 Evidence that any process agent referred to in Clause 47.2 (*Service of process*), if not an Obligor, has accepted its appointment.
- 6.2 Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 11 (*Fees*) and Clause 15 (*Costs and Expenses*) have been paid or will be paid by the Drawdown Date.
- 6.3 Evidence of the Borrowers' Minimum Liquidity Amount required under Clause 20.1 (*Borrowers' Minimum liquidity*) having been credited in the relevant Earnings Account.

PART C

CONDITIONS SUBSEQUENT

1 Legal opinions

Executed legal opinions in agreed form of the legal advisers to the Arranger, the Facility Agent and the Security Agent in the jurisdiction of the Approved Flag of the relevant Vessel, England and such other relevant jurisdictions as the Facility Agent may require.

2 Vessel and other security

- (a) Evidence that the Security Documents have been duly registered or recorded in such jurisdictions as the Facility Agent may require and that all notices of assignment required under or in connection with the relevant Security Documents have been served.
- (b) A duly executed original of a Letter of Undertaking from the Approved Brokers in a form acceptable to the Facility Agent.
- (c) A duly executed original of a Letter of Undertaking from any protection and indemnity club or war risks association through or with whom any obligatory insurances are placed or effected in a form acceptable to the Facility Agent.

3 Miscellaneous

Evidence that all legal fees have been paid within 30 days of the relevant Drawdown Date.

SCHEDULE 3

REQUESTS

PART A

DRAWDOWN REQUEST

From: Athena Marine LLC
Aphrodite Marine LLC
Aris Marine LLC
Alexander Marine LLC

To: DVB BANK SE

Dated: [●] 2017

Dear Sirs

Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC - \$52,625,589 Facility Agreement dated [●] 2017 (the "Agreement")

- 1 We refer to the Agreement. This is a Drawdown Request. Terms defined in the Agreement have the same meaning in this Drawdown Request unless given a different meaning in this Drawdown Request.
- 2 We wish to borrow an Advance under Tranche [A][B][C][D] on the following terms:
Proposed Drawdown Date: [●] 2017 (or, if that is not a Business Day, the next Business Day)
Amount: \$[●] or, if less, the Available Tranche
Interest Period: 3 Months
- 3 We confirm that each condition specified in Clause 4.1 (*Conditions precedent*) of this Agreement as they relate to the Advance to which this Drawdown Request refers is satisfied on the date of this Drawdown Request (or waived if applicable).
- 4 The proceeds of the relevant Advance should be credited to: [●]
[account number: [●]
name and SWIFT of account bank: [●]
name and SWIFT of US correspondent bank: [●]]
- 5 This Drawdown Request is irrevocable.

Yours faithfully

authorised signatory for
ATHENA MARINE LLC

authorised signatory for
APHRODITE MARINE LLC

authorised signatory for
ARIS MARINE LLC

authorised signatory for
ALEXANDER MARINE LLC

PART B

SELECTION NOTICE

From: Athena Marine LLC
Aphrodite Marine LLC
Aris Marine LLC
Alexander Marine LLC

To: DVB BANK SE

Dated: [●]

Dear Sirs

Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC - \$52,625,589 Facility Agreement dated [●] 2017 (the "Agreement")

- 1 We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
- 2 We request that, subject to paragraph (g) of Clause 9.1 (*Selection of Interest Periods*) of the Agreement, the next Interest Period for the Loan be [●].
- 3 This Selection Notice is irrevocable.

Yours faithfully

authorised signatory for
ATHENA MARINE LLC

authorised signatory for
APHRODITE MARINE LLC

authorised signatory for
ARIS MARINE LLC

authorised signatory for
ALEXANDER MARINE LLC

SCHEDULE 4

TRANSFER CERTIFICATE

To: DVB BANK SE as Facility Agent and DVB BANK SE as Security Agent

From: [The Existing Lender] (the “Existing Lender”) and [The New Lender] (the “New Lender”)

Dated:[●]

Dear Sirs

Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC - \$52,625,589 Facility Agreement dated [●] 2017 (the “Agreement”)

- 1 We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to Clause 27.5 (*Procedure for transfer*) of the Agreement:
 - (a) the Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all of the Existing Lender’s rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender’s Commitment and participation in the Loan under the Agreement as specified in the Schedule in accordance with Clause 27.5 (*Procedure for transfer*) of the Agreement;
 - (b) the proposed Transfer Date is [●];
 - (c) the Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) of the Agreement are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 27.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
- 4 The New Lender hereby confirms that it has received a copy of each of the Security Documents which are governed by German law and which are account pledges, is aware of the contents of such account pledges and expressly consents to the declarations of the Security Agent made on behalf of the New Lender (as future pledgee) in such account pledges.
- 5 This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 6 This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 7 This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender’s interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender’s Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details
for notices and account details for payments.]

[Existing Lender]

By: [●]

[New Lender]

By: [●]

This Transfer Certificate is accepted by the Facility Agent and the Security Agent and the Transfer Date is confirmed as [●].

[Facility Agent]

By: [●]

[Security Agent]

By: [●]

SCHEDULE 5

FORM OF ASSIGNMENT AGREEMENT

To: DVB Bank SE as Facility Agent, DVB Bank SE as Security Agent and Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC as Borrowers, for and on behalf of each Transaction Obligor

From: [the Existing Lender] (the “Existing Lender”) and [the New Lender] (the “New Lender”)

Dated: [●]

Dear Sirs

Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC - \$52,625,589 Facility Agreement dated [●] 2017 (the “Agreement”)

- 1 We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
- 2 We refer to Clause 27.6 (*Procedure for assignment*):
 - (a) the Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender’s Commitment and participations in the Loan under the Agreement as specified in the Schedule;
 - (b) the Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitments and participations in the Loan under the Agreement specified in the Schedule; and
 - (c) the New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
- 3 The proposed Transfer Date is [●].
- 4 On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
- 5 The Facility Office and address, fax, number and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) are set out in the Schedule.
- 6 The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 27.4 (*Limitation of responsibility of Existing Lenders*).
- 7 The New Lender hereby confirms that it has received a copy of each of the Security Documents which are governed by German law and which are account pledges, is aware of the contents of such account pledges and expressly consents to the declarations of the Security Agent made on behalf of the New Lender (as future pledgee) in such account pledges.
- 8 This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 27.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrowers*), to the Borrowers (on behalf of each Transaction Obligor) of the assignment referred to in this Assignment Agreement.

- 9 This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
- 10 This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 11 This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment rights and obligations to be transferred by assignment, release and accession

[insert relevant details]

[Facility office address, fax number and attention details for notices
and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Assignment Agreement is accepted by the Facility Agent and the Security Agent and the Transfer Date is confirmed as [●].

Signature of this Assignment Agreement by the Facility Agent constitutes confirmation by the Facility Agent of receipt of notice of the assignment referred to herein, which notice the Facility Agent receives on behalf of each Finance Party.

[Facility Agent]

By:

[Security Agent]

By:]

SCHEDULE 6

PART A

COMPLIANCE CERTIFICATE DURING THE WAIVER PERIOD

To: DVB Bank SE as Facility Agent

From: Poseidon Containers Holdings LLC

Dated: [●]

Dear Sirs

[Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC - \$52,625,589 Facility Agreement dated [●] 2017 (the "Agreement")]

1 We refer to the Agreement. This is a Compliance Certificate. 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:

(a) an amount of \$[●] remains credited to each Earnings Account;

(b) as at the 3-month period ending on [●] to which the financial statements referred to below were prepared, the Guarantor is in compliance with the following covenants under Clause 20.2 (*Guarantor's financial covenants*):

(i) the Book Leverage Ratio is [●] per cent.; and

(ii) the Liquidity is [●].

To evidence such compliance, we attach a copy of the latest [annual][quarterly] consolidated financial statements of the Group together with calculations and evidence setting out in reasonable detail the data and calculations made above.

3 We confirm that no Default is continuing.

4 We further attach the VMC Surcharge Certificate and the Excess Cash Flow Notice.

Signed: _____

Chief Financial Officer

of

POSEIDON CONTAINERS HOLDINGS LLC

PART B

COMPLIANCE CERTIFICATE AFTER THE WAIVER PERIOD

To: DVB Bank SE as Facility Agent

From: Poseidon Containers Holdings LLC

Dated: [●]

Dear Sirs

Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC - \$52,625,589 Facility Agreement dated [●] 2017 (the "Agreement")

1 We refer to the Agreement. This is a Compliance Certificate. 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:

- (a) an amount of \$[●] remains credited to each Earnings Account;
- (b) the aggregate Market Value of the Vessels plus any net realisable value of additional security previously provided under Clause 24.1 (*Minimum required security cover*) is equal to [●] per cent. of the Loan.
- (c) as at the 3-month period ending on [●] to which the financial statements referred to below were prepared, the Guarantor is in compliance with the following covenants under Clause 20.2 (*Guarantor's financial covenants*):
 - (i) the Value Adjusted Leverage Ratio is [●] per cent.;
 - (ii) the minimum Net Worth is \$[●];
 - (iii) the Liquidity is [●];
 - (iv) the Book Leverage Ratio is [●].

To evidence such compliance, we attach a copy of the latest [annual][quarterly] consolidated financial statements of the Group together with calculations and evidence setting out in reasonable detail the data and calculations made above (including valuations in a form acceptable to the Facility Agent evidencing the Market Value of each Fleet Vessel which were used to calculate the Value Adjusted Total Assets of the Group as at [●]).

3 We confirm that no Default is continuing.

4 We further attach the VMC Surcharge Certificate and the Excess Cash Flow Notice.

Signed: _____

Chief Financial Officer

of

POSEIDON CONTAINERS HOLDINGS LLC

SCHEDULE 7

TIMETABLES

Delivery of a duly completed Drawdown Request (Clause 5.1 (<i>Delivery of a Drawdown Request</i>)) or a Selection Notice (Clause 9.1 (<i>Selection of Interest Periods</i>))	Three Business Days before the intended Drawdown Date (Clause 5.1 (<i>Delivery of a Drawdown Request</i>)) or the expiry of the preceding Interest Period (Clause 9.1 (<i>Selection of Interest Periods</i>))
Facility Agent notifies the Lenders of an Advance in accordance with Clause 5.4 (<i>Lenders' participation</i>)	Three Business Days before the intended Drawdown Date.
LIBOR is fixed	Quotation Day as of 11:00 am London time
Reference Bank Rate calculated by reference to available quotations in accordance with Clause 10.2 (<i>Calculation of Reference Bank Rate</i>)	Noon on the Quotation Day

SCHEDULE 8

EQUITY CONTRIBUTION DATES AND AMOUNTS

<u>Date</u>	<u>Amount</u>
31 August 2017	1,200,000
30 November 2017	610,000
28 February 2018	750,000
31 May 2018	750,000
31 August 2018	750,000
30 November 2018	750,000
28 February 2019	800,000
31 May 2019	800,000
31 August 2019	800,000
30 November 2019	800,000
	<u>8,000,000</u>

SCHEDULE 9

VMC SURCHARGE CERTIFICATE

To: DVB Bank SE as Facility Agent

From: Poseidon Containers Holdings LLC

Dated: [●]

Dear Sirs

Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC - \$52,625,589 Facility Agreement dated [●] 2017 (the "Agreement")

- 1 We refer to the Agreement. This is a VMC Surcharge Certificate. Terms defined in the Agreement have the same meaning when used in this VMC Surcharge Certificate unless given a different meaning in this VMC Surcharge Certificate.
- 2 We confirm that:
- (a) Based on valuations obtained under Clause 24.7 (*Provision of valuations*), the aggregate Market Value of the Vessels plus any net realisable value of additional security previously provided under Clause 24.1 (*Minimum required security cover*) is equal to [●] per cent, of the Loan (Security Cover Ratio);
 - (b) the shortfall amount between the Security Cover Ratio and 100% is \$[●];
 - (c) the VMC Surcharge amount is \$[●], calculated in accordance with Clause 24.8 (*VMC Surcharge*) of the Agreement.

Signed: _____
Officer
of
ATHENA MARINE LLC

Signed: _____
Officer
of
APHRODITE MARINE LLC

Signed: _____
Officer
of
ARIS MARINE LLC

Signed: _____
Officer
of
ALEXANDER MARINE LLC

Signed: _____
Officer
of
POSEIDON CONTAINERS HOLDINGS LLC

BORROWERS

SIGNED by AIKATERINI EMMANOUIL
duly authorised
for and on behalf of
ATHENA MARINE LLC
in the presence of:



Witness' signature: **PAT SKALA**
Witness' name: **WATSON, FARLEY & WILLIAMS**
Witness' address: 348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



SIGNED by AIKATERINI EMMANOUIL
duly authorised
for and on behalf of
APHRODITE MARINE LLC
in the presence of:



Witness' signature: **PAT SKALA**
Witness' name: **WATSON, FARLEY & WILLIAMS**
Witness' address: 348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



SIGNED by AIKATERINI EMMANOUIL
duly authorised
for and on behalf of
ARIS MARINE LLC
in the presence of:



Witness' signature: **PAT SKALA**
Witness' name: **WATSON, FARLEY & WILLIAMS**
Witness' address: 348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



SIGNED by AIKATERINI EMMANOUIL
duly authorised
for and on behalf of
ALEXANDER MARINE LLC
in the presence of:



Witness' signature: **PAT SKALA**
Witness' name: **WATSON, FARLEY & WILLIAMS**
Witness' address: 348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE




GUARANTOR

SIGNED by AIKATERINI EMMANOUIL
duly authorised
for and on behalf of
POSEIDON CONTAINERS HOLDINGS LLC
in the presence of:

) 

Witness' signature:
Witness' name:
Witness' address:


) 
) PAT SKALA
) WATSON, FARLEY & WILLIAMS
) 348 SYNGROU AVENUE
) 176 74 KALLITHEA
) ATHENS - GREECE

LENDERS

SIGNED by GEORGIA ASIMAKOPOULOS
duly authorised
for and on behalf of
DVB BANK SE, Amsterdam Branch
as Lender
in the presence of:

) 

Witness' signature:
Witness' name:
Witness' address:

) 
) PAT SKALA
) WATSON, FARLEY & WILLIAMS
) 348 SYNGROU AVENUE
) 176 74 KALLITHEA
) ATHENS - GREECE

ARRANGER

SIGNED by GEORGIA ASIMAKOPOULOS
duly authorised
for and on behalf of
DVB BANK SE, Amsterdam Branch
as Arranger
in the presence of:

) 

Witness' signature:
Witness' name:
Witness' address:

) 
) PAT SKALA
) WATSON, FARLEY & WILLIAMS
) 348 SYNGROU AVENUE
) 176 74 KALLITHEA
) ATHENS - GREECE

FACILITY AGENT

SIGNED by GEORGIA ASIMAKOPOULOS
duly authorised
for and on behalf of
DVB BANK SE, Amsterdam Branch
as Facility Agent
in the presence of:

) 

Witness' signature:
Witness' name:
Witness' address:

) 
) PAT SKALA
) WATSON, FARLEY & WILLIAMS
) 348 SYNGROU AVENUE
) 176 74 KALLITHEA
) ATHENS - GREECE

WATSON FARLEY
&
WILLIAMS

THIS IS INTENDED TO BE A BLANK PAGE

DRAWDOWN REQUEST

From: Athena Marine LLC
Aphrodite Marine LLC
Aris Marine LLC
Alexander Marine LLC

To: DVB BANK SE

Dated: 19 July 2017


Dear Sirs


Athena Marine LLC, Aphrodite Marine LLC, Aris Marine LLC and Alexander Marine LLC - \$52,625,589 Facility Agreement dated 18 July 2017 (the "Agreement")

- 1 We refer to the Agreement. This is a Drawdown Request. Terms defined in the Agreement have the same meaning in this Drawdown Request unless given a different meaning in this Drawdown Request.
- 2 We wish to borrow an Advance under Tranche A, B, C and D on the following terms:

Proposed Drawdown Date:	21st July, 2017 (or, if that is not a Business the next
Day,	Business Day)
Total Amount of all Tranches:	\$52,625,589 or, if less, the Available Tranche
Interest Period:	3 Months
- 3 We confirm that each condition specified in Clause 4.1 of this Agreement as they relate to the Advance to which this Drawdown Request refers is satisfied on the date of this Drawdown Request (or waived if applicable).
- 4 The proceeds of the relevant Advance will refinance in full existing principal indebtedness with DVB Bank SE Reference FP 3038352.
- 5 This Drawdown Request is irrevocable.

Yours faithfully


Aikaterini Emmanouil
authorised signatory for
ATHENA MARINE LLC


Aikaterini Emmanouil
authorised signatory for



Aikaterini Emmanouil
authorised signatory for
ARIS MARINE LLC



Aikaterini Emmanouil
authorised signatory for
ALEXANDER MARINE LLC

Dated 24 October 2018

**ATHENA MARINE LLC
APHRODITE MARINE LLC
ARIS MARINE LLC and
ALEXANDER MARINE LLC**
as joint and several Borrowers

and

POSEIDON CONTAINERS HOLDINGS LLC
as Guarantor

and

ODYSSEUS MARINE LLC
as Shareholder

and

THE BANKS AND FINANCIAL INSTITUTIONS Listed in Schedule 1
as Lenders

and

DVB BANK SE, AMSTERDAM BRANCH
as Facility Agent, Security Agent, and Arranger

and

DVB BANK SE
as Account Bank

FIRST SUPPLEMENTAL AGREEMENT

relating to
a facility agreement dated 18 July 2017
in respect of a loan facility of US\$52,625,589
to refinance certain existing indebtedness and secured on
m.vs. "NEWYORKER", "NIKOLAS", "MAIRA" and "MARY"

**WATSON FARLEY
&
WILLIAMS**

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PARTIES

- (1) **ATHENA MARINE LLC, APHRODITE MARINE LLC, ARIS MARINE LLC and ALEXANDER MARINE LLC**, each a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (each a “**Borrower**” and, together, the “**Borrowers**”);
- (2) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (the “**Guarantor**”);
- (3) **ODYSSEUS MARINE LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (the “**Shareholder**”);
- (4) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**;
- (5) **DVB BANK SE, AMSTERDAM BRANCH**, acting through its office at WTC Schiphol Tower F, 6th Floor, Schiphol Boulevard 255, 1118 BH Schiphol, The Netherlands, as **Facility Agent, Security Agent and Arranger**; and
- (6) **DVB BANK SE**, acting through its office at Platz der Republik 6, 60325, Frankfurt/Main, Germany, as **Account Bank**.

BACKGROUND

- (A) By a facility agreement dated 18 July 2017 (the “**Facility Agreement**”) and made between (i) the Borrowers as joint and several borrowers, (ii) the Guarantor, (iii) the Lenders, (iv) the Facility Agent, (v) the Security Agent, (vi) the Arranger and (vii) the Account Bank, the Lenders have made available to the Borrowers a loan facility in an amount of (originally) up to US\$52,625,589.
- (B) The Borrowers and the Guarantor have requested that the Finance Parties consent and agree to:
 - (i) the reverse triangular merger involving the Guarantor and the New Holding Company, as a result of which (a) the Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (b) the Poseidon Shareholders would receive shares of the New Holding Company, the shares and voting rights attaching to the shares in respect of the New Holding Company being in turn legally and beneficially owned, amongst others, by the Poseidon Shareholders and the New Shareholders;
 - (ii) the change in the ultimate beneficial ownership of the equity interests in the Borrowers, the Guarantor and the Shareholder;
 - (iii) the cessation of Mr George Giouroukos from his position as Chief Executive Officer of the Guarantor; and
 - (iv) the termination of the existing Management Agreements and their replacement by new Management Agreements to be entered into between the relevant Borrower or the Guarantor (as may be the case) and each Approved Manager on substantially similar terms to the existing Management Agreements,together, the “**Request**”.

- (C) This First Supplemental Agreement sets out the terms and conditions on which the Finance Parties agree to the requests of the Borrowers, the Shareholder and the Guarantor set out in Recital (B).

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Defined expressions

Words and expressions defined in the Facility Agreement shall have the same meanings when used in this First Supplemental Agreement unless the context otherwise requires.

1.2 Definitions

In this First Supplemental Agreement, unless the contrary intention appears:

“**Effective Date**” means the date on which the Facility Agent notifies the Borrowers in writing in the form set out in Schedule 4 that all the conditions precedent in Schedule 2 have been satisfied, which confirmation the Facility Agent shall be under no obligation to give if an Event of Default shall have occurred.

“**Merger**” means a reverse triangular merger involving the Guarantor and the New Holding Company, as a result of which (a) the Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (b) the Poseidon Shareholders would receive shares of the New Holding Company.

“**Merger Documents**” means the ancillary agreements entered into by the Poseidon Shareholders and the New Shareholders in connection with the definitive agreement in respect of the Merger.

“**New Holding Company**” means the corporation under the name Global Ship Lease Inc. (as may be renamed following the Merger), incorporated in the Republic of the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, P.O. Box 1405, Majuro, Marshall Islands MH96960 and whose shares are publically listed on the New York Stock Exchange.

“**New Shareholder**” means each of:

- (a) Mr Michael Gross (either directly or indirectly through one or more Subsidiaries); and
- (b) CMA CGM S.A., a company incorporated in France.

“**Poseidon Shareholder**” means each of:

- (a) KEP VI (Newco Marine), Ltd, a company incorporated in the Cayman Islands;
- (b) KIA VIII (Newco Marine), Ltd, a company incorporated in the Cayman Islands;

(c) MAAS Capital Investments B.V., a company incorporated in the Netherlands; and

(d) Management Investor Co, a corporation incorporated in the Marshall Islands.

“**Relevant Shareholding**” means, in respect of the New Holding Company, the percentage of ownership of shares and voting power being held by each of the Poseidon Shareholders and the New Shareholders, as such percentage shall be set out in the Merger Documents and disclosed in writing to the Facility Agent on the date of the Merger.

1.3 Application of construction and interpretation provisions of Facility Agreement

Clauses 1.2, 1.4 and 1.5 of the Facility Agreement apply, with any necessary modifications, to this First Supplemental Agreement.

2 AGREEMENT OF THE FINANCE PARTIES

2.1 Agreement of the Lenders

The Lenders and the Facility Agent consent and agree, subject to and upon the terms and conditions of this First Supplemental Agreement, to the Request and all actions taken in connection therewith.

2.2 Agreement of the Finance Parties

The Finance Parties agree, subject to and upon the terms and conditions of this First Supplemental Agreement, to the consequential amendment of the Facility Agreement and the other Finance Documents in connection with the matters referred to in Clause 2.1.

2.3 Effective Date

The agreement of the Finance Parties contained in Clause 2.1 (*Agreement of the Lenders*) and 2.2 (*Agreement of the Finance Parties*) shall have effect on and from the Effective Date.

2.4 Void First Supplemental Agreement

If for any reason whatsoever (including but not limited to the Merger not having taken place), the Borrowers fail to fulfil the conditions subsequent in Clause 3.3 by 31 December 2018 (or such later date as may be agreed by the Facility Agent), this First Supplemental Agreement shall be rendered void ab initio.

3 CONDITIONS PRECEDENT AND CONDITIONS SUBSEQUENT

3.1 General

The agreement of the Finance Parties contained in Clauses 2.1 and 2.2 is subject to the fulfilment of the conditions precedent in Clause 3.2.

3.2 Conditions precedent

The conditions referred to in Clause 3.1 are that the Facility Agent shall have received the documents and evidence referred to in Schedule 2 in all respects in form and substance satisfactory to the Facility Agent and its lawyers on the date of this First Supplemental Agreement or such later date as may be applicable. Upon receipt of the documents and evidence referred to above, the Facility Agent shall promptly deliver to the Borrowers a written confirmation in the form set out in Schedule 4.

3.3 Conditions Subsequent

The Borrowers further undertake to provide the Facility Agent with the documents and evidence referred to in Schedule 3 in all respects in form and substance satisfactory to the Facility Agent and its lawyers on the date falling three (3) Business Days following the date of the Merger (or such later date as may be agreed between the Borrowers and the Facility Agent pursuant to Clause 3.4).

3.4 Waiver of conditions precedent

If the Facility Agent, in its discretion, issues a confirmation in the form set out in Schedule 4 before certain of the conditions referred to in Clause 3.2 are satisfied, the Borrowers shall, in each case, ensure that those conditions are satisfied within a maximum of 5 Business Days after the Effective Date.

4 REPRESENTATIONS AND WARRANTIES

4.1 Repetition of Facility Agreement representations and warranties

Each Borrower and the Guarantor represents and warrants to the Facility Agent that the representations and warranties in clause 18 (*Representations*) of the Facility Agreement, as amended by the transactions contemplated in the Request and as amended by this First Supplemental Agreement and updated with appropriate modifications to refer to this First Supplemental Agreement and, where appropriate, each other Finance Document which is being amended by this First Supplemental Agreement and the transactions contemplated in the Request, remain true and not misleading if repeated on the date of this First Supplemental Agreement with reference to the circumstances now existing.

4.2 Repetition of Finance Document representations and warranties

Each Borrower, the Guarantor and each of the other Transaction Obligors represent and warrant to the Facility Agent that the representations and warranties in the Finance Documents (other than the Facility Agreement) to which each is a party, as amended by the transactions contemplated in the Request and as amended and supplemented by this First Supplemental Agreement and updated with appropriate modifications to refer to this First Supplemental Agreement and the transactions contemplated in the Request, remain true and not misleading if repeated on the date of this First Supplemental Agreement with reference to the circumstances now existing.

5 AMENDMENT OF FACILITY AGREEMENT AND OTHER FINANCE DOCUMENTS

5.1 Amendments to Facility Agreement

With effect on and from (and subject to the occurrence of) the Effective Date, the Facility Agreement shall be, and shall be deemed by this First Supplemental Agreement to be, amended as follows:

- (a) by deleting the definitions of “**ABN Facility Agreement**”, “**Existing ABN Amro Facility Agreement**”, “**Existing CACIB Facility Agreement**” “**Existing Unicredit Facility Agreement**”, “**Refinancing Date**” and “**Termination Event**” in clause 1.1 thereof and all references thereto (including clause 21.26 thereof) in their entirety;

(b) by adding the following definitions in clause 1.1 thereof as follows in the requisite alphabetical order:

“**Effective Date**” shall have the meaning given to this term in the First Supplemental Agreement.

“**First Supplemental Agreement**” means the supplemental agreement dated 24 October 2018 and made between (i) the Borrowers, (ii) the Guarantor, (iii) the Lenders, (iv) the Facility Agent, (v) the Security Agent, (vi) the Arranger, (vii) the Account Bank and (viii) Odysseus setting out the terms and conditions pursuant to which this Agreement is amended and supplemented.

“**Merger**” means a reverse triangular merger involving the Guarantor and the New Holding Company, as a result of which (i) the Guarantor would be the surviving entity and an indirect, wholly-owned subsidiary of the New Holding Company and (ii) the Poseidon Shareholders would receive shares of the New Holding Company.

“**Merger Documents**” means the ancillary agreements entered into by the Poseidon Shareholders and the New Shareholders in connection with the definitive agreement in respect of the Merger.

“**New Holding Company**” means the corporation under the name Global Ship Lease Inc. (as may be renamed following the Merger), a corporation incorporated in the Republic of the Marshall Islands, whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, P.O. Box 1405, Majuro, Marshall Islands MH96960 and whose shares are publically listed on the New York Stock Exchange.

“**New Shareholder**” means each of:

- (a) Mr Michael Gross (either directly or indirectly through one or more Subsidiaries); and
- (b) CMA CGM S.A., a company incorporated in France.

“**Poseidon Shareholders**” means, each of:

- (a) KEP VI (Newco Marine) Ltd., a company incorporated in the Cayman Islands;
- (b) KIA VIII (Newco Marine) Ltd., a company incorporated in the Cayman Islands;
- (c) MAAS Capital Investments B.V., a company incorporated in the Netherlands; and
- (d) Management Investor Co, a corporation incorporated in the Marshall Islands.

“**Relevant Shareholding**” means, in respect of the New Holding Company, the percentage of ownership of shares and voting power being held by each of the Poseidon Shareholders and the New Shareholders, as such percentage shall be set out in the Merger Documents and disclosed in writing to the Facility Agent, as of the date of the Merger.

“**US GAAP**” means the United States of America Generally Accepted Accounting Principles promulgated by the Financial Accounting Standards Board, as amended from time to time, together with its pronouncements thereon from time to time.

- (c) by deleting the definition of “**Commercial Management Agreement**” in clause 1.1 thereof and replacing it with the following:
““**Commercial Management Agreement**” means, in relation to a Vessel, the agreement entered or to be entered into between the Guarantor and the Approved Commercial Manager regarding the commercial management of, amongst other vessels, that Vessel.”;
- (d) by deleting the definition of “**Existing Fleet Vessel**” in clause 1.1 thereof and replacing it with the following:
““**Existing Fleet Vessel**” means any vessel (including the Vessels) wholly owned by the Guarantor (directly or indirectly) by which any of the Group Facility Agreements is secured as at the Effective Date (each an “**Existing Fleet Vessel**”).”;
- (e) by deleting the definition of “**Group Facility Agreement**” in clause 1.1 thereof and replacing it with the following:
““**Group Facility Agreements**” means:
- (a) the facility agreement dated 11 August 2017 entered into by, inter alia, Credit Agricole Corporate and Investment Bank (as Lender) and Hector Marine LLC, Hephaestus Marine LLC and Pericles Marine LLC (as joint and several borrowers), as may be amended, supplemented, novated and/or replaced from time to time;
 - (b) the facility agreement dated 11 August 2017 entered into by, inter alia, ABN AMRO Bank N.V. (as Agent, Arranger, Swap Bank and Security Trustee) and Zeus One Marine LLC, Ikaros Marine LLC, Tasman Marine LLC, Hudson Marine LLC and Drake Marine LLC (as joint and several borrowers) as amended and restated by an Amending and Restating Deed on 9 October 2018, as may be amended, supplemented, novated and/or replaced from time to time;
 - (c) the facility agreement dated 30 August 2017 entered into by, inter alia, Wilmington Trust, National Association (as Facility Agent and Security Agent) and Leonidas Marine LLC as Borrower, as may be amended, supplemented, novated and/or replaced from time to time; and
 - (d) the facility agreement dated 9 October 2018 entered into by, inter alia, Amsterdam Trade Bank N.V. (as Agent and Security Agent) and THD Maritime Co. Limited as Borrower, as may be amended, supplemented, novated and/or replaced from time to time.”;
- (f) by deleting the definition of “**Technical Management Agreement**” in clause 1.1 thereof and replacing it with the following:
““**Technical Management Agreement**” means, in relation to a Vessel, the agreement entered or to be entered into between the relevant Borrower and the Approved Technical Manager regarding the technical management of that Vessel.”;
- (g) by including the words “or US GAAP” next to the reference to “IFRS” in the definition of “**Financial Indebtedness**” in clause 1.1 thereof;
- (h) by deleting the definition of “**IPO**” in clause 1.1 thereof in its entirety and all references thereto;

- (i) by deleting the definition of “**LLC Shares**” in clause 1.1 thereof and replacing it with the following:

““**LLC Shares**” in respect of a Borrower shall have the meaning ascribed thereto in that Borrower’s limited liability company agreement and, in respect of the Guarantor, shall have the meaning ascribed to “Unit” in the Guarantor’s limited liability company agreement, as amended.”;

- (j) by inserting the following clause as an additional new clause 7.8 thereof:

“7.8 Mandatory Prepayment in case of Delisting

- (a) If a Delisting occurs, the Borrowers and the Guarantor shall promptly notify the Facility Agent upon becoming aware of that event, and the Facility Agent shall, if the Majority Lenders so require, by not less than 15 days’ notice to the Borrowers, cancel the Facility and declare the Loan, together with all accrued interest, and all other amounts accrued under the Finance Documents, immediately due and payable, whereupon the Facility will be cancelled and the Loan and all such outstanding interest and other amounts will become immediately due and payable.
- (b) In the event that such Delisting occurs and no mandatory prepayment is required under paragraph (a) of this Clause 7.8, then the Transaction Obligors shall enter into, and provide, such documentation as may be required by the Facility Agent (acting with the authorisation of the Majority Lenders, acting reasonably) in order to amend this Agreement and the other Finance Documents, in light of such Delisting.

For the purposes of this Clause 7.8 (*Mandatory Prepayment in case of Delisting*):

“**Delisting**” means if (a) the shares of the New Holding Company cease to be publically listed on the New York Stock Exchange and (b) in the opinion of the Facility Agent (acting with the authorisation of the Majority Lenders, acting reasonably), the average charter rate of hire in respect of the Mortgaged Vessels (in aggregate) is not sufficient to cover Six Months’ Debt Service.

“**Operating Expenses**” mean, in relation to a Mortgaged Vessel, the appropriately and properly incurred costs and expenses of operating that Ship including expenses for crewing, victualling, insuring, maintenance, spares, management, operation and voyage (if payable by the relevant Borrower) of that Mortgaged Vessel.

“**Six Months’ Debt Service**” means, in respect of the six month period commencing on the date of the Delisting and ending six months thereafter, the aggregate amount of (a) the Operating Expenses in respect of the Mortgaged Vessels and (b) any sums to be incurred by the Borrowers in respect of the payment of principal of, and accrued interest on, the Loan and any accrued costs and expenses pursuant to this Agreement, during such six month period.”;

- (k) by deleting clause 18.3 thereof in its entirety and replacing it with the following new clause:

“18.3 LLC Shares and ownership

- (a) In the case of each Borrower, its limited liability company interest is unitized into a maximum of 500 LLC Shares, all of which have been issued to the Guarantor, other than in respect of Borrower D, in which case all 500 authorized LLC Shares have been issued to Odysseus.

- (b) In the case of the Guarantor, its limited liability company interest is unitized (and no limitation on the number of units is established within its limited liability company agreement), all of which are indirectly legally and beneficially owned by the New Holding Company.
 - (c) The legal title to and direct beneficial interest in the LLC Shares in each Borrower is held free of any Security other than Permitted Security or any other claim by (other than in respect of Borrower D) the Guarantor and, in respect of Borrower D, Odysseus.
 - (d) None of the LLC Shares in a Borrower is subject to any option to purchase, pre-emption rights or similar rights.”;
- (I) by deleting clause 18.32 thereof in its entirety and replacing it with the following new clause:

“18.32 Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No. 848/2015 on Insolvency Proceedings (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in Greece (or, in the case of the Guarantor, Greece or the United States of America as notified by the Guarantor to the Facility Agent on the Effective Date) and it has no “establishment” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.”;

- (m) by deleting clause 18.33 thereof in its entirety and replacing it with the following new clause:

“18.33 Place of business

No Transaction Obligor has a place of business in any country other than Greece or, in respect of the Guarantor, Greece or the United States of America as notified by the Guarantor to the Facility Agent on the Effective Date.”;

- (n) by deleting paragraph (b)(i) in clause 19.2 thereof and replacing it with the following new clause:

“(i) as soon as they become available, but in any event within 120 days after the end of each of the respective financial years of the Guarantor, the unaudited consolidated financial statements of the Guarantor for that financial year (such annual consolidated financial statements to be supplemented to include updated details of all off-balance sheet and employment commitments), together with a certification from the Chief Financial Officer of the Guarantor confirming that the figures are substantially in the same form as those figures used in the audited financial statements provided in respect of the New Holding Company under paragraph (c) of this Clause 19.2;”;

- (o) by incorporating a sub-clause (c) in clause 19.2 thereof which shall be read and construed as follows:

“(c) The Borrowers shall supply to the Facility Agent, in sufficient copies for all the Lenders, as soon as they become available, but in any event within 120 days after the end of each of the respective financial years of the New Holding Company (commencing with the financial year ending on 31 December 2018), publicly available annual financial statements of the New Holding Company prepared in accordance with NYSE rules (as shown and available in the website of the New Holding Company).”;

(p) by including the words “or US GAAP” next to the references to “IFRS” in clauses 18.15, 19.4 and 20.2 thereof;

(q) by deleting in its entirety clause 21.12 thereof and replacing it with the following new clause:

“21.12 Merger

(r) No Obligor shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction (save for the Merger), without the prior consultations and written consent from the Facility Agent (acting on the instructions of all Lenders) **Provided that** prior consent of the Facility Agent is not required in the case of a merger, amalgamation, demerger, consolidation or corporate reconstruction of the New Holding Company where the New Holding Company remains the surviving entity of that merger and so long as (i) no Event of Default has occurred and is continuing at any relevant time, (ii) such merger, amalgamation, demerger, consolidation or corporate reconstruction has no Material Adverse Effect on the business assets, operations, property or financial condition of the New Holding Company and (iii) either (A) at the time of entry into definitive documentation with respect to such transaction, the ratio of the principal amount of the Total Debt of the Person being acquired by, or being merged, consolidated or amalgamated into, the New Holding Company to the Fair Market Value of such Person does not exceed 80% or (B) the ratio of the principal amount of the Total Debt relative to the Adjusted EBITDA of the New Holding Company on a pro forma basis will be no greater than the ratio of the New Holding Company was prior to such transaction.

For the purposes of this clause only, the following definitions shall apply:

Adjusted EBITDA means, with respect to any specified Person, the net income (loss) before interest income and expense including amortization of deferred financing costs, realized and unrealized gain (loss) on interest rate derivatives, earnings allocated to preferred shares, income taxes, depreciation, amortization and impairment charges of such Person on a consolidated basis for the most recently ended four-quarter period for which internal financial statements are available immediately preceding the calculation date or as otherwise specified.

Approved Valuer means any of Clarksons, Maersk Broker, Howe Robinson, Fearnleys, Braemar ACM, Barry Rogliano Sales (BRS), Simpson Spence Young, E.A. Gibson.

Fair Market Value means, with respect to any asset or property, the value that would be paid in cash by a willing buyer to an unaffiliated willing seller on the basis of a sale for prompt delivery in an arm’s length transaction not involving distress or necessity of either party, as determined in good faith by the Obligors, provided that in respect of a vessel, such Fair Market Value shall be determined in dollars, as the arithmetic mean of independent valuations of such vessel on an “as is where is” basis, including any charters or other contracts for employment, obtained by the Obligors from two Approved Valuers.

Person means any natural person, corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity, whether legal or not.

Total Debt means, with respect to any Person, the total amount of indebtedness of such Person on a consolidated basis as of the end of the most recently ended fiscal quarter for which internal financial statements are available immediately preceding the calculation date.”;

- (s) by deleting in its entirety clause 21.25 thereof and replacing it with the following new clause:

“21.25 Constitutional documents

Without prejudice to Clause 21.17 (*Share Capital*) and the terms of any Shares Security, no Obligor shall allow any amendment or variation to its constitutional documents unless (i) such amendment or variation would clearly be immaterial to this Agreement and the other Finance Documents or (ii) in connection with the Guarantor only, is required in connection with the Merger or is immaterial to this Agreement and the other Finance Documents.”;

- (t) by deleting in its entirety paragraph (d) of clause 23.17 thereof and replacing it with the following new paragraph (d):

“(d) change, cancel or terminate any Management Agreement save for any termination of the then existing Management Agreements and the entering into new Management Agreements as required in connection with the Merger;”;

- (u) by deleting in its entirety clause 26.10 thereof and replacing it with the following new clause:

“26.10 Ownership of the Obligors and the New Holding Company / Guarantees of New Holding Company

- (a) The Guarantor ceases to hold the direct legal and beneficial ownership and control of all of the limited liability company interests in a Borrower (other than Borrower D) or Odysseus (and the voting rights attaching to those limited liability company interests).
- (b) Odysseus ceases to hold the direct legal and beneficial ownership and control of all of the limited liability company interests in Borrower D (and the voting rights attaching to those limited liability company interests).
- (c) The New Holding Company ceases to hold the indirect legal and beneficial ownership and control of all of the limited liability company interests in the Guarantor (and the voting rights attaching to those limited liability company interests).
- (d) Any of the Poseidon Shareholders and/or the New Shareholders cease to own (either directly or indirectly through one or more Subsidiaries) any part of its respective Relevant Shareholding in the New Holding Company during the six month period following the Merger.
- (e) Mr George Giouroukos ceases to be the Executive Chairman (or such equivalent position as disclosed to the Facility Agent) of the New Holding Company, other than by reason of death or other incapacity in managing his affairs.
- (f) The New Holding Company guarantees the obligations of any member of the Group (other than the Borrowers) under any Group Facility Agreement (the “**Initial Guarantee(s)**”) and the New Holding Company fails to:

- (i) notify the Facility Agent of its intention to enter into such Initial Guarantee(s) and of its/their terms within 7 days prior to the date of such Initial Guarantee(s); or
 - (ii) execute in favour of the Security Agent a guarantee as security of the obligations of the Borrowers under this Agreement on similar terms as the Initial Guarantee(s), within 20 days (or such later date as may be reasonably required for the negotiation and preparation of the relevant guarantee documentation) from the Facility Agent's request (together with any other documentation that may be required by the Facility Agent including, without limitation, any amendment documentation in respect of this Agreement and any other documents that may be reasonably required by the Facility Agent).";
- (v) by construing the definition of, and references throughout the Facility Agreement to, each Finance Document as if the same referred to that Finance Document as amended and supplemented by this First Supplemental Agreement; and
 - (w) by construing references throughout the Facility Agreement to "this Agreement", "hereunder" and other like expressions as if the same referred to the Facility Agreement as amended and supplemented by this First Supplemental Agreement.

5.2 Amendments to Shares Security of Odysseus

With effect on and from (and subject to the occurrence of) the Effective Date, the Shares Security granted by Odysseus shall be, and shall be deemed by this First Supplemental Agreement to be, amended as follows:

- (a) by deleting sub-clause (b) in clause 4.8 thereof and replacing it as follows:
 - “(b) The direct legal and beneficial ownership and control of the limited liability company interests in the Member (and the voting rights attaching to those limited liability company interests) is maintained by the Guarantor.”;
- (b) by construing the definition of, and references throughout the Shares Security granted by Odysseus to, the Facility Agreement and any of the other Finance Documents as if the same referred to the Facility Agreement and those Finance Documents as amended by this First Supplemental Agreement; and
- (c) by construing references throughout the Shares Security granted by Odysseus 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 First Supplemental Agreement.

5.3 Amendments to Finance Documents

With effect on and from (and subject to the occurrence of) the Effective Date, each of the Finance Documents (other than the Facility Agreement and the Shares Security granted by Odysseus) shall be, and shall be deemed by this First Supplemental Agreement to be, amended as follows:

- (a) by construing the definition of, and references throughout each of the Finance Documents to, the Facility Agreement and any of the other Finance Documents as if the same referred to the Facility Agreement and those Finance Documents as amended by this First 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 First Supplemental Agreement.

5.4 The Finance Documents to remain in full force and effect

The Finance Documents shall remain in full force and effect, as amended by:

- (a) the amendments contained or referred to in Clauses 5.1, 5.2 and 5.3; and
- (b) such further or consequential modifications as may be necessary to give full effect to the terms of this First Supplemental Agreement.

6 FURTHER ASSURANCES

6.1 Borrowers’, Guarantor’s and Shareholder’s obligations to execute further documents etc.

Each Borrower, the Guarantor and the Shareholder shall:

- (a) execute and deliver to the Facility Agent (or as it may direct) any assignment, mortgage, power of attorney, proxy or other document, governed by the laws of England or such other country as the Facility Agent may, in any particular case, specify; and
- (b) effect any registration or notarisation, give any notice or take any other step,
which the Facility Agent may, by notice to the Borrowers or, as the case may be, the Guarantor or the Shareholder 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 or right of any kind which the Facility Agent intended should be created by or pursuant to the Facility Agreement or any other Finance Document, each as amended or supplemented by this First Supplemental Agreement; and
- (b) to implement the terms and provisions of this First Supplemental Agreement.

6.3 Terms of further assurances

The Facility Agent may specify the terms of any document to be executed by the Borrowers or the Guarantor or the Shareholder under Clause 6.1, and those terms may include any covenants, powers and provisions which the Facility Agent considers appropriate to protect its interests.

6.4 Obligation to comply with notice

The Borrowers or the Guarantor or the Shareholder shall comply with a notice under Clause 6.1 by the date specified in the notice.

6.5 Limited liability company action

At the same time as the Borrowers or, as the case may be, the Guarantor or the Shareholder, deliver to the Facility Agent any document executed under Clause 6.1(a), the Borrowers or, as the case may be, the Guarantor or the Shareholder, shall also deliver to the Facility Agent a certificate signed by an officer of each Borrower or, as the case may be, the Guarantor or the Shareholder, which shall:

- (a) set out the text of a resolution of that Borrower's or, as the case may be, the Guarantor's or the Shareholder's applicable governing body specifically authorising the execution of the document specified by the Facility Agent unless the execution of the relevant document is authorised by the existing resolutions and general power of attorney of that Borrower or, as the case may be, the Guarantor or the Shareholder; and
- (b) state that either the resolution was duly passed by the member or board of directors, as applicable, validly convened and held throughout and is valid under that Borrower's or, as the case may be, the Guarantor's or the Shareholder's limited liability company agreement or other constitutional documents.

7 EXPENSES

7.1 Reimbursement of expenses

The Borrowers shall reimburse to the Facility Agent on demand all reasonable costs, fees and expenses (including, but not limited to, legal fees and expenses) and taxes thereon incurred by the Facility Agent or any other Finance Party in connection with the negotiation, preparation and execution of this First Supplemental Agreement and any other documents required thereunder.

8 NOTICES

8.1 General

The provisions of clause 36 (*Notices*) of the Facility Agreement, as amended by this First Supplemental Agreement, shall apply to this First Supplemental Agreement as if they were expressly incorporated in this First Supplemental Agreement with any necessary modifications.

9 SUPPLEMENTAL

9.1 Counterparts

This First Supplemental Agreement may be executed in any number of counterparts.

9.2 Third party rights

No person who is not a party to this First Supplemental Agreement has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this First Supplemental Agreement.

10 LAW AND JURISDICTION

10.1 Governing law

This First 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.

10.2 Incorporation of the Facility Agreement provisions

The provisions of clause 47 (*Enforcement*) of the Facility Agreement, as amended by this First Supplemental Agreement, shall apply to this First Supplemental Agreement as if they were expressly incorporated in this First Supplemental Agreement with any necessary modifications.

This First Supplemental Agreement has been duly executed as a Deed on the date stated at the beginning of this First Supplemental Agreement.

SCHEDULE 1

LENDERS

Lender	Lending Office
DVB Bank SE, Amsterdam Branch	WTC Schiphol Tower F 6th Floor Attn: Transaction Management Schiphol Boulevard 255 1118 BH Schiphol The Netherlands

SCHEDULE 2

CONDITIONS PRECEDENT DOCUMENTS

The following are the documents referred to in Clause 3.2:

- 1 In respect of the Obligors and the Shareholder only, documents of the kind specified in paragraphs 1.1–1.8 of Schedule 2, Part A of the Facility Agreement as amended and supplemented by this First Supplemental Agreement with appropriate modifications to refer to this First Supplemental Agreement (as applicable) and, in respect of the Approved Managers, an up-to-date certificate of incumbency.
- 2 A duly executed original of this First Supplemental Agreement and any documents required pursuant thereto.
- 3 Evidence satisfactory to the Facility Agent that the amount of all fees and expenses to be paid pursuant to Clause 7 of this First Supplemental Agreement have been agreed by the Borrowers.
- 4 Documentary evidence that the agent for service of process named in clause 47 of the Facility Agreement has accepted its appointment in respect of this First Supplemental Agreement.
- 5 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 First Supplemental Agreement (including without limitation) all necessary governmental and other official approvals and consents in such pertinent jurisdictions as the Facility Agent deems appropriate.
- 6 Favourable legal opinions from lawyers appointed by the Facility Agent on such matters concerning the laws of Marshall Islands and such other relevant jurisdictions as the Facility Agent may require.
- 7 Any further opinions, consents, agreements and documents in connection with this First Supplemental Agreement or any other Finance Document which the Facility Agent may request by notice to the Borrowers prior to the Effective Date.

SCHEDULE 3

CONDITIONS SUBSEQUENT DOCUMENTS

The following are the documents referred to in Clause 3.3:

- 1 Evidence satisfactory to the Facility Agent that the Merger has taken place and that, immediately after the Merger, each Poseidon Shareholder and each New Shareholder is, or will be, the legal and beneficial owner of its respective Relevant Shareholding.
- 2 Such documents and other evidence in such form as is requested by the Facility Agent in order for the Lenders to comply with all necessary “know your customer” or “client acceptance” or other similar identification procedures (including, but not limited to, specimen signatures of all the members or directors, as the case may be, and other officers of the New Holding Company) in relation to the transactions contemplated in the Finance Documents.
- 3 A certified true copy of the amended and restated limited liability company agreement and the certificate of limited liability company interest in respect of the Guarantor specifying the members/holders of the membership interests in the Guarantor.
- 4 A certified true copy of the Articles of Association and the Bylaws of the New Holding Company, as amended following the Merger.
- 5 A certified true copy of the duly executed Merger Documents (evidencing the Relevant Shareholding which should not be materially different from the proportions advised to the Facility Agent prior to the Effective Date).
- 6 A certificate of the Borrowers stating the percentage of ownership of shares and common (voting power) being held by each of the Poseidon Shareholders and the New Shareholders in the New Holding Company.
- 7 Evidence of the change of the name of the New Holding Company (if applicable).
- 8 A certified copy of each of the new Management Agreements together with such documentation as may be required by the Facility Agent in respect of any amendments to the existing Manager’s Undertakings.

SCHEDULE 4
FORM OF EFFECTIVE DATE NOTICE

To: **ATHENA MARINE LLC**
APHRODITE MARINE LLC
ARIS MARINE LLC and
ALEXANDER MARINE LLC

c/o Technomar Shipping Inc.
3-5 Menandrou Street
145 61 Kifisia
Athens, Greece
Fax: +30 210 8084224

[•] 2018

Dear Sirs

We refer to the first supplemental agreement (the "**First Supplemental Agreement**") dated [•] 2018 made between, *inter alios*, (i) yourselves as Borrowers and (ii) ourselves as Lenders, Arranger, Facility Agent and Security Agent.

Words and expressions defined in the First Supplemental Agreement shall have the same meaning when used in this letter.

We write to confirm that the conditions precedent in Schedule 2 of the First Supplemental Agreement [(other than those conditions precedent set out in clauses [•], in respect of which we have provided a waiver for the same to be received within [•] Business Days of the Effective Date)] have been fulfilled and that accordingly the Effective Date is [•] 2018.

Yours faithfully

for and on behalf of
DVB BANK SE, AMSTERDAM BRANCH

LENDERS

EXECUTED as a DEED

by **DVB BANK SE, AMSTERDAM BRANCH**
acting by Anthi Kekatou
its duly authorised
attorney-in-fact
in the presence of:

)
)
) *Anthi Kekatou*
)
)
)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

FACILITY AGENT

EXECUTED as a DEED

by **DVB BANK SE, AMSTERDAM BRANCH**
acting by Anthi Kekatou
its duly authorised
attorney-in-fact
in the presence of:

)
)
) *Anthi Kekatou*
)
)
)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SECURITY AGENT

EXECUTED as a DEED

by **DVB BANK SE, AMSTERDAM BRANCH**
acting by Anthi Kekatou
its duly authorised
attorney-in-fact
in the presence of:

)
)
) *Anthi Kekatou*
)
)
)



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

ARRANGER

EXECUTED as a DEED

by **DVB BANK SE, AMSTERDAM BRANCH**

acting by Anthi Kekatou

its duly authorised

attorney-in-fact

in the presence of:

)
)
)
)
)
)
)



PAT SKALA

WATSON, FARLEY & WILLIAMS

348 SYNGROU AVENUE

176 74 KALLITHEA

ATHENS - GREECE

ACCOUNT BANK

EXECUTED as a DEED
by **DVB BANK SE**
acting by Anthi Kekatou
its duly authorised
attorney-in-fact
in the presence of:
BORROWERS



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



EXECUTED as a DEED
by **ATHENA MARINE LLC**
acting by Aikaterini Emmanouil
its duly authorised
attorney-in-fact
in the presence of:



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



EXECUTED as a DEED
by **APHRODITE MARINE LLC**
acting by Aikaterini Emmanouil
its duly authorised
attorney-in-fact
in the presence of:



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



EXECUTED as a DEED
by **ARIS MARINE LLC**
acting by Aikaterini Emmanouil
its duly authorised
attorney-in-fact
in the presence of:



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE



EXECUTED as a DEED
by **ALEXANDER MARINE LLC**
acting by Aikaterini Emmanouil
its duly authorised
attorney-in-fact
in the presence of:



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE





PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

GUARANTOR

EXECUTED as a DEED
by **POSEIDON CONTAINERS HOLDINGS LLC**
acting by Aikaterini Emmanouil
its duly authorised
attorney-in-fact
in the presence of:



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

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SHAREHOLDER

EXECUTED as a DEED
by **ODYSSEUS MARINE LLC**
acting by Aikaterini Emmanouil
its duly authorised
attorney-in-fact
in the presence of:



PAT SKALA
WATSON, FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

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COUNTERSIGNED this 24th day of October 2018 for and on behalf of the below companies each of which, by its execution hereof, confirms and acknowledges that it has read and understood the terms and conditions of this First 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 Facility Agreement and the other Finance Documents.

APPROVED MANAGERS



George Youroukos
President
for and on behalf of
TECHNOMAR SHIPPING INC.



Dimitrios Tsiaklagkanos
President
for and on behalf of
CONCHART COMMERCIAL INC.

COUNTERSIGNED this 24th day of October 2018 for and on behalf of the below company which, by its execution hereof, confirms and acknowledges that it has read and understood the terms and conditions of this First Supplemental Agreement, that it agrees in all respects to the same and that the Subordination Deed to which it is a party shall remain in full force and effect in accordance with its terms.

SUBORDINATED CREDITOR



Georgios Giouroulos
Chief Executive Officer
for and on behalf of
K&T MARINE LLC

Dated 3 October 2018

USD 80,000,000

TERM LOAN FACILITY

**PHILIPPOS MARINE LLC
ARISTOTELES MARINE LLC
MENELAOS MARINE LLC**
as joint and several Borrowers

**POSEIDON CONTAINERS HOLDINGS LLC
TRITON CONTAINERS HOLDINGS LLC**
as Parent Guarantors

and

THE BANKS AND FINANCIAL INSTITUTIONS
listed in Part B of Schedule 1
as Lenders

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK
as Arranger

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK
as Facility Agent

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK
as Security Agent

FACILITY AGREEMENT

relating to
the refinancing of certain existing indebtedness in relation to m.vs. "ALEXANDRA", "UASC BUBIYAN" and "UASC YAS"

**WATSON FARLEY
&
WILLIAMS**

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PARTIES

- (1) **PHILIPPOS MARINE LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a borrower (“**Borrower A**”)
- (2) **ARISTOTELES MARINE LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a borrower (“**Borrower B**”)
- (3) **MENELAOS MARINE LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a borrower (“**Borrower C**”)
- (4) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a guarantor (the “**Parent Guarantor A**”)
- (5) **TRITON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a guarantor (the “**Parent Guarantor B**”)
- (6) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** as arranger (the “**Arranger**”)
- (7) **THE FINANCIAL INSTITUTIONS** listed in Part B of Schedule 1 (*The Parties*) as lenders (the “**Original Lenders**”)
- (8) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** as agent of the other Finance Parties (the “**Facility Agent**”)
- (9) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** as security agent for the Secured Parties (the “**Security Agent**”)

BACKGROUND

The Lenders have agreed to make available to the Borrowers a facility of USD 80,000,000 for the purposes of (inter alia) refinancing part of the existing indebtedness of the Ships.

OPERATIVE PROVISIONS

SECTION 1

INTERPRETATION

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Account Bank**” means Credit Agricole Corporate and Investment Bank acting through its office at 12, place des Etats-Unis, CS 70052, 92547 Montrouge Cedex, France or any replacement bank or other financial institution as may be approved by the Facility Agent acting with the authorisation of the Majority Lenders.

“**Accounts**” means the Earnings Accounts and the Retention Account.

“**Account Security**” means a document creating Security over any Account in agreed form.

“**Accounting Period**” means each consecutive period of six (6) months falling on each of 30 June and 31st December of each financial year of Parent Guarantor A during the Security Period for which it is required to deliver financial statements pursuant to Clause 20.2 (*Financial statements*).

“**Additional Guarantee**” means a guarantee to be executed by the New Parent in favour of the Security Agent on such terms and in such form as may be agreed between the Facility Agent and the New Parent.

“**Advance**” means a borrowing of all or part of the Loan under this Agreement.

“**Affiliate**” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“**Approved Brokers**” means any firm or firms of insurance brokers approved in writing by the Facility Agent, such approval not to be unreasonably withheld.

“**Approved Classification**” means, in relation to a Ship, as at the date of this Agreement, the classification in relation to that Ship specified in Schedule 7 (*Details of the Ships*) with the classification in relation to that Ship specified in Schedule 7 (*Details of the Ships*) or the equivalent classification with another Approved Classification Society.

“**Approved Classification Society**” means, in relation to a Ship, as at the date of this Agreement, the classification society in relation to that Ship specified in Schedule 7 (*Details of the Ships*) or any other classification society which is a member of the International Association of Classification Societies (but excluding the Russian Register of Shipping and China Classification Society) approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

“**Approved Commercial Manager**” means, in relation to a Ship, as at the date of this Agreement, Conchart Commercial Inc. or any other person approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders as the commercial manager of that Ship.

“**Approved Flag**” means, in relation to a Ship, as at the date of this Agreement, the flag of the Republic of the Marshall Islands or such other flag approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

“**Approved Manager**” means, in relation to a Ship, the Approved Commercial Manager or the Approved Technical Manager of that Ship.

“**Approved Technical Manager**” in relation to a Ship, as at the date of this Agreement, Technomar Shipping Inc. or any other person approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders as the technical manager of that Ship.

“**Approved Valuer**” means any of Clarksons-Platou, Barry Rogliano Salles, Kontiki Marine, Howe Robinson and any other firm or firms of independent sale and purchase shipbrokers agreed between the Facility Agent and the Borrowers.

“**Assignment Agreement**” means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

“**Associated Fleet Vessels**” means, together, m.vs. “MAIRA”, “NIKOLAS”, “NEWYORKER”, “ORCA I”, “AGIOS DIMITRIOS”, “MARY”, “KATHERINE”, “DOLPHIN II”, “ATHENA”, “KRISTINA” “TASMAN”, “DIMITRIS Y”, and “IAN H”, each wholly owned at any relevant time by direct or indirect Subsidiaries of Parent Guarantor A.

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, legalisation or registration.

“**Availability Period**” means the period from and including the date of this Agreement to and including 30 October 2018.

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers.

“**Bail-In Legislation**” means:

- (i) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (ii) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“**Book Leverage Ratio**” means, in respect of each Accounting Period and on a consolidated basis of the Parent Guarantor A, the ratio of Total Borrowings divided by the Total Assets during such period, as shown in the applicable financial statements of Parent Guarantor A and as determined in accordance with GAAP.

“**Borrower**” means Borrower A, Borrower B or Borrower C.

“**Break Costs**” means the amount (if any) by which:

- (i) the interest which a Lender should have received for the period from the date of receipt of all or any part of its participation in the Loan or an Unpaid Sum to the last day of the current Interest Period in relation to the Loan, the relevant part of the Loan or that Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds

- (ii) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Paris and New York.

“**Charter**” means, in relation to a Ship, any charter relating to that Ship, or other contract for its employment, whether or not already in existence.

“**Charter Guarantee**” means any guarantee, bond, letter of credit or other instrument (whether or not already issued) supporting a Charter or an Initial Charter, the form of which shall not be subject to the Facility Agent’s prior approval.

“**Code**” means the US Internal Revenue Code of 1986.

“**Commercial Management Agreement**” means the agreement entered into between Parent Guarantor B (or any parent company of it) for and on behalf of the Borrowers and the Approved Commercial Manager regarding the commercial management of a Ship.

“**Commitment**” means:

- (i) in relation to an Original Lender, the amount set opposite its name under the heading “Commitment” in Part B of Schedule 1 (*The Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- (ii) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

“**Compliance Certificate**” means a certificate in the form set out in Schedule 6 (*Form of Compliance Certificate*) or in any other form agreed between Parent Guarantor A and the Facility Agent.

“**Confidential Information**” means all information relating to any Transaction Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (i) any member of the Group or any of its advisers; or

(ii) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

(a) information that:

- (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 44 (*Confidential Information*); or
- (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (i) or (ii) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and

(b) any Funding Rate.

“**Confidentiality Undertaking**” means a confidentiality undertaking in substantially the appropriate form recommended by the LMA from time to time or in any other form agreed between the Borrowers and the Facility Agent.

“**Consolidated Liquidity**” means, in respect of an Accounting Period of Parent Guarantor A, the aggregate amount of free, unencumbered cash held by Parent Guarantor A, including cash equivalents and/or committed but non called-in equity;

“**Corresponding Debt**” means any amount, other than any Parallel Debt, which an Obligor owes to a Secured Party under or in connection with the Finance Documents.

“**Default**” means an Event of Default or a Potential Event of Default.

“**Deferral Period**” means the period commencing on the Utilisation Date and ending on 31 December 2019.

“**Delegate**” means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

“**Disruption Event**” means either or both of:

- (i) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties or, if applicable, any Transaction Obligor; or

- (ii) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party or, if applicable, any Transaction Obligor preventing that, or any other, Party or, if applicable, any Transaction Obligor:
 - (a) from performing its payment obligations under the Finance Documents; or
 - (b) from communicating with other Parties or, if applicable, any Transaction Obligor in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party or, if applicable, any Transaction Obligor whose operations are disrupted.

“Dividend Payment” means, in relation to an Obligor, any of the following:

- (i) a declaration, making or payment of any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its equity interests;
- (ii) a repayment or distribution of any dividend or share premium reserve; or
- (iii) a redemption, repurchase, defeasance, retirement or repayment of any of its share capital or a resolution to do any of the foregoing.

“Document of Compliance” has the meaning given to it in the ISM Code.

“dollars”, **“USD”** and **“\$”** mean the lawful currency, for the time being, of the United States of America.

“Earnings” means, in relation to a Ship, all moneys whatsoever which are now, or later become, payable (actually or contingently) to a Borrower or the Security Agent and which arise out of or in connection with or relate to the use or operation of that Ship, including (but not limited to):

- (i) the following, save to the extent that any of them is, with the prior written consent of the Facility Agent, pooled or shared with any other person:
 - (a) all freight, hire and passage moneys including, without limitation, all moneys payable under, arising out of or in connection with a Charter or a Charter Guarantee;
 - (b) the proceeds of the exercise of any lien on sub-freights;
 - (c) compensation payable to a Borrower or the Security Agent in the event of requisition of that Ship for hire or use;
 - (d) remuneration for salvage and towage services;
 - (e) demurrage and detention moneys;
 - (f) without prejudice to the generality of sub-paragraph (a) above, damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of that Ship;

- (g) all moneys which are at any time payable under any Insurances in relation to loss of hire;
 - (h) all monies which are at any time payable to a Borrower in relation to general average contribution; and
- (ii) if and whenever that Ship is employed on terms whereby any moneys falling within sub-paragraphs (a) to (h) of paragraph (i) 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 that Ship.

“Earnings Account” means, in relation to a Borrower:

- (i) an account in the name of that Borrower with the Account Bank designated “Earnings Account”;
- (ii) any other account in the name of that Borrower with the Account Bank which may, with the prior written consent of the Facility Agent, be opened in the place of the account referred to in paragraph (i) above, irrespective of the number or designation of such replacement account;
or
- (iii) any sub-account of any account referred to in paragraphs (i) or (ii) above.

“EEA Member Country” means any member state of the European Union, Iceland, Liechtenstein and Norway.

“Environmental Approval” means any present or future permit, ruling, variance or other Authorisation required under Environmental Laws.

“Environmental Claim” means any claim by any governmental, judicial or regulatory authority or any other person which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any Environmental Law and, for this purpose, **“claim”** includes a claim for damages, compensation, contribution, injury, fines, losses and penalties or any other payment of any kind, including in relation to clean-up and removal, 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:

- (i) any release, emission, spill or discharge of Environmentally Sensitive Material whether within a Ship or from a Ship into any other vessel or into or upon the air, water, land or soils (including the seabed) or surface water; or
- (ii) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water from a vessel other than any Ship and which involves a collision between any Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which a Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or a Ship and/or any Transaction Obligor and/or any operator or manager of a Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action; or

- (iii) any other incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water otherwise than from a Ship and in connection with which a Ship is actually or potentially liable to be arrested and/or where any Transaction Obligor and/or any operator or manager of a Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action, other than in accordance with an Environmental Approval.

“**Environmental Law**” means any present or future law relating to pollution or protection of human health or the environment, to conditions in the workplace, to the carriage, generation, handling, storage, use, release or spillage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material.

“**Environmentally Sensitive Material**” means and includes all contaminants, oil, oil products, toxic substances 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.

“**EU Bail-In Legislation Schedule**” means the document described as such and published by the LMA from time to time.

“**Event of Default**” means any event or circumstance specified as such in Clause 27 (*Events of Default*).

“**Existing Facility Agreement**” means the facility agreement dated 25 January 2013 (as supplemented and amended by a supplemental letter dated 14 January 2015, a first supplemental agreement dated 14 September 2015, a second supplemental letter dated 17 November 2015, a deferral letter dated 14 October 2016, a second supplemental agreement dated 27 January 2017, a deferral letter dated 13 April 2018 and a deferral letter dated 29 June 2018) and made between (inter alios) (i) the Borrowers as joint and several borrowers, (ii) Parent Guarantor B as guarantor and (iii) DVB Bank SE as lender, in respect of a facility of (originally) up to US\$232,000,000.

“**Existing indebtedness**” means, at any date, any outstanding indebtedness of the Obligors (other than Parent Guarantor A) on that date under the Existing Facility Agreement.

“**Existing Security**” means any Security created to secure the Existing Indebtedness.

“**Facility**” means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

“**Facility Office**” means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than 5 Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.

“**FATCA**” means:

- (i) sections 1471 to 1474 of the Code or any associated regulations;
- (ii) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (i) above; or

- (iii) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (i) or (ii) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

“FATCA Application Date” means:

- (i) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (ii) in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (iii) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (i) or (ii) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

“FATCA Deduction” means a deduction or withholding from a payment under a Finance Document required by FATCA.

“FATCA Exempt Party” means a Party that is entitled to receive payments free from any FATCA Deduction.

“Fee Letter” means any letter or letters dated on or about the date of this Agreement between any of the Arranger, the Facility Agent and the Security Agent and any Obligor setting out any of the fees referred to in Clause 11 (*Fees*).

“Finance Document” means:

- (i) this Agreement;
- (ii) each Utilisation Request;
- (iii) the Intercreditor Agreement;
- (iv) any Security Document;
- (v) any Manager’s Undertaking;
- (vi) any Additional Guarantee;
- (vii) any Fee Letter;
- (viii) any other document which is executed for the purpose of establishing any priority or subordination arrangement in relation to the Secured Liabilities; or
- (ix) any other document designated as such by the Facility Agent and the Borrowers.

“Finance Party” means the Facility Agent, the Security Agent, the Arranger, or a Lender.

“Financial Indebtedness” means any indebtedness for or in relation to:

- (i) moneys borrowed;
- (ii) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (iii) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (iv) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability (other than any liability in respect of a lease or hire purchase contract which would, in accordance with GAAP in force prior to 1 January 2019, have been treated as an operating lease);
- (v) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (vi) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (vii) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (viii) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (ix) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (i) to (viii) above.

“Fleet Vessels” means the Ships, the Associated Fleet Vessels and all of the ships from time to time wholly owned by Subsidiaries of Parent Guarantor A and, in the singular, means any of them.

“Funding Rate” means any individual rate notified by a Lender to the Facility Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause 10.3 (*Cost of funds*).

“GAAP” means generally accepted accounting principles in the United States of America including IFRS.

“General Assignment” means, in relation to a Ship, the general assignment creating first ranking Security over:

- (i) that Ship’s Earnings, its Insurances and any Requisition Compensation in relation to that Ship; and
- (ii) any Charter and any Charter Guarantee in relation to that Ship, in agreed form.

“**Group**” means the Parent Guarantors and their Subsidiaries for the time being.

“**Holding Company**” means, in relation to a person, any other person in relation to which it is a Subsidiary.

“**IFRS**” means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“**Indemnified Person**” has the meaning given to it in Clause 14.2 (*Other indemnities*).

“**Initial Charter**” means, in relation to

- (i) Ship A, a time charter with Ocean Network Express Pte. Ltd., of Singapore dated 12 March 2018 with latest expiration date 7 June 2019 (earliest redelivery date 7 March 2019) and for a charter hire of USD 20,750 per day;
- (ii) Ship B, a time charter with originally United Arab Shipping Co (SAG) dated 15 December 2014 as subsequently novated on 28 August 2017 with Hapag-Lloyd Aktiengesellschaft., Hamburg and as further amended by Addendum no.1 dated 12 January 2018, with latest expiration date 5 May 2019 (earliest redelivery date 5 February 2019) and for a charter hire of USD 20,000 per day (including a 1 year option at a charter rate of USD 30,000 per day); and
- (iii) Ship C, a time charter with originally United Arab Shipping Co (SAG) dated 15 December 2014 as subsequently novated on 28 August 2017 with Hapag-Lloyd Aktiengesellschaft., Hamburg and as further amended by Addendum no.1 dated 12 January 2018, with latest expiration date 5 May 2019 (earliest redelivery date 5 February 2019) and for a charter hire of USD 20,000 per day (including a 1 year option at a charter rate of USD 30,000 per day).

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

- (i) all policies and contracts of insurance, including entries of that Ship in any protection and indemnity or war risks association, effected in relation to that Ship, that Ship’s Earnings or otherwise in relation to that Ship whether before, on or after the date of this Agreement; and
- (ii) all rights and other assets relating to, or derived from, any of such policies, contracts or entries, including any rights to a return of premium and any rights in relation to any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement.

“**Interest Payment Date**” has the meaning given to it in paragraph (a) of Clause 8.2 (*Payment of interest*).

“**Intercreditor Agreement**” means an agreement between the Finance Parties and the Junior Finance Parties by which the Junior Finance Parties subordinate all their rights and interests under the Junior Finance Documents to the rights and interests of the Finance Parties.

“**Interest Period**” means, in relation to the Loan or any part of the Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

“**ISM Code**” means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time.

“**ISPS Code**” means the International Ship and Port Facility Security (ISPS) Code as adopted by the International Maritime Organization’s (IMO) Diplomatic Conference of December 2002, as the same may be amended or supplemented from time to time.

“**ISSC**” means an International Ship Security Certificate issued under the ISPS Code.

“**Junior Facility Agent**” means Wilmington Trust, National Association of Wilmington, Delaware, United States of America.

“**Junior Facility Agreement**” means a facility agreement made or to be made between the Borrowers as borrowers and (inter alia) the Junior Lenders as lenders, by which the Junior Lenders have agreed to make available to the Borrowers a facility of up to USD 38,500,000.

“**Junior Finance Documents**” means any document defined as a “Finance Document” in the Junior Facility Agreement.

“**Junior Finance Party**” means the Junior Lenders, the Junior Facility Agent and any other party defined as a “Finance Party” in the Junior Facility Agreement.

“**Junior Lender**” means the lenders under the Junior Facility Agreement as set out in the Intercreditor Agreement.

“**Junior Loan**” means the amounts to be advanced or outstanding at the relevant time (as the context may require) under the Junior Facility Agreement.

“**Junior Security**” means any Security granted as security for the Junior Loan.

“**Lender**” means:

- (i) any Original Lender; and
- (ii) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 28 (*Changes to the Lenders*),

which in each case has not ceased to be a Party as such in accordance with this Agreement.

“**Letter of Ownership**” means a letter to be provided to the Facility Agent, from such entities or individuals, and in such form as may be acceptable to, the Facility Agent for the purposes of this Agreement.

“**LIBOR**” means, in relation to the Loan or any part of the Loan:

- (i) the applicable Screen Rate as of the Specified Time for dollars and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or

(ii) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

“**Limitation Acts**” means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

“**LLC Shares**”, in respect of a Borrower, shall have the meaning ascribed thereto in that Borrower’s limited liability company agreement.

“**LMA**” means the Loan Market Association or any successor organisation.

“**Loan**” means the principal amount made available or otherwise the amount advanced and for the time being outstanding, as the case may be, under the Facility and a “**part of the Loan**” means the Advance or any other part of the Loan as the context may require.

“**Major Casualty**” means, in relation to a Ship, any casualty to that Ship in relation to which the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds USD 750,000 or the equivalent in any other currency.

“**Majority Lenders**” means:

- (i) if no Advance has yet been made, a Lender or Lenders whose Commitments aggregate more than 66 $\frac{2}{3}$ per cent, of the Total Commitments;
or
- (ii) at any other time, a Lender or Lenders whose participations in the Loan aggregate more than 66 $\frac{2}{3}$ per cent, of the amount of the Loan then outstanding or, if the Loan has been repaid or prepaid in full, a Lender or Lenders whose participations in the Loan immediately before repayment or prepayment in full aggregate more than 66 $\frac{2}{3}$ per cent, of the Loan immediately before such repayment.

“**Management Agreement**” means a Technical Management Agreement or a Commercial Management Agreement.

“**Manager’s Undertaking**” means, in relation to a Ship, the letter of undertaking from its Approved Technical Manager and the letter of undertaking from its Approved Commercial Manager subordinating the rights of such Approved Technical Manager and such Approved Commercial Manager respectively against that Ship and the relevant Borrower to the rights of the Finance Parties in agreed form.

“**Margin**” means

- (i) 3.00 per cent, per annum during the first six Months following the Utilisation Date;
- (ii) 3.25 per cent, per annum during the following twelve Months; and
- (iii) 3.50 per cent, per annum thereafter.

“**Market Value**” means, in relation to a Ship or any other vessel, the value determined in accordance with Clause 25.7 (*Provision of valuations*),

“Material Adverse Effect” means in the reasonable opinion of the Majority Lenders a material adverse effect on:

- (i) the business, operations, property, condition (financial or otherwise) or prospects of the Group as a whole; or
- (ii) the ability of any Transaction Obligor to perform its obligations under any Finance Document; or
- (iii) the validity or enforceability of, or the effectiveness or ranking of any Security granted or intended to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

“Month” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (i) (subject to paragraph (iii) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (ii) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (iii) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

“Mortgage” means, in relation to a Ship, a first preferred Marshall Islands ship mortgage on that Ship in agreed form.

“Net Worth” means equity payments already advanced in respect of the Fleet Vessels less accumulated dividends plus retained earnings of the Fleet Vessels as such term is defined in the applicable financial statements of Parent Guarantor A determined in accordance with GAAP.

“New Parent” means a company which will be the ultimate parent company of Parent Guarantor A following the completion of any merger or a reverse merger as described in Clause 22.13 (*Merger*) during the Security Period.

“Obligor” means each Borrower and each Parent Guarantor.

“Original Financial Statements” means:

- (i) in relation to each Parent Guarantor, its audited consolidated financial statements of the Group for its financial year ended 2017; and
- (ii) in relation to each Borrower, its unaudited financial statements for its financial year ended 2017.

“Original Jurisdiction” means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is formed as at the date of this Agreement.

“Overseas Regulations” means the Overseas Companies Regulations 2009 (SI 2009/1801).

“**Parallel Debt**” means any amount which an Obligor owes to the Security Agent under Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or under that clause as incorporated by reference or in full in any other Finance Document.

“**Parent Guarantor**” means Parent Guarantor A or Parent Guarantor B.

“**Participating Member State**” means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“**Party**” means a party to this Agreement.

“**Perfection Requirements**” means the making or procuring of filings, stampings, registrations, notarisations, endorsements, translations and/or notifications of any Finance Document (and/or any Security created under it) necessary for the validity, enforceability (as against the relevant Obligor or any relevant third party) and/or perfection of that Finance Document.

“**Permitted Charter**” means, in relation to a Ship, a Charter:

- (i) which is a time, voyage or consecutive voyage charter;
- (ii) the duration of which does not exceed and is not capable of exceeding, by virtue of any optional extensions, 12 months plus a redelivery allowance of not more than 30 days unless prior approval has been obtained from the Facility Agent;
- (iii) which is entered into on *bona fide* arm’s length terms at the time at which that Ship is fixed; and
- (iv) in relation to which not more than two months’ hire is payable in advance,

and any other Charter which is approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders which authorisation no Lender shall unreasonably withhold or delay.

“**Permitted Financial Indebtedness**” means any Financial Indebtedness incurred under the Finance Documents and the Junior Finance Documents and, for the avoidance of doubt, includes any normal trading debt of the Borrowers in the ordinary course of their business operations of owning and operating the Ships and, in respect of the Parent Guarantors, any guarantees that have already been issued or may be issued in the context of supporting their respective Subsidiaries (including Subsidiaries formed after the date of this Agreement) in obtaining financing or acquiring vessels.

“**Permitted Security**” means:

- (i) until the Utilisation Date, any Existing Security;
- (ii) Security created by the Finance Documents;
- (iii) the Junior Security;
- (iv) liens for unpaid master’s and crew’s wages in accordance with first class ship ownership and management practice and not being enforced through arrest;

- (v) liens for salvage;
- (vi) liens for master's disbursements incurred in the ordinary course of trading in accordance with first class ship ownership and management practice; and
- (vii) any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of any Ship:
 - (a) not as a result of any default or omission by any Borrower; and
 - (b) subject, in the case of liens for repair or maintenance, to Clause 24.15 (*Restrictions on chartering, appointment of managers etc.*), provided such lien does not secure amounts more than 60 days overdue (unless the overdue amount is being contested in good faith by appropriate steps and for the payment of which adequate reserves are held and provided further that such proceedings do not give rise to a material risk of the relevant Ship or any interest in it being seized, sold, forfeited or lost).

"Potential Event of Default" means any event or circumstance specified in Clause 27 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Protected Party" has the meaning given to it in Clause 12.1 (*Definitions*).

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market in which case the Quotation Day will be determined by the Facility Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

"Related Fund" in relation to a fund (the "first fund"), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

"Relevant Interbank Market" means the London interbank market.

"Relevant Jurisdiction" means, in relation to a Transaction Obligor:

- (i) its Original Jurisdiction;
- (ii) any jurisdiction where any asset subject to, or intended to be subject to, any of the Transaction Security created, or intended to be created, by it is situated;
- (iii) any jurisdiction where it conducts its business; and
- (iv) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

“Repayment Date” means each date on which a Repayment Instalment is required to be paid under Clause 6.1 (*Repayment of Loan*).

“Repayment Instalment” has the meaning given to it in Clause 6.1 (*Repayment of Loan*).

“Repeating Representation” means each of the representations set out in Clause 19 (*Representations*) except Clause 19.10 (*Insolvency*), Clause 19.11 (*No filing or stamp taxes*) and Clause 19.12 (*Deduction of Tax*) and any representation of any Transaction Obligor made in any other Finance Document that is expressed to be a “Repeating Representation” or is otherwise expressed to be repeated.

“Representative” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

“Requisition” means in relation to a Ship:

- (i) any expropriation, confiscation, requisition (excluding a requisition for hire or use which does not involve a requisition for title) 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 (whether *de jure* or *de facto*) by any government or official authority or by any person or persons claiming to be or to represent a government or official authority unless it is within 45 days redelivered to the full control of the Borrower owning that Ship (or any other longer period as the Facility Agent may agree at the request of the relevant Borrower); and
- (ii) any capture or seizure of that Ship (including any hijacking or theft) by any person whatsoever (unless it is within 45 days redelivered to the full control of the Borrower owning that Ship (or any other longer period as the Facility Agent may agree at the request of the relevant Borrower)).

“Requisition Compensation” includes all compensation or other moneys payable to a Borrower by reason of any Requisition or any arrest or detention of a Ship in the exercise or purported exercise of any lien or claim.

“Resolution Authority” means any body which has authority to exercise any Write-down and Conversion Powers.

“Retention Account” means:

- (i) an account in the name of the Borrowers with the Account Bank designated “Philippos Marine LLC et al - Retention Account”;
- (ii) any other account in the name of the Borrowers with the Account Bank which may, with the prior written consent of the Facility Agent, be opened in the place of the account referred to in paragraph (i) above, irrespective of the number or designation of such replacement account;
or
- (iii) any sub-account of any account referred to in paragraphs (i) or (ii) above.

“Safety Management Certificate” has the meaning given to it in the ISM Code.

“**Safety Management System**” has the meaning given to it in the ISM Code.

“**Sanctions**” means any economic, financial or trade sanctions laws, regulations, embargoes or other restrictive measures adopted, administered, enacted or enforced by any Sanctions Authority, or otherwise imposed by any law or regulation compliance with which is reasonable in the ordinary course of business of any Transaction Obligor or to which any Transaction Obligor is subject (which shall include without limitation, any extra-territorial sanctions imposed by law or regulation of the United States of America).

“**Sanctions Authority**” means:

- (i) the government of the United States of America;
- (ii) the United Nations;
- (iii) the European Union (or the governments of any of its member states);
- (iv) the United Kingdom; or
- (v) the respective governmental institutions and agencies of any of the foregoing including the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”), the United States Department of State, the United States Department of Commerce and Her Majesty’s Treasury.

“**Sanctions Restricted Jurisdiction**” means any country or territory which is the target of country-wide or territory-wide Sanctions, including as at the date of this Agreement, Iran, Sudan, Syria, Crimea, North Korea and Cuba.

“**Sanctions Restricted Person**” means a person or vessel:

- (i) that is, or is directly or indirectly, owned or controlled (as such terms are defined by the relevant Sanctions Authority) by, or acting on behalf of, one or more persons or entities on any list (each as amended, supplemented or substituted from time to time) of restricted entities, persons or organisations (or equivalent) published by a Sanctions Authority;
- (ii) that is located or resident in or incorporated or formed under the laws of, or owned or controlled by, a person located or resident in or incorporated under the laws of a Sanctions Restricted Jurisdiction; or

that is otherwise the target or subject of Sanctions.

“**Screen Rate**” means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for dollars for the relevant period displayed on page LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Borrowers.

“**Secured Liabilities**” means all present and future obligations and liabilities, (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under or in connection with each Finance Document.

“Secured Party” means each Finance Party from time to time party to this Agreement, a Receiver or any Delegate.

“Security” means a mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

“Security Assets” means all of the assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

“Security Document” means:

- (i) any Shares Security;
- (ii) any Mortgage;
- (iii) any General Assignment;
- (iv) any Account Security;
- (v) any other document (whether or not it creates Security) which is executed as security for the Secured Liabilities; or
- (vi) any other document designated as such by the Facility Agent and the Borrowers.

“Security Period” means the period starting on the date of this Agreement and ending on the date on which the Facility Agent is satisfied that there is no outstanding Commitment in force and that the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full.

“Security Property” means:

- (i) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (ii) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in relation to the Secured Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Security Agent as trustee for the Secured Parties;
- (iii) the Security Agent’s interest in any turnover trust created under the Finance Documents;
- (iv) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties,

except:

- (a) rights intended for the sole benefit of the Security Agent; and
- (b) any moneys or other assets which the Security Agent has transferred to the Facility Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement.

“Selection Notice” means a notice substantially in the form set out in Part A of Schedule 3 (*Requests*) given in accordance with Clause 9 (*Interest Periods*).

“Servicing Party” means the Facility Agent or the Security Agent.

“Shareholder” means:

- (i) in respect of Borrower A, Parent Guarantor B; and
- (ii) in respect of Borrower B and Borrower C, Triton NB LLC, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960.

“Shares Security” means, in relation to a Borrower, a document creating Security over the LLC Shares in that Borrower in agreed form.

“Ship” means Ship A, Ship B or Ship C.

“Ship A” means m.v. “ALEXANDRA”, details of which are set out opposite its name in Schedule 7 (*Details of the Ships*).

“Ship B” means m.v. “UASC BUBIYAN”, details of which are set out opposite its name in Schedule 7 (*Details of the Ships*).

“Ship C” means m.v. “UASC YAS”, details of which are set out opposite its name in Schedule 7 (*Details of the Ships*).

“Specified Time” means a day or time determined in accordance with Schedule 8 (*Timetables*).

“Subsidiary” means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

“Tax” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“Tax Credit” has the meaning given to it in Clause 12.1 (*Definitions*).

“Tax Deduction” has the meaning given to it in Clause 12.1 (*Definitions*).

“Tax Payment” has the meaning given to it in Clause 12.1 (*Definitions*).

“Technical Management Agreement” means the agreement entered into between a Borrower and the Approved Technical Manager regarding the technical management of a Ship.

“Termination Date” means 30 June 2020.

“Third Parties Act” has the meaning given to it in Clause 1.5 (*Third party rights*).

“Total Assets” means, in respect of each Accounting Period, the total assets of Parent Guarantor A as stated in the most recent financial statements produced in accordance with Clause 20.2 (*Financial Statements*);

“Total Borrowings” means at any relevant time the total long-term borrowings, inclusive of current portion of long-term borrowings as stated in the most recent financial statements of Parent Guarantor A produced in accordance with Clause 20.2 (*Financial Statements*);

“Total Commitments” means the aggregate of the Commitments, being USD 80,000,000 at the date of this Agreement.

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

- (i) actual, constructive, compromised, agreed or arranged total loss of that Ship; or
- (ii) any Requisition of that Ship unless that Ship is returned to the full control of the relevant Borrower within 45 days of such Requisition (or such longer period as may be requested by the relevant Borrower and agreed to by the Facility Agent).

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

- (i) 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;
- (ii) in the case of a constructive, compromised, agreed or arranged total loss of that Ship, the earlier of:
 - (a) the date on which a notice of abandonment is given (or deemed or agreed to be given) to the insurers; and
 - (b) the date of any compromise, arrangement or agreement made by or on behalf of the relevant Borrower with that Ship’s insurers in which the insurers agree to treat that Ship as a total loss; and
- (iii) in the case of any other type of Total Loss, the date (or the most likely date) on which it appears to the Facility Agent that the event constituting the total loss occurred.

“Transaction Document” means:

- (i) a Finance Document;
- (ii) any Charter; or
- (iii) any other document designated as such by the Facility Agent and a Borrower.

“Transaction Obligor” means an Obligor or any other member of the Group who executes a Transaction Document (other than a Charter).

“Transaction Security” means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

“Transfer Certificate” means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the Borrowers.

“**Transfer Date**” means, in relation to an assignment or a transfer, the later of:

- (i) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (ii) the date on which the Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

“**UK Establishment**” means a UK establishment as defined in the Overseas Regulations.

“**Unpaid Sum**” means any sum due and payable but unpaid by a Transaction Obligor under the Finance Documents.

“**US**” means the United States of America.

“**US Tax Obligor**” means:

- (i) a person which is resident for tax purposes in the US; or
- (ii) a person some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

“**Utilisation**” means the utilisation of the Facility.

“**Utilisation Date**” means the date of the Utilisation, being the date on which the Advance is to be made.

“**Utilisation Request**” means a notice substantially in the form set out in Part A of Schedule 3 (*Requests*).

“**Value Adjusted Leverage Ratio**” means at any time the ratio (expressed as a percentage) of:

- i) the Total Borrowings divided by
- ii) the Value Adjusted Total Assets;

“**Value Adjusted Total Assets**” means the Total Assets of Parent Guarantor A adjusted (upwards or downwards) in each case for the difference of the book value of all Fleet Vessels (as evidenced in the most recent financial statements produced in accordance with Clause 20.2 (*Financial Statements*)) and the aggregate Market Value of all Fleet Vessels;

“**VAT**” means:

- (i) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (ii) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (i) above, or imposed elsewhere.

“**Write-down and Conversion Powers**” means:

- (i) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and

- (ii) in relation to any other applicable Bail-In Legislation:
 - (a) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (b) any similar or analogous powers under that Bail-In Legislation.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the “**Account Bank**”, the “**Arranger**”, the “**Facility Agent**”, any “**Finance Party**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Secured Party**”, the “**Security Agent**”, any “**Transaction Obligor**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
 - (ii) “**assets**” includes present and future properties, revenues and rights of every description;
 - (iii) a liability which is “**contingent**” means a liability which is not certain to arise and/or the amount of which remains unascertained;
 - (iv) “**document**” includes a deed and also a letter, fax, email or telex;
 - (v) “**expense**” means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Tax including VAT;
 - (vi) a “**Finance Document**”, a “**Security Document**” or “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document, Security Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (vii) a “**group of Lenders**” includes all the Lenders;
 - (viii) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (ix) “**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;
 - (x) “**proceedings**” means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;

- (xi) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (xii) a “**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;
 - (xiii) a provision of law is a reference to that provision as amended or re-enacted;
 - (xiv) a time of day is a reference to London time;
 - (xv) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
 - (xvi) words denoting the singular number shall include the plural and vice versa; and
 - (xvii) “**including**” and “**in particular**” (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.
- (b) The determination of the extent to which a rate is “**for a period equal in length**” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
 - (c) Section, Clause and Schedule headings are for ease of reference only and are not to be used for the purposes of construction or interpretation of the Finance Documents.
 - (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under, or in connection with, any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (e) A Potential Event of Default is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived or, if the Facility Agent deems that it is capable of remedy, has not been remedied within the period of time specified by the Facility Agent.

1.3 Construction of insurance terms

In this Agreement:

“**approved**” means, for the purposes of Clause 23 (*Insurance Undertakings*), approved in writing by the Facility Agent.

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

“**obligatory insurances**” means all insurances effected, or which any Borrower is obliged to effect, under Clause 23 (*Insurance Undertakings*) or any other provision of this Agreement or of another Finance Document.

“**policy**” 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) (1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/10/83) (1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision.

“**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 23 of the Institute Time Clauses (Hulls) (1/10/83).

1.4 Agreed forms of Finance Documents

References in Clause 1.1 (*Definitions*) to any Finance Document being in “agreed form” are to that Finance Document;

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by each Borrower and the Facility Agent); or
- (b) in any other form agreed in writing between each Borrower and the Facility Agent acting with the authorisation of the Majority Lenders or, where Clause 43.2 (*All Lender matters*) applies, all the Lenders.

1.5 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Subject to Clause 43.3 (*Other exceptions*) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Affiliate, Receiver, Delegate or any other person described in paragraph (d) of Clause 14.2 (*Other indemnities*), paragraph (b) of Clause 30.11 (*Exclusion of liability*), or paragraph (b) of Clause 31.11 (*Exclusion of liability*) may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

SECTION 2

THE FACILITY

2 THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrowers a dollar term loan facility in an amount equal to the Total Commitments.

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from a Transaction Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of the Loan or any other amount owed by a Transaction Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by that Transaction Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.3 Borrowers' Agent

- (a) Each Borrower by its execution of this Agreement irrevocably appoints Parent Guarantor A to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) Parent Guarantor A on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including Utilisation Requests), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Borrower notwithstanding that they may affect the Borrower, without further reference to or the consent of that Borrower; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Borrower pursuant to the Finance Documents to the Parent Guarantor A,

and in each case the Borrower shall be bound as though the Borrower itself had given the notices and instructions (including, without limitation, any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by Parent Guarantor A or given to

Parent Guarantor A under any Finance Document on behalf of a Borrower or in connection with any Finance Document (whether or not known to any Borrower) shall be binding for all purposes on that Borrower as if that Borrower had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of Parent Guarantor A and any Borrower, those of Parent Guarantor A shall prevail.

3 PURPOSE

3.1 Purpose

Each Borrower shall apply all amounts borrowed by it under the Facility only for the purpose stated in the preamble (Background) to this Agreement.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4 CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Borrowers may not deliver the Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Part A of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent.

4.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if:

- (a) on the date of the Utilisation Request and on the proposed Utilisation Date and before the Loan is made available:
 - (i) no Default is continuing or would result from the proposed Utilisation;
 - (ii) the Repeating Representations to be made by each Obligor on its own behalf or on behalf of any other Transaction Obligor or any Approved Manager are true;
 - (iii) the know-your-customer checks for each of the Obligors have been conducted to the Facility Agent's and the Lenders' satisfaction; and
- (b) the Facility Agent has received on or before the Utilisation Date, or is satisfied it will receive when the Advance is made available, all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent.

4.3 Notification of satisfaction of conditions precedent

- (a) The Facility Agent shall notify the Borrowers and the Lenders promptly upon being satisfied as to the satisfaction of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*).
- (b) Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.4 Waiver of conditions precedent

If the Majority Lenders, at their discretion, permit the Advance to be borrowed before any of the conditions precedent referred to in Clause 4.1 (*initial conditions precedent*) or Clause 4.2 (*Further conditions precedent*) has been satisfied, the Borrowers shall ensure that that condition is satisfied within five Business Days after the relevant Utilisation Date or such later date as the Facility Agent, acting with the authorisation of the Majority Lenders, may agree in writing with the Borrowers.

SECTION 3

UTILISATION

5 UTILISATION

5.1 Delivery of Utilisation Request

- (a) The Borrowers may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.
- (b) The Borrowers may not deliver more than one Utilisation Request under this Agreement.

5.2 Completion of Utilisation Request

- (a) The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date is a Business Day within the relevant Availability Period;
 - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
 - (iii) all applicable deductible items have been completed; and
 - (iv) the proposed Interest Period complies with Clause 9 (*Interest Periods*).
- (b) Only one Advance may be requested in the Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be dollars.
- (b) The amount of the proposed Advance must be an amount which is not more than the Total Commitments.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in the Advance available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in the Advance will be equal to the proportion borne by its Commitment to the Total Commitments before the making of the Advance.
- (c) The Facility Agent shall notify each Lender of the amount of the Advance and the amount of its participation in the Advance by the Specified Time.

5.5 Cancellation of Commitments

The Commitments which are not utilised on the Utilisation Date shall then be cancelled.

5.6 Retentions

The Borrowers may authorise the Facility Agent to deduct from the proceeds of the Advance any fees then payable to the Finance Parties under this Agreement which they shall list as deductible items in the Utilisation Request.

5.7 Disbursement of Advance to third party

Payment by the Facility Agent under Clause 5.6 (*Retentions*) to a person other than a Borrower shall constitute the making of the relevant Advance and the Borrowers shall at that time become indebted, as principal and direct obligors, to each Lender in an amount equal to that Lender's participation in the Advance.

5.8 Prepositioning of funds

If required, in respect of the proposed Advance, the Lenders, at the request of the Borrowers and on terms acceptable to all the Lenders and in their absolute discretion, preposition funds with any bank, each Borrower and each Parent Guarantor:

- (a) agree to pay interest on the amount of the funds so prepositioned at the rate described in Clause 8.1 (*Calculation of interest*) on the basis of successive interest periods of one day and so that interest shall be paid together with the first payment of interest on such Advance after the Utilisation Date in respect of it or, if such Utilisation Date does not occur, within three Business Days of demand by the Facility Agent; and
- (b) shall, without duplication, indemnify each Finance Party against any costs, loss or liability it may incur in connection with such arrangement.

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

6 REPAYMENT

6.1 Repayment of Loan

The Borrowers shall repay the Loan by 7 equal consecutive quarterly instalments, each in an amount of USD 1,500,000, the first of which shall be repaid on the date falling three Months after the Utilisation Date and a balloon instalment in the amount of USD 69,500,000 together with the seventh and final quarterly repayment instalment, and each such instalment shall be a “**Repayment Instalment**”.

6.2 Effect of cancellation and prepayment on scheduled repayments

- (a) If the Commitment of any Lender is cancelled under Clause 7.1 (*Illegality*) then the Repayment Instalments falling after that cancellation will be reduced pro rata by the amount of the Commitments so cancelled.
- (b) If any part of any Commitment is cancelled pursuant to Clause 5.5 (*Cancellation of Commitments*), the Repayment Instalments for each Repayment Date falling after that cancellation will be reduced pro rata by the amount of the Commitments so cancelled.
- (c) If any part of the Loan is repaid or prepaid in accordance with Clause 7.5 (*Right of repayment and cancellation in relation to a single Lender*) or Clause 7.1 (*Illegality*) then the Repayment Instalments for each Repayment Date falling after that repayment or prepayment will be reduced pro rata by the amount of the Loan repaid or prepaid.
- (d) If any part of the Loan is prepaid in accordance with Clause 7.2 (*Voluntary prepayment of Loan*), Clause 7.3 (*Mandatory prepayment on sale or Total Loss*) then the amount of the Repayment Instalments for each Repayment Date falling after that repayment or prepayment will reduce pro-rata by the amount of the Loan repaid or prepaid.

6.3 Termination Date

On the Termination Date, the Borrowers shall additionally pay to the Facility Agent for the account of the Finance Parties all other sums then accrued and owing under the Finance Documents.

6.4 Reborrowing

No Borrower may reborrow any part of the Facility which is repaid.

7 PREPAYMENT AND CANCELLATION

7.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in an Advance or the Loan or any part thereof or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the Borrowers, the Commitment of that Lender will be immediately cancelled; and
- (c) the Borrowers shall prepay that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Facility Agent has notified the Borrowers or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participation prepaid.

7.2 Voluntary prepayment of Loan

The Borrowers may, if they give the Facility Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of USD 500,000 or a multiple of that amount).

7.3 Mandatory prepayment on sale or Total Loss

- (a) If a Ship is sold (without prejudice to paragraph (a) of Clause 22.12 (*Disposals*)) or becomes a Total Loss, the Borrowers shall prepay the Relevant Amount on the Relevant Date.
- (b) Provided that no Default has occurred and is continuing, any remaining proceeds of the sale or Total Loss of a Ship after the prepayment referred to in paragraph (a) above has been made, together with all other amounts that are payable on any such prepayment pursuant to the Finance Documents, shall be paid to the Borrower that owned the relevant Ship.

In this Clause 7.3 (*Mandatory prepayment on sale or Total Loss*):

“**Applicable Amount**” means the Loan multiplied by a fraction whose:

- (i) numerator is the Market Value of the Ship being sold or which has become a Total Loss; and
- (ii) denominator is the aggregate of (A) the Market Value of the other Ships and (B) the Market Value of the Ship being sold or which has become a Total Loss.

“**Relevant Amount**” means an amount equal to the higher of;

- (i) the Applicable Amount on the Relevant Date; and
- (ii) an amount which, after giving effect to the prepayment required to be made pursuant to this Clause 7.3 (*Mandatory prepayment on sale or Total Loss*), results in the asset cover ratio determined pursuant to Clause 25.1 (*Minimum required security cover*) being equal to the higher of (A) the asset cover ratio maintained immediately prior to the prepayment made pursuant to this Clause 7.3 (*Mandatory prepayment on sale or Total Loss*) and (B) 125 per cent.

“**RelevantDate**” means:

- (i) in the case of a sale of a Ship, on the date on which the sale is completed by delivery of that Ship to the buyer of that Ship; and

- (ii) in the case of a Total Loss of a Ship, the date falling on the earlier of:
 - (A) the date falling 180 days after the Total Loss Date; and
 - (B) the date of receipt by the Security Agent of the proceeds of insurance relating to such Total Loss.

7.4 Change of Control

- (a) If a Change of Control occurs the Borrowers and the Parent Guarantors shall promptly notify the Facility Agent upon becoming aware of that event and if the Majority Lenders so require, the Facility Agent shall (acting on the instructions of the Majority Lenders), by not less than 7 days' notice to the Borrowers, cancel the Facility and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility will be cancelled and the Loan and all such outstanding interest and other amounts will become immediately due and payable.

For the purpose of this paragraph (a), a “**Change of Control**” occurs if:

- (i) During the Security Period (and should no reverse merger as described in Clause 22.13 (*Merger*) be completed):
 - (A) a change occurs in the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (1) cast, or control the casting of, all of the votes that might be cast at a general meeting of either Parent Guarantor; or
 - (2) appoint or remove all, or the majority, of the directors or other equivalent officers of either Parent Guarantor; or
 - (3) give directions with respect to the operating and financial policies of either Parent Guarantor with which the directors or other equivalent officers of that Parent Guarantor are obliged to comply; and/or
 - (B) a change occurs in the beneficial holding of all of the issued equity interests of either Parent Guarantor (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital),in each case ((A) and (B) above) from the position of each Parent Guarantor as disclosed to the Facility Agent prior to the execution of this Agreement; and
- (ii) If a reverse merger as described in Clause 22.13 (*Merger*) is completed (and at any time after its completion):
 - (A) at any time during the six month period following the date of the reverse merger as described in Clause 22.13 (*Merger*) the owners that hold voting rights in the New Parent (as disclosed to the Facility Agent) immediately following such merger cease to own (either directly or through one or more of their Affiliates) collectively an amount that is more than 50% of the voting rights of the New Parent (or its successor);
 - (B) Mr George Giouroukos ceases to be the Executive Chairman (or any other equivalent executive officer position) of the New Parent other than by reason of death or other incapacity in managing his affairs.

- (b) The Obligors undertake that there will be no change in the direct legal or beneficial ownership or control of the Borrowers if no merger takes place.

7.5 Right of repayment and cancellation in relation to a single Lender

- (a) **If:**
 - (i) any sum payable to any Lender by a Transaction Obligor is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*) or under that clause as incorporated by reference or in full in any other Finance Document; or
 - (ii) any Lender claims indemnification from a Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13.1 (*Increased costs*),the Borrowers may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Facility Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loan.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrowers have given notice of cancellation under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrowers in that notice), the Borrowers shall repay that Lender's participation in the Loan.

7.6 Restrictions

- (d) Any notice of cancellation or prepayment given by any Party under this Clause 7 (*Prepayment and Cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made, the amount of that cancellation or prepayment and, if relevant, the part of the Loan to be prepaid or cancelled.
- (e) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (f) No Borrower may reborrow any part of the Facility which is prepaid.
- (g) No Borrower shall repay or prepay all or any part of the Loan or cancel all or any part of the Total Commitments except at the times and in the manner expressly provided for in this Agreement.
- (h) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (i) If the Facility Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrowers or the affected Lenders, as appropriate.

- (j) If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

7.7 Application of prepayments

Any prepayment of any part of the Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality*) or Clause 7.5 (*Right of repayment and cancellation in relation to a single Lender*)) shall be applied pro rata to each Lender's participation in that part of the Loan.

SECTION 5

COSTS OF UTILISATION

8 INTEREST

8.1 Calculation of interest

The rate of interest on the Loan or any part of the Loan for each Interest Period is the percentage rate per annum which is the aggregate of:

- (a) the applicable Margin; and
- (b) LIBOR.

8.2 Payment of interest

- (a) The Borrowers shall pay accrued interest on the Loan or any part of the Loan on the last day of each Interest Period (each an “**Interest Payment Date**”).
- (b) If an Interest Period is longer than three Months, the Borrowers shall also pay interest then accrued on the Loan or the relevant part of the Loan on the dates falling at three Monthly intervals after the first day of the Interest Period.

8.3 Default interest

- (a) If a Transaction Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 2 per cent, per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted part of the Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Facility Agent. Any interest accruing under this Clause 8.3 (*Default interest*) shall be immediately payable by the Obligor on demand by the Facility Agent.
- (b) If an Unpaid Sum consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period relating to the Loan or that part of the Loan:
 - (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan or that part of the Loan; and
 - (ii) the rate of interest applying to that Unpaid Sum during that first Interest Period shall be 2 per cent, per annum higher than the rate which would have applied if that Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

8.4 Notification of rates of interest

- (a) The Facility Agent shall promptly notify the Lenders and the Borrowers of the determination of a rate of interest under this Agreement.
- (b) The Facility Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan, any part of the Loan or any Unpaid Sum.

9 INTEREST PERIODS

9.1 Selection of Interest Periods

- (a) The Borrowers may select the first Interest Period for the Loan in the Utilisation Request. Subject to paragraph (f) below and Clause 9.2 (*Changes to Interest Periods*), the Borrowers may select each subsequent Interest Period in respect of the Loan in a Selection Notice.
- (b) Each Selection Notice is irrevocable and must be delivered to the Facility Agent by the Borrowers not later than the Specified Time.
- (c) If the Borrowers fail to select a first Interest Period in the Utilisation Request or fail to deliver a Selection Notice to the Facility Agent in accordance with paragraphs (a) and (b) above, the relevant Interest Period will, subject to paragraph (f) below and Clause 9.2 (*Changes to Interest Periods*), be three Months.
- (d) Subject to this Clause 9 (*Interest Periods*), the Borrowers may select an Interest Period of 3 Months or any other period agreed between the Borrowers and the Facility Agent (acting on the instructions of all the Lenders).
- (e) An Interest Period in respect of the Loan or any part of the Loan shall not extend beyond the Termination Date.
- (f) In respect of a Repayment Instalment, the Borrowers may request in the relevant Selection Notice that an Interest Period for a part of the Loan equal to such Repayment Instalment shall end on the Repayment Date relating to it and, subject to paragraph (d) above, select a longer Interest Period for the remaining part of the Loan.
- (g) The first Interest Period for the Loan shall start on the Utilisation Date and each subsequent Interest Period shall start on the last day of the preceding Interest Period.
- (h) Except for the purposes of paragraph (f) above and Clause 9.2 (*Changes to Interest Periods*), the Loan shall have one Interest Period only at any time.

9.2 Changes to Interest Periods

- (a) In respect of a Repayment Instalment, prior to determining the interest rate for the Loan, the Facility Agent may establish an Interest Period for a part of the Loan equal to such Repayment Instalment to end on the Repayment Date relating to it and the remaining part of the Loan shall have the Interest Period selected in the relevant Selection Notice, subject to paragraph (d) of Clause 9.1 (*Selection of Interest Periods*).
- (b) If the Facility Agent makes any change to an Interest Period referred to in this Clause 9.2 (*Changes to Interest Periods*), it shall promptly notify the Borrowers and the Lenders.

9.3 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10 CHANGES TO THE CALCULATION OF INTEREST

10.1 Unavailability of Screen Rate

- (a) *Fair and adequate means*: If no Screen Rate is available for LIBOR for the Interest Period of the Loan or any part of the Loan, the Facility Agent may, in consultation with the Borrowers and the Lenders determine a fair and adequate means for ascertaining LIBOR.
- (b) *Cost of funds*: If paragraph (a) above applies no fair and adequate available means for ascertaining LIBOR can be found, there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 10.3 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

10.2 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notification from a Lender that the cost to it of funding its participation in the Loan or that part of the Loan from whatever source it may reasonably select would be in excess of LIBOR then Clause 10.3 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

10.3 Cost of funds

- (a) If this Clause 10.3 (*Cost of funds*) applies, the rate of interest on the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the weighted average of the rates notified to the Facility Agent by each Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause 10.3 (*Cost of funds*) applies and the Facility Agent or the Borrowers so require, the Facility Agent and the Borrowers shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 43.4 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrowers, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub- paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.

- (e) If this Clause 10.3 (*Cost of funds*) applies pursuant to Clause 10.2 (*Market disruption*) and:
 - (i) a Lender's Funding Rate is less than LIBOR; or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.
- (f) If this Clause 10.3 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.
- (g) If the Borrowers and the Facility Agent enter into negotiations pursuant to paragraph (b) above but do not agree on an alternative basis for determining the rate of interest, or (as the case may be) an alternative basis for funding, the rate determined by the Facility Agent pursuant to paragraph (a) above shall apply unless, while the circumstances in Clause 10.1 (*Unavailability of Screen Rate*) or 10.2 (*Market Disruption*) continue, the Borrower notify the Facility Agent of their intention to prepay the Loan. Clause 7.6 (*Restrictions*) shall apply to such notice.
- (h) If the Borrowers notify the Facility Agent pursuant to paragraph (g) above, they shall prepay the Loan in full at the end of the selected Interest Period, and during such Interest Period the same interest rate as for the preceding Interest Period shall apply.

10.4 Break Costs

- (a) The Borrowers shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by a Borrower on a day other than the last day of an Interest Period for the Loan, the relevant part of the Loan or that Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11 FEES

11.1 Underwriting and structuring fee

The Borrowers shall pay to the Arranger (for its own account) an underwriting and structuring fee as agreed in the Fee Letter.

11.2 Management and Participation fee

The Borrowers shall pay to the Facility Agent (for the account of the Lenders) a management and participation fee as agreed in the Fee Letter,

11.3 Facility Agent fee

The Borrowers shall pay to the Facility Agent (for its own account) an agency fee in the amount and at the times agreed in the Fee Letter.

ADDITIONAL PAYMENT OBLIGATIONS

12 TAX GROSS UP AND INDEMNITIES

12.1 Definitions

- (a) In this Agreement:

“**Protected Party**” means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

“**Tax Payment**” means either the increase in a payment made by an Obligor to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 12 (*Tax Gross Up and Indemnities*) reference to “determines” or “determined” means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrowers shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrowers and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 Tax indemnity

- (a) The Obligors shall (within three Business Days of demand by the Facility Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or
 - (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Obligors.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3 (*Tax indemnity*), notify the Facility Agent.

12.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was received; and
- (b) that Finance Party has obtained and utilised that Tax Credit,
the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

12.5 Stamp taxes

The Obligors shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability which that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

12.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
 - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this sub-paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.6 (VAT) to any Party shall, at any time when that Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union)) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or representative or head) of that group or unity at the relevant time (as the case may be).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party’s VAT registration and such other information as is reasonably requested in connection with such Finance Party’s VAT reporting requirements in relation to such supply.

12.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party; and
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to sub-paragraph (i) of paragraph (a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything and sub-paragraph (iii) of paragraph (a) above shall not oblige any other Party to do anything which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with sub-paragraphs (i) or (ii) of paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If a Borrower is a US Tax Obligor, or the Facility Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
 - (i) where a Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where a Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or

- (iii) where a Borrower is not a US Tax Obligor, the date of a request from the Facility Agent, supply to the Facility Agent:
 - (iv) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (v) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrowers.
 - (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrowers.
 - (h) The Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

12.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify each Obligor and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

13 INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*), the Borrowers shall, within three Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
 - (ii) compliance with any law or regulation made,

in each case after the date of this Agreement; or

(iii) the implementation, application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.

(b) In this Agreement:

(i) “**Basel III**” means:

- (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

(ii) “**CRD IV**” means:

- (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012;
- (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and
- (C) any other law or regulation which implements Basel III.

(iii) “**Increased Costs**” means:

- (A) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
- (B) an additional or increased cost; or
- (C) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

13.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrowers.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);
- (d) compensated for by any payment made pursuant to Clause 14.3 (*Mandatory Cost*); or
- (e) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14 OTHER INDEMNITIES

14.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
 - (i) making or filing a claim or proof against that Obligor; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,that Obligor shall, as an independent obligation, on demand, indemnify each Secured Party to which that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other indemnities

- (a) Each Obligor shall within 3 Business Days of any demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:
 - (i) the occurrence of any Event of Default;

- (ii) a failure by a Transaction Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 33 (*Sharing among the Finance Parties*);
 - (iii) funding, or making arrangements to fund, its participation in an Advance requested by the Borrowers in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or
 - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrowers.
- (b) Each Obligor shall, on demand, indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate (each such person for the purposes of this Clause 14.2 (*Other indemnities*) an “**Indemnified Person**”), against any cost, loss or liability incurred by that Indemnified Person pursuant to or in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry, in connection with or arising out of the entry into and the transactions contemplated by the Finance Documents, having the benefit of any Security constituted by the Finance Documents or which relates to the condition or operation of, or any incident occurring in relation to, any Ship unless such cost, loss or liability is caused by the gross negligence or wilful misconduct of that Indemnified Person.
- (c) Without limiting, but subject to any limitations set out in paragraph (b) above, the indemnity in paragraph (b) above shall cover any cost, loss or liability incurred by each Indemnified Person in any jurisdiction:
- (i) arising or asserted under or in connection with any law relating to safety at sea, the ISM Code, any Environmental Law or any Sanctions; or
 - (ii) in connection with any Environmental Claim.
- (d) Any Affiliate or any officer or employee of a Finance Party or of any of its Affiliates may rely on this Clause 14.2 (*Other indemnities*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

14.3 Mandatory Cost

Each Borrower shall within 3 Business Days of any demand by the Facility Agent, pay to the Facility Agent for the account of the relevant Lender, such amount which any Lender certifies in a notice to the Facility Agent to be its good faith determination of the amount necessary to compensate it for complying with:

- (a) in the case of a Lender lending from a Facility Office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank or any other authority or agency which replaces all or any of its functions) in respect of loans made from that Facility Office; and
- (b) in the case of any Lender lending from a Facility Office in the United Kingdom, any reserve asset, special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England (or any other governmental authority or agency)

and/or paying any fees to the Financial Conduct Authority and/or the Prudential Regulation Authority (or any other governmental authority or agency which replaces all or any of their functions),

which, in each case, is referable to that Lender's participation in the Loan.

14.4 Indemnity to the Facility Agent

Each Obligor shall within 3 Business Days of any demand, indemnify the Facility Agent against:

- (a) any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes is a Default; or
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents; and
- (b) any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 34.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Finance Documents.

14.5 Indemnity to the Security Agent

- (a) Each Obligor shall within 3 Business Days of any demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them:
 - (i) in relation to or as a result of:
 - (A) any failure by a Borrower to comply with its obligations under Clause 16 (*Costs and Expenses*);
 - (B) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (C) the taking, holding, protection or enforcement of the Finance Documents and the Transaction Security;
 - (D) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
 - (E) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
 - (F) any action by any Transaction Obligor which vitiates, reduces the value of, or is otherwise prejudicial to, the Transaction Security; and

- (G) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents.
 - (ii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property or the performance of the terms of this Agreement or the other Finance Documents (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.5 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

15 MITIGATION BY THE FINANCE PARTIES

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrowers, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax Gross Up and Indemnities*), Clause 13 (*Increased Costs*) or paragraph (a) of Clause 14.3 (*Mandatory Cost*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Transaction Obligor under the Finance Documents.

15.2 Limitation of liability

- (a) Each Obligor shall, on demand, indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if either:
 - (i) a Default has occurred and is continuing; or
 - (ii) in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16 COSTS AND EXPENSES

16.1 Transaction expenses

The Obligors shall, within three days of any demand, pay the Facility Agent, the Security Agent and the Arranger the amount of all costs and expenses (including pre-agreed legal fees) reasonably incurred by any Secured Party in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and

- (b) any other Finance Documents executed after the date of this Agreement.

16.2 Amendment costs

If:

- (a) a Transaction Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required either pursuant to Clause 34.9 (*Change of currency*) or as contemplated in Clause 43.4 (*Replacement of Screen Rate*); or
- (c) a Transaction Obligor requests, and the Security Agent agrees to, the release of all or any part of the Security Assets from the Transaction Security, the Obligors shall, on demand, reimburse each of the Facility Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by each Secured Party in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 Enforcement and preservation costs

The Obligors shall within 3 Business Days of any demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

GUARANTEES AND JOINT AND SEVERAL LIABILITY OF BORROWERS

17 GUARANTEE AND INDEMNITY – PARENT GUARANTOR**17.1 Guarantee and indemnity**

Each Parent Guarantor irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each Borrower of all that Borrower's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever a Borrower does not pay any amount when due under or in connection with any Finance Document, that Parent Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by that Parent Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 17 (*Guarantee and Indemnity – Parent Guarantor*) if the amount claimed had been recoverable on the basis of a guarantee.

17.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by each Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

17.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Transaction Obligor or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Parent Guarantor under this Clause 17 (*Guarantee and Indemnity – Parent Guarantor*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

17.4 Waiver of defences

The obligations of each Parent Guarantor under this Clause 17 (*Guarantee and Indemnity – Parent Guarantor*) and in respect of any Transaction Security will not be affected or discharged by an act, omission, matter or thing which, but for this Clause 17.4 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Clause 17 (*Guarantee and Indemnity – Parent Guarantor*) or in respect of any Transaction Security (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;

- (b) the release of any other Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect or delay in perfecting, or refusal or neglect to take up or enforce, or delay in taking or enforcing any rights against, or security over assets of, any Transaction Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Transaction Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

17.5 Immediate recourse

Each Parent Guarantor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person (including without limitation to commence any proceedings under any Finance Document or to enforce any Transaction Security) before claiming or commencing proceedings under this Clause 17 (*Guarantee and Indemnity – Parent Guarantor*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

17.6 Appropriations

Until all amounts which may be or become payable by the Transaction Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Parent Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from a Parent Guarantor or on account of that Parent Guarantor's liability under this Clause 17 (*Guarantee and Indemnity – Parent Guarantor*).

17.7 Deferral of Parent Guarantor's rights

All rights which a Parent Guarantor at any time has (whether in respect of this guarantee, a mortgage or any other transaction) against any Borrower, any other Transaction Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under

the Finance Documents and until the end of the Security Period and unless the Facility Agent otherwise directs, no Parent Guarantor will exercise any rights which it may have (whether in respect of any Finance Document to which it is a Party or any other transaction) by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 17 (*Guarantee and Indemnity – Parent Guarantor*):

- (a) to be indemnified by a Transaction Obligor;
- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Transaction Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which the Parent Guarantors have given a guarantee, undertaking or indemnity under Clause 17.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Transaction Obligor; and/or
- (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Secured Party.

If a Parent Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Transaction Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct for application in accordance with Clause 34 (*Payment Mechanics*).

17.8 Additional security

This guarantee and any other Security given by each Parent Guarantor is in addition to and is not in any way prejudiced by, and shall not prejudice, any other guarantee or Security or any other right of recourse now or subsequently held by any Secured Party or any right of set-off or netting or right to combine accounts in connection with the Finance Documents.

17.9 Applicability of provisions of Guarantee to other Security

Clauses 17.2 (*Continuing guarantee*), 17.3 (*Reinstatement*), 17.4 (*Waiver of defences*), 17.5 (*Immediate recourse*), 17.6 (*Appropriations*), 17.7 (*Deferral of Parent Guarantor's rights*) and 17.8 (*Additional security*) shall apply, with any necessary modifications, to any Security which a Parent Guarantor creates (whether at the time at which it signs this Agreement or at any later time) to secure the Secured Liabilities or any part of them.

18 JOINT AND SEVERAL LIABILITY OF THE BORROWERS

18.1 Joint and several liability

All liabilities and obligations of the Borrowers under this Agreement shall, whether expressed to be so or not, be joint and several.

18.2 Waiver of defences

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 any other Borrower;
- (b) any Lender or the Security Agent entering into any rescheduling, refinancing or other arrangement of any kind with any other Borrower;
- (c) any Lender or the Security Agent releasing any other Borrower or any Security created by a Finance Document; or
- (d) any time, waiver or consent granted to, or composition with any other Borrower or other person;
- (e) the release of any other Borrower or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (f) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any other Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (g) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other Borrower or any other person;
- (h) any amendment, novation, supplement, extension, restatement (however fundamental, and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (i) any unenforceability, illegality or invalidity of any obligation or any person under any Finance Document or any other document or security; or
- (j) any insolvency or similar proceedings.

18.3 Principal Debtor

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 no Borrower shall, in any circumstances, be construed to be a surety for the obligations of any other Borrower under this Agreement.

18.4 Borrower restrictions

- (a) Subject to paragraph (b) below, during the Security Period no Borrower shall:
- (i) claim any amount which may be due to it from any other Borrower whether in respect of a payment made under, or matter arising out of, this Agreement or any Finance Document, or any matter unconnected with this Agreement or any Finance Document; or
 - (ii) take or enforce any form of security from any other Borrower for such an amount, or in any way seek to have recourse in respect of such an amount against any asset of any other Borrower; or
 - (iii) set off such an amount against any sum due from it to any other Borrower; or
 - (iv) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving any other Borrower; or
 - (v) exercise or assert any combination of the foregoing.
- (b) If during the Security Period, the Facility Agent, by notice to a Borrower, requires it to take any action referred to in paragraph (a) above in relation to any other Borrower, that Borrower shall take that action as soon as practicable after receiving the Facility Agent's notice.

18.5 Deferral of Borrowers' rights

Until all amounts which may be or become payable by the Borrowers under or in connection with the Finance Documents have been irrevocably paid in full and unless the Facility Agent otherwise directs, no Borrower will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

- (a) to be indemnified by any other Borrower; or
- (b) to claim any contribution from any other Borrower in relation to any payment made by it under the Finance Documents.

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

19 REPRESENTATIONS**19.1 General**

Each Obligor makes the representations and warranties set out in this Clause 19 (*Representations*) to each Finance Party on the date of this Agreement.

19.2 Status

- (a) It is a limited liability company formed and validly existing and in good standing under the law of its Original Jurisdiction.
- (b) It and each Transaction Obligor has the power to own its assets and carry on its business as it is being conducted.

19.3 Share capital and ownership

- (a) The aggregate limited liability company interests of Borrower A are 500 (five hundred) authorised shares all of which are expressed in LLC Shares; the aggregate number of LLC Shares Borrower A has issued is 500 (five hundred).
- (b) The aggregate limited liability company interests of Borrower B are 500 (five hundred) authorised shares all of which are expressed in LLC Shares; the aggregate number of LLC Shares Borrower B has issued is 500 (five hundred).
- (c) The aggregate limited liability company interests of Borrower C are 500 (five hundred) authorised shares all of which are expressed in LLC Shares; the aggregate number of LLC Shares Borrower C has issued is 500 (five hundred).
- (d) Provided that no reverse merger as described in Clause 22.13 (*Merger*) is completed, the legal title to and beneficial interest in the LLC Shares in each Borrower is held by the relevant Shareholder free of any Security or any other claim, except for Permitted Security.
- (e) None of the LLC Shares in any Borrower is subject to any option to purchase, pre-emption rights or similar rights.

19.4 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations.

19.5 Validity, effectiveness and ranking of Security

- (a) Each Finance Document to which it is a party does now or, as the case may be, will upon execution and delivery create, subject to the Legal Reservations and the Perfection Requirements, the Security it purports to create over any assets to which such Security, by its terms, relates, and such Security will, when created or intended to be created, be valid and effective.

- (b) No third party has or will have any Security (except for Permitted Security) over any assets that are the subject of any Transaction Security granted by it.
- (c) Subject to the Perfection Requirements, the Transaction Security granted by it to the Security Agent or any other Secured Party has or will when created or intended to be created have first ranking priority or such other priority it is expressed to have in the Finance Documents and is not subject to any prior ranking or *pari passu* ranking security.
- (d) No concurrence, consent or authorisation of any person is required for the creation of or otherwise in connection with any Transaction Security.

19.6 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, each Transaction Document to which it is a party do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

19.7 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, each Transaction Document to which it is or will be a party and the transactions contemplated by those Transaction Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, granting of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

19.8 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
- (b) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect.

19.9 Governing law and enforcement

- (a) The choice of governing law of each Transaction Document to which it is a party will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in relation to a Transaction Document to which it is a party in the jurisdiction of the governing law of that Transaction Document and any arbitral award obtained in relation to a Transaction Document in the seat of that arbitral tribunal as specified in that Transaction Document will be recognised and enforced in its Relevant Jurisdictions.

19.10 Insolvency

No:

- (a) corporate action, legal proceeding or other similar legal procedure or similar legal step described in paragraph (a) of Clause 27.8 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 27.9 (*Creditors' process*),
has been taken or, to its knowledge, threatened in relation to any Transaction Obligor; and none of the circumstances described in Clause 27.7 (*Insolvency*) applies to any Transaction Obligor.

19.11 No filing or stamp taxes

Under the laws of its Relevant Jurisdictions it is not necessary that the Finance Documents to which it is a party be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by those Finance Documents except the registration of the Mortgages at the ship registry of the Republic of the Marshall Islands; which registration will be made promptly after the date of the relevant Finance Documents.

19.12 Deduction of Tax

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to which it is a party.

19.13 No default

- (a) No Event of Default and, on the date of this Agreement and on each Utilisation Date, no Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject.

19.14 No misleading information

- (a) Any factual information provided by any member of the Group for the purposes of this Agreement was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) The financial projections contained in any such information have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from any such information and no information has been given or withheld that results in any such information being untrue or misleading in any material respect.

19.15 Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) Its Original Financial Statements give a true and fair view of its financial condition as at the end of the relevant financial year and its results of operations during the relevant financial year (consolidated in the case of each Parent Guarantor).
- (c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of each Parent Guarantor) since August 2018.
- (d) Its most recent financial statements delivered pursuant to Clause 20.2 (*Financial statements*):
 - (i) have been prepared in accordance with Clause 20.4 (*Requirements as to financial statements*); and
 - (ii) fairly present] its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of each Parent Guarantor).
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 20.2 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition (or the business or consolidated financial condition of the Group, in the case of each Parent Guarantor).

19.16 Pari passu ranking

Its payment obligations under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

19.17 No proceedings pending or threatened

- (a) No litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any other Transaction Obligor.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or any other Transaction Obligor.

19.18 Valuations

- (a) All information supplied by it or on its behalf to an Approved Valuer for the purposes of a valuation delivered to the Facility Agent in accordance with this Agreement was true and accurate as at the date it was supplied or (if appropriate) as at the date (if any) at which it is stated to be given.

- (b) It has not omitted to supply any information to an Approved Valuer which, if disclosed, would adversely affect any valuation prepared by such Approved Valuer.
- (c) There has been no change to the factual information provided pursuant to paragraph (a) above in relation to any valuation between the date such information was provided and the date of that valuation which, in either case, renders that information untrue or misleading in any material respect.

19.19 No breach of laws

It has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

19.20 Initial Charter

Each Ship is subject to the Initial Charter and delivered to the respective charterer.

19.21 Compliance with Environmental Laws

All Environmental Laws relating to the ownership, operation and management of each Ship and, to the best of each Obligor's knowledge, the business of each other Transaction Obligor (as now conducted and as reasonably anticipated to be conducted in the future) and the terms of all Environmental Approvals have been complied with.

19.22 No Environmental Claim

No Environmental Claim has been made or threatened against any member of the Group or any Ship.

19.23 No Environmental Incident

No Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred.

19.24 ISM and ISPS Code compliance

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

19.25 Taxes paid

- (a) It is not and no other Transaction Obligor is materially overdue in the filing of any Tax returns and it is not (and no other Transaction Obligor is) overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any other Transaction Obligor) with respect to Taxes.

19.26 Financial Indebtedness

No Obligor has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

19.27 Overseas companies

No Obligor has delivered particulars, whether in its name stated in the Finance Documents or any other name, of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or, if it has so registered, it has provided to the Facility Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

19.28 Good title to assets

It has good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

19.29 Ownership

- (a) Borrower A is the sole legal and beneficial owner of Ship A, its Earnings and its Insurances.
- (b) Borrower B is the sole legal and beneficial owner of Ship B, its Earnings and its Insurances
- (c) Borrower C is the sole legal and beneficial owner of Ship C, its Earnings and its Insurances.
- (d) With effect on and from the date of its creation or intended creation, each Transaction Obligor will be the sole legal and beneficial owner of any asset that is the subject of any Transaction Security created or intended to be created by such Transaction Obligor.
- (e) The constitutional documents of each Transaction Obligor do not and could not restrict or inhibit any transfer of the LLC Shares of the Borrowers on creation or enforcement of the security conferred by the Security Documents.

19.30 Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (recast) (the "Regulation"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in Greece and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

19.31 Place of business

No Obligor has a place of business in any country other than Greece.

19.32 No employee or pension arrangements

No Obligor has any employees or any liabilities under any pension scheme.

19.33 Sanctions

- (a) No Transaction Obligor:
 - (i) is a Sanctions Restricted Person;
 - (ii) owns or controls directly or indirectly a Sanctions Restricted Person; or
 - (iii) has a Sanctions Restricted Person serving as a director, officer or, to the best of its knowledge, employee.

- (b) No proceeds of the Loan shall be made available, directly or to the knowledge of an Obligor (after reasonable enquiry) indirectly, to or for the benefit of a Sanctions Restricted Person contrary to Sanctions or for transactions in a Sanctions Restricted Jurisdiction nor shall they be otherwise, directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions.

19.34 US Tax Obligor

No Transaction Obligor is a US Tax Obligor.

19.35 Repetition

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of each Utilisation Request and the first day of each Interest Period.

20 INFORMATION UNDERTAKINGS

20.1 General

The undertakings in this Clause 20 (*Information Undertakings*) remain in force throughout the Security Period unless the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders), may otherwise permit.

20.2 Financial statements

Parent Guarantor A shall supply to the Facility Agent in sufficient copies for all the Lenders:

- (a) as soon as they become available, but in any event within 180 days after the end of each of their respective financial years:

- (i) the unaudited financial statements of each Borrower for that financial year; and
- (ii) the audited consolidated financial statements of each Parent Guarantor for that financial year,

Provided that if the reverse merger described in Clause 22.13 (Merger) is completed, Parent Guarantor A shall have no further obligation to provide any audited consolidated financial statements set out in this paragraph (a) and the Facility Agent shall thereafter receive unaudited financial statements as set out in paragraph (b) below by the Borrowers and each Parent Guarantor;

- (b) as soon as the same become available, but in any event within 90 days after the end of each half of each of their respective financial years if the reverse merger described in Clause 22.13 (Merger) has been completed:

- (i) the unaudited financial statements of each Borrower for that financial half year; and
- (ii) the unaudited consolidated financial statements of each Parent Guarantor for that financial half year; and
- (iii) publicly available annual financial statements of the New Parent prepared in accordance with NYSE rules (as shown and available in the website of the New Parent).

20.3 Compliance Certificate

- (a) Parent Guarantor A shall supply to the Facility Agent, together with each set of financial statements delivered pursuant to sub-paragraph (ii) of paragraph (a) or sub-paragraph (ii) of paragraph (b) of Clause 20.2 (*Financial statements*) as the case may be, a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 21 (*Financial Covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by the chief financial officer of Parent Guarantor A.

20.4 Requirements as to financial statements

- (a) Each set of financial statements delivered by Parent Guarantor A pursuant to Clause 20.2 (*Financial statements*) shall be certified by a senior officer of the relevant company as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition and operations as at the date as at which those financial statements were drawn up.
- (b) The Borrowers shall procure that each set of financial statements delivered pursuant to Clause 20.2 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for Parent Guarantor A and for the Borrowers unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in GAAP, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of Parent Guarantor A) deliver to the Facility Agent:
 - (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which Parent Guarantor A's Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether Clause 21 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and Parent Guarantor A's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

20.5 Information: miscellaneous

Each Obligor shall and shall procure that each other Transaction Obligor shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):

- (a) all documents dispatched by it to its members (or any class of them) or its creditors upon request of the Facility Agent;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect;

- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group and which might have a Material Adverse Effect;
- (d) promptly, its constitutional documents where these have been amended or varied;
- (e) promptly, such further information and/or documents regarding:
 - (i) each Ship, goods transported on each Ship, its Earnings and its Insurances;
 - (ii) the Security Assets;
 - (iii) compliance of the Transaction Obligors with the terms of the Finance Documents;
 - (iv) the financial condition, business and operations of any Transaction Obligor, as any Finance Party (through the Facility Agent) may reasonably request; and
- (f) promptly, such further information and/or documents as any Finance Party (through the Facility Agent) may reasonably request so as to enable such Finance Party to comply with any laws applicable to it or as may be required by any regulatory authority.

20.6 Notification of Default

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor shall, notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Facility Agent, each Borrower shall supply to the Facility Agent a certificate signed by an officer on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

20.7 Notification of litigation

- (a) The Borrowers will provide the Facility Agent with details of any legal action (i) involving any Borrower and any other Transaction Obligor as soon as such action is instituted and (ii) on becoming aware of the same, involving any Approved Technical Manager, or any Ship, its Earnings, its Insurances unless in each case it is clear that the legal action could not reasonably be expected to have a Material Adverse Effect if adversely determined.
- (b) The Borrowers shall and shall procure that any other Transaction Obligor shall supply to the Facility Agent promptly, to the extent permitted by law, details of any claim, action, suit, proceedings or investigation against it with respect to Sanctions by any Sanctions Authority (in sufficient copies for all the Lenders, if the Facility Agent so requests).

20.8 Use of websites

- (a) Each Obligor may satisfy its obligation under the Finance Documents to which it is a party to deliver any information in relation to those Lenders (the “**Website lenders**”) which accept this method of communication by posting this information onto an electronic website designated by the Borrowers and the Facility Agent (the “**Designated Website**”) if:

- (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
- (ii) both the relevant Obligor and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
- (iii) the information is in a format previously agreed between the relevant Obligor and the Facility Agent.

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the Facility Agent shall notify the Obligors accordingly and each Obligor shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event each Obligor shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Obligors or any of them and the Facility Agent.
- (c) An Obligor shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) if that Obligor becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If an Obligor notifies the Facility Agent under sub-paragraph (i) or (v) of paragraph (c) above, all information to be provided by the Obligors under this Agreement after the date of that notice shall be supplied in paper form unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Obligors shall comply with any such request within 10 Business Days.

20.9 “Know your customer” checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;

- (ii) any change in the status of a Transaction Obligor (or of a Holding Company of a Transaction Obligor) (including, without limitation, a change of ownership of a Transaction Obligor or of a Holding Company of a Transaction Obligor) after the date of this Agreement; or
- (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges a Finance Party (or, in the case of sub-paragraph (iii) above, any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by a Servicing Party (for itself or on behalf of any other Finance Party) or any Lender (for itself or, in the case of the event described in sub-paragraph (iii) above, on behalf of any prospective new Lender) in order for such Finance Party or, in the case of the event described in sub-paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of a Servicing Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Servicing Party (for itself) in order for that Servicing Party to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

21 FINANCIAL COVENANTS

Parent Guarantor A shall at all times (unless otherwise provided in this Clause) throughout the Security Period comply with the following covenants.

21.1 Minimum net worth

The minimum Net Worth of Parent Guarantor A shall not be less than USD 50,000,000. This covenant is to be tested starting with the financial statements delivered pursuant to Clause 20.2 (*Financial statements*) for the financial year 2020.

21.2 Book Leverage Ratio

The Book Leverage Ratio will not exceed:

- (a) 85 per cent. at any time from the Utilisation Date to 31 December 2018; and
- (b) 75 per cent. from 1 January 2019 and thereafter for the remainder of the Security Period.

21.3 Value Adjusted Leverage Ratio

The Value Adjusted Leverage Ratio shall not exceed 75 per cent. This covenant is to be tested starting with the financial statements delivered pursuant to Clause 20.2 (*Financial statements*) for the financial year 2020.

21.4 liquidity Covenant

The Consolidated liquidity of Parent Guarantor A shall be equal to the higher of (i) USD 12,500,000 and (ii) the aggregate of USD 300,000 per trading Fleet Vessel owned by Parent Guarantor A or its Subsidiaries at any relevant time. For the avoidance of doubt, such Consolidated liquidity shall apply throughout the Security Period and not only at the time of delivery of the financial statements pursuant to Clause 20.2 (*Financial statements*) or, as the case may be, any Compliance Certificate.

22 GENERAL UNDERTAKINGS

22.1 General

The undertakings in this Clause 22 (*General Undertakings*) remain in force throughout the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit (and in the case of Clause 22.12 (Disposals), 22.13 (Merger), 22.15 (Financial Indebtedness), 22.19 (Other transactions), such permission not to be unreasonably withheld).

22.2 Authorisations

Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of,
 - any Authorisation required under any law or regulation of a Relevant Jurisdiction or the state of the Approved Flag at any time of each Ship to enable it to:
 - (i) perform its obligations under the Transaction Documents to which it is a party;
 - (ii) ensure the legality, validity, enforceability or admissibility in evidence in any Relevant Jurisdiction or in the state of the Approved Flag at any time of each Ship, of any Transaction Document to which it is a party; and
 - (iii) own and operate each Ship (in the case of the Borrowers).

22.3 Compliance with laws

Each Obligor shall, and shall procure that each other Transaction Obligor will, comply in all respects with all laws and regulations to which it may be subject, if failure so to comply has a Material Adverse Effect.

22.4 Environmental compliance

Each Obligor shall, and shall procure that each other Transaction Obligor will:

- (a) comply with all Environmental laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental law,

where failure to do so has a Material Adverse Effect.

22.5 Environmental Claims

Each Obligor shall and shall procure that each other Transaction Obligor will, promptly upon becoming aware of the same, inform the Facility Agent in writing of:

- (a) any Environmental Claim against any Transaction Obligor which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any Transaction Obligor,

where the claim, if determined against that Transaction Obligor, has a Material Adverse Effect.

22.6 Taxation

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor will, pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (i) such payment is being contested in good faith;
- (ii) adequate reserves are maintained for those Taxes and the costs required to contest them and both have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 20.2 (*Financial statements*); and
- (iii) such payment can be lawfully withheld.

- (b) No Obligor shall and the Obligors shall procure that no other Transaction Obligor will, change its residence for Tax purposes.

22.7 Overseas companies

Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly inform the Facility Agent if it delivers to the Registrar particulars required under the Overseas Regulations of any UK Establishment and it shall comply with any directions given to it by the Facility Agent regarding the recording of any Transaction Security on the register which it is required to maintain under The Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009.

22.8 No change to centre of main interests

No Obligor shall change the location of its centre of main interest (as that term is used in Article 3(1) of the Regulation) from that stated in relation to it in Clause 19.30 (*Centre of main interests and establishments*) and it will create no “establishment” (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

22.9 Pari passu ranking

Each Obligor shall, and shall procure that each other Transaction Obligor will, ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and

unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

22.10 Title

From the Utilisation Date:

- (a) Borrower A shall hold the legal title to, and own the entire beneficial interest in Ship A, its Earnings and its Insurances free from any Existing Security.
- (b) Borrower B shall hold the legal title to, and own the entire beneficial interest in Ship B, its Earnings and its Insurances free from any Existing Security.
- (c) Borrower C shall hold the legal title to, and own the entire beneficial interest in Ship C, its Earnings and its Insurances free from any Existing Security.
- (d) With effect on and from its creation or intended creation, each Obligor shall hold the legal title to, and own the entire beneficial interest in any other assets the subject of any Transaction Security created or intended to be created by such Obligor.

22.11 Negative pledge

- (a) No Obligor shall create or permit to subsist any Security over any of its assets which are the subject of the Security created or intended to be created by the Finance Documents.
- (b) No Obligor shall:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by a Transaction Obligor;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Permitted Security.

22.12 Disposals

- (a) No Obligor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset (including without limitation any Ship, its Earnings or its Insurances).
- (b) Paragraph (a) above does not apply to any Charter as all Charters are subject to Clause 24.15 (*Restrictions on chartering, appointment of managers etc.*) or to a sale of a Ship provided the Borrowers comply with the prepayment obligations of Clause 7 and the provisions of Clause 7.3 (*Mandatory prepayment on sale or Total Loss*).

22.13 Merger

No Obligor shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction, Provided that (a) any contributions that may be made by any Affiliate of Parent Guarantor B into Parent Guarantor A and (b) a prospective reverse merger (the outline of which has been disclosed to the Facility Agent prior to the execution of this Agreement) involving Parent Guarantor A, are permitted and, if any such reverse merger takes place which results in a New Parent, any further amalgamation, demerger, merger, consolidation or corporate reconstruction is permitted so long as (i) the New Parent remains the surviving entity of any such process; and ii) no Default has occurred at the relevant time or would be triggered as a result of such process; and (iii) the process of any such further amalgamation, demerger, merger, consolidation or corporate reconstruction does not have a Material Adverse Effect.

22.14 Change of business

- (a) Each Parent Guarantor shall procure that no substantial change is made to the general nature of the business of the Parent Guarantors or the Group from that carried on at the date of this Agreement.
- (b) No Borrower shall engage in any business other than the ownership and operation of its Ship.

22.15 Financial Indebtedness

No Borrower shall incur or permit to be outstanding any Financial Indebtedness except Permitted Financial Indebtedness.

22.16 Expenditure

No Borrower shall incur any expenditure, except for expenditure reasonably incurred in the ordinary course of owning, operating, maintaining and repairing its Ship.

22.17 Share capital

No Borrower shall:

- (a) purchase, cancel or redeem any of its LLC Shares;
- (b) increase or reduce its authorised share capital;
- (c) issue any further LLC Shares and provided such new shares are made subject to the terms of the Shares Security applicable to that Borrower immediately upon the issue of such new shares in a manner satisfactory to the Security Agent and the terms of that Shares Security are complied with;
- (d) appoint any further director, officer or secretary of that Borrower (unless the provisions of the Shares Security applicable to that Borrower are complied with).

22.18 Dividends

- (a) Each Borrower may declare and make a Dividend Payment only once per year, and only if (i) there is no breach of any obligation of any Transaction Obligor under any Finance Document and (ii) the asset cover ratio determined pursuant to Clause 25.1 (*Minimum required security cover*) is at the relevant time not less than 150 per cent.

- (b) Parent Guarantor A may make a Dividend Payment only if all of the following conditions have been met to the satisfaction of the Facility Agent:
 - (i) the Book Leverage Ratio does not exceed at the relevant time 75 per cent; and
 - (ii) the covenants set out in Clause 21 (*Financial Covenants*) are all complied with by Parent Guarantor A;
 - (iii) Parent Guarantor A is in compliance with its obligations under this Agreement and any other loan facility agreement to which it is a party (in any capacity, including, but not limited to, as guarantor) and the Facility Agent is also a party to such loan facility agreement.

22.19 Other transactions

No Borrower will:

- (a) be the creditor in respect of any loan or any form of credit to any person other than where such loan or form of credit is Permitted Financial Indebtedness;
- (b) give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents;
- (c) enter into any material agreement other than:
 - (i) the Transaction Documents;
 - (ii) the Junior Finance Documents;
 - (iii) any other agreement expressly allowed under any other term of this Agreement; and
- (d) enter into any transaction on terms which are, in any respect, less favourable to that Borrower than those which it could obtain in a bargain made at arms' length; or
- (e) 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.

22.20 Unlawfulness, invalidity and ranking; Security imperilled

No Obligor shall do (or fail to do) or cause or permit another person to do (or omit to do) anything which is likely to:

- (a) make it unlawful for a Transaction Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of a Transaction Obligor under the Transaction Documents to cease to be legal, valid, binding or enforceable;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Transaction Security to rank after, or lose its priority to, any other Security; and

(e) imperil or jeopardise the Transaction Security.

22.21 Further assurance

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly, and in any event within the time period specified by the Security Agent do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)):
- (i) to create, perfect, vest in favour of the Security Agent or protect the priority of the Security or any right of any kind created or intended to be created under or evidenced by the Finance Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of any of the Secured Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent or confer on the Secured Parties Security over any property and assets of that Transaction Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Finance Documents;
 - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Transaction Security or to exercise any power specified in any Finance Document in respect of which the Security has become enforceable; and/or
 - (iv) to enable or assist the Security Agent to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Obligor shall, and shall procure that each other Transaction Obligor will, take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to the Finance Documents.
- (c) At the same time as an Obligor delivers to the Security Agent any document executed by itself or another Transaction Obligor]pursuant to this Clause 22.21 (*Further assurance*), that Obligor shall deliver, or shall procure that such other Transaction Obligor will deliver, to the Security Agent a certificate signed by two of that Obligor's or Transaction Obligor's directors or officers which shall:
- (i) set out the text of a resolution of that Obligor's or Transaction Obligor's directors specifically authorising the execution of the document specified by the Security Agent; and
 - (ii) 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 or

officers and is valid under that Obligor's or Transaction Obligor's articles of association or other constitutional documents.

22.22 Additional Guarantee

The Parent Guarantors shall procure that any New Parent provides an Additional Guarantee upon the request of the Facility Agent within the first 6 months after the completion of any merger or a reverse merger as described in Clause 22.13 (*Merger*) provided that the Parent Guarantors shall have no such obligation if:

- (i) any such merger or reverse merger is not consummated; or
- (ii) the New Parent is restricted from granting the Additional Guarantee by virtue of any law or any financing agreement or other contract to which it is a party as at the date of this Agreement.

23 INSURANCE UNDERTAKINGS

23.1 General

The undertakings in this Clause 23 (*Insurance Undertakings*) remain in force from the date of this Agreement throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority lenders (or, where specified, all the lenders) may otherwise permit.

23.2 Maintenance of obligatory insurances

Each Borrower shall keep the Ship owned by it insured at its expense against:

- (a) fire and usual marine risks (including hull and machinery and excess risks);
- (b) war risks;
- (c) protection and indemnity risks; and
- (d) any other risks against which the Facility Agent acting on the instructions of the Majority Lenders considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for that Borrower to insure and which are specified by the Facility Agent by notice to that Borrower.

23.3 Terms of obligatory insurances

Each Borrower shall effect such Insurances:

- (a) in USD;
- (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) 120 per cent. of the part of the Loan attributable to the Ship owned by it; and
 - (ii) the Market Value of that Ship;

- (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 under basic protection and indemnity club entry;
- (d) in the case of protection and indemnity risks, in respect of the full tonnage of its Ship;
- (e) on approved terms; and
- (f) through Approved Brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations.

23.4 Further protections for the Finance Parties

In addition to the terms set out in Clause 23.3 (*Terms of obligatory insurances*), each Borrower shall procure that the obligatory insurances effected by it shall:

- (a) subject always to paragraph (b), name that Borrower as the sole named insured unless the interest of every other named insured is limited:
 - (i) in respect of any obligatory insurances for hull and machinery and war risks;
 - (A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
 - (B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
 - (ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

and every other named insured has undertaken in writing to the Security Agent (in such form as it requires) that any deductible shall be apportioned between that Borrower and every other named insured in proportion to the gross claims made or paid by each of them and that it shall do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;

- (b) whenever the Facility Agent requires, name (or be amended to name) the Security Agent as additional named insured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Agent, but without the Security Agent being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (c) name the Security Agent as loss payee with such directions for payment as the Facility Agent may specify;
- (d) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Agent shall be made without set off, counterclaim or deductions or condition whatsoever;

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

23.5 Renewal of obligatory insurances

Each Borrower shall:

- (a) at least 10 days before the expiry of any obligatory insurance effected by it:
 - (i) notify the Facility Agent of the Approved Brokers (or other insurers) and any protection and indemnity or war risks association through or with which it proposes to renew that obligatory insurance and of the proposed terms of renewal; and
 - (ii) obtain the Facility Agents' approval to the matters referred to in sub-paragraph (i) above;
- (b) at least 5 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Facility Agent's approval pursuant to paragraph (a) above; and
- (c) procure that the Approved Brokers and/or the approved war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Facility Agent in writing of the terms and conditions of the renewal.

23.6 Copies of policies; letters of undertaking

Each Borrower shall ensure that the Approved Brokers provide the Security Agent with:

- (a) *pro forma* copies of all policies relating to the obligatory insurances which they are to effect or renew; and
- (b) a letter or letters or undertaking in a form required by the Facility Agent and including undertakings by the Approved Brokers that:
 - (i) 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 23.4 (*Further protections for the Finance Parties*);
 - (ii) they will hold such policies, and the benefit of such insurances, to the order of the Security Agent in accordance with such loss payable clause;
 - (iii) they will advise the Security Agent immediately of any material change to the terms of the obligatory insurances;
 - (iv) they will, if they have not received notice of renewal instructions from the relevant Borrower or its agents, notify the Security Agent not less than 14 days before the expiry of the obligatory insurances;
 - (v) if they receive instructions to renew the obligatory insurances, they will promptly notify the Facility Agent of the terms of the instructions;
 - (vi) they will not set off against any sum recoverable in respect of a claim relating to the Ship owned by that Borrower under such obligatory insurances any premiums or other

amounts due to them or any other person whether in respect of that Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts; and

- (vii) they will arrange for a separate policy to be issued in respect of the Ship owned by that Borrower forthwith upon being so requested by the Facility Agent.

23.7 Copies of certificates of entry

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provide the Security Agent with:

- (a) a certified copy of the certificate of entry for that Ship;
- (b) a letter or letters of undertaking in such form as may be required by the Facility Agent acting on the instructions of Majority Lenders; and
- (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 that Ship.

23.8 Deposit of original policies

Each Borrower shall ensure that all policies relating to obligatory insurances effected by it are deposited with the Approved Brokers through which the insurances are effected or renewed.

23.9 Payment of premiums

Each Borrower shall punctually pay all premiums or other sums payable in respect of the obligatory insurances effected by it and produce all relevant receipts when so required by the Facility Agent or the Security Agent.

23.10 Guarantees

Each Borrower shall use its best endeavours to procure that a protection and indemnity or war risks association issues any guarantees as may be required always in accordance with their respective rules and conditions and shall further use its best endeavours to procure that such guarantees are issued as promptly as practically possible and that they remain in full force and effect.

23.11 Compliance with terms of insurances

- (a) No Borrower shall do or 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.
- (b) Without limiting paragraph (a) above, each Borrower shall:
 - (i) 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 sub-paragraph (iii) of paragraph (b) of Clause 23.6 (*Copies of policies*;

letters of undertaking) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Facility Agent has not given its prior approval;

- (ii) not make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
- (iii) make (and promptly supply copies to the Facility Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
- (iv) not 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.

23.12 Alteration to terms of insurances

No Borrower shall make or agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance.

23.13 Settlement of claims

Each Borrower shall:

- (a) not settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty; and
- (b) do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

23.14 Provision of copies of communications

Each Borrower shall provide the Security Agent, upon the Security Agent's request, with copies of all written communications between that Borrower and:

- (a) the Approved Brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters,

which relate directly or indirectly to:

- (i) 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) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

23.15 Provision of information

Each Borrower shall provide the Facility Agent (or any persons which it may designate) upon the Facility Agent's request with any information which the Facility Agent (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 23.16 (*Mortgagee's interest and additional perils insurances*) or dealing with or considering any matters relating to any such insurances,

and the Borrowers shall, forthwith upon demand, indemnify the Security Agent in respect of all fees and other expenses incurred by or for the account of the Security Agent in connection with any such report as is referred to in paragraph (a) above.

23.16 Mortgagee's interest and additional perils insurances

- (a) The Security Agent shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance and a mortgagee's interest additional perils insurance in such amounts, on such terms, through such insurers and generally in such manner as the Security Agent acting on the instructions of the Majority Lenders may from time to time consider appropriate.
- (b) The Borrowers shall upon demand fully indemnify the Security Agent in respect of all premiums and other expenses which are incurred in connection with or with a view to effecting, maintaining or renewing any insurance referred to in paragraph (a) above or dealing with, or considering, any matter arising out of any such insurance.

24 GENERAL SHIP UNDERTAKINGS

24.1 General

The undertakings in this Clause 24 (*General Ship Undertakings*) remain in force on and from the date of this Agreement and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit (and in the case of Clauses 24.2 (*Ship's name and registration*), 24.3 (*Repair and classification*), 24.4 (*Modifications*), 24.5 (*Removal and installation of parts*) and 24.15 (*Restrictions on chartering, appointment of managers etc.*) such permission not to be unreasonably withheld).

24.2 Ships' names and registration

Each Borrower shall, in respect of the Ship owned by it:

- (a) keep that Ship registered in its name under the Approved Flag from time to time at its port of registration;

- (b) not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperilled;
- (c) not enter into any dual flagging arrangement in respect of that Ship; and
- (d) not change the name of that Ship,

provided that any change of flag of a Ship shall be subject to:

- (i) that Ship remaining subject to Security securing the Secured Liabilities created by a first priority or preferred ship mortgage on that Ship and, if appropriate, a first priority deed of covenant collateral to that mortgage (or equivalent first priority Security) on substantially the same terms as the Mortgage on that Ship and on such other terms and in such other form as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require; and
- (ii) the execution of such other documentation amending and supplementing the Finance Documents as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require.

24.3 Repair and classification

Each Borrower shall keep the Ship owned by it in a good and safe condition and state of repair:

- (a) consistent with first class ship ownership and management practice; and
- (b) so as to maintain the Approved Classification free of overdue recommendations and conditions.

24.4 Modifications

No Borrower shall make any modification or repairs to, or replacement of, the Ship owned by it or equipment installed on it which would or might materially and adversely alter the structure, type or performance characteristics of that Ship or materially reduce its value.

24.5 Removal and installation of parts

- (a) Subject to paragraph (b) below, no Borrower shall remove any material part of the Ship owned by it, or any item of equipment installed on such Ship unless:
 - (i) 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;
 - (ii) the replacement part or item is free from any Security in favour of any person other than the Security Agent; and
 - (iii) the replacement part or item becomes, on installation on that Ship, the property of that Borrower and subject to the security constituted by the Mortgage on that Ship.
- (b) 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 that Borrower.

24.6 Surveys

Each Borrower shall submit the Ship owned by it regularly to all periodic or other surveys which may be required for classification purposes and, if so required by the Facility Agent, provide the Facility Agent, with copies of all survey reports.

24.7 Inspection

Each Borrower shall permit the Security Agent (acting through surveyors or other persons appointed by it for that purpose) to board the Ship owned by it at all reasonable times, without interfering with the Ship's trading schedule, to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections. The costs of such inspection (only once in each 12-month period, starting on the Utilisation Date unless a Default has occurred and is continuing) shall be for the account of the relevant Borrower.

24.8 Prevention of and release from arrest

- (a) Each Borrower shall, in respect of the Ship owned by it, promptly discharge:
- (i) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against that Ship, its Earnings or its Insurances;
 - (ii) all Taxes, dues and other amounts charged in respect of that Ship, its Earnings or its Insurances; and
 - (iii) all other outgoings whatsoever in respect of that Ship, its Earnings or its Insurances.
- (b) Each Borrower shall as promptly as possible after 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, take all steps necessary to procure its release by providing bail or otherwise as the circumstances may require.

24.9 Compliance with laws etc.

Each Borrower shall:

- (a) comply, or procure compliance with all laws or regulations:
- (i) relating to its business generally;
 - (ii) all Sanctions; and
 - (iii) relating to the Ship owned by it, its ownership, employment, operation, management and registration, including, but not limited to, the ISM Code, the ISPS Code, all Environmental Laws, all Sanctions and the laws of the Approved Flag;
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals; and

- (c) without limiting paragraph (a) above, not employ the Ship owned by it nor allow its employment, operation or management in any manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and Sanctions.

24.10 ISPS Code

Without limiting paragraph (a) of Clause 24.9 (*Compliance with laws etc.*), each Borrower shall:

- (a) procure that the Ship owned by it and the company responsible for that Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain an ISSC for that Ship; and
- (c) notify the Facility Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

24.11 Sanctions and Ship trading

- (a) Without limiting Clause 24.9 (*Compliance with laws etc.*), each Obligor shall procure:
 - (i) that the Ship owned by it shall not be used by or for the benefit of a Sanctions Restricted Person;
 - (ii) that such Ship shall not be used in trading in any manner contrary to Sanctions (or which could be contrary to Sanctions if Sanctions were binding on each Transaction Obligor);
 - (iii) that such Ship shall not be traded in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances; and
 - (iv) that each charterparty in respect of that Ship shall contain, for the benefit of that Borrower, language which gives effect to the provisions of paragraph (c) of Clause 24.9 (*Compliance with laws etc.*) as regards Sanctions and of this Clause 24.11 (*Sanctions and Ship trading*) and which permits refusal of employment or voyage orders if compliance would result in a breach of Sanctions (or which would result in a breach of Sanctions if Sanctions were binding on each Transaction Obligor).
- (b) Each Obligor shall:
 - (i) not directly or to its knowledge (after reasonable enquiry) indirectly use or permit to be used all or any part of the proceeds of the Loan, or lend, contribute or otherwise make available such proceeds directly or to its knowledge (after reasonable enquiry) indirectly, to any person or entity (A) to finance or facilitate any activity or transaction of or with any Sanctions Restricted Person contrary to Sanctions or in any Sanctions Restricted Jurisdiction, or (B) in any other manner that would result in a violation of any Sanctions by any Party;
 - (ii) not fund all or part of any payment under the Loan out of proceeds derived directly or to its knowledge (after reasonable enquiry) indirectly from any activity or transaction with a Sanctions Restricted Person contrary to Sanctions or in a Sanctions Restricted Jurisdiction or which would otherwise cause any party to be in breach of any Sanctions; and

- (iii) procure that no proceeds to its knowledge (after reasonable enquiry) from activities or business with a Sanctions Restricted Person contrary to Sanctions or in a Sanctions Restricted Jurisdiction are credited to any Account.

24.12 Trading in war zones

In the event of hostilities in any part of the world (whether war is declared or not), no Borrower shall cause or permit any Ship 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:

- (a) the prior written consent of the underwriters of that Ship has been given; and
- (b) that Borrower has (at its expense) effected any special, additional or modified insurance cover (to the extent not covered by such Ship's war risks insurances) which the underwriters of such Ship may require.

24.13 Provision of information

Without prejudice to Clause 20.5 (*Information: miscellaneous*) each Borrower shall, in respect of the Ship owned by it, promptly provide the Facility Agent with any information which it requests regarding:

- (a) that Ship, its employment, position and engagements;
- (b) the Earnings and payments and amounts due to its master and crew;
- (c) any expenditure incurred, or likely to be incurred, in connection with the operation, maintenance or repair of that Ship and any payments made by it in respect of that Ship;
- (d) any towages and salvages; and
- (e) its compliance, the Approved Manager's compliance and the compliance of that Ship with the ISM Code and the ISPS Code, and, upon the Facility Agent's request, promptly provide copies of any current Charter relating to that Ship, of any current guarantee of any such Charter, the Ship's Safety Management Certificate and any relevant Document of Compliance.

24.14 Notification of certain events

Each Borrower shall, in respect of the Ship owned by it, as soon as practically possible notify the Facility Agent by fax, confirmed forthwith by letter, of:

- (a) any casualty to that Ship which is a Major Casualty;
- (b) any occurrence as a result of which that Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requisition of that Ship for hire;
- (d) any overdue requirement or recommendation made in relation to that Ship by any insurer or classification society or by any competent authority;

- (e) any arrest or detention of that Ship or any exercise or purported exercise of any lien on that Ship or the Earnings;
- (f) any intended dry docking of that Ship;
- (g) any Environmental Claim made against that Borrower or in connection with that Ship, or any Environmental Incident;
- (h) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, an Approved Manager or otherwise in connection with that Ship; or
- (i) 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 each Borrower shall keep the Facility Agent advised in writing on a regular basis and in such detail as the Facility Agent shall require as to that Borrower's, any such Approved Manager's or any other person's response to any of those events or matters.

24.15 Restrictions on chartering, appointment of managers etc.

No 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, voyage or consecutive voyage charter in respect of that Ship other than a Permitted Charter;
- (c) materially amend, supplement or terminate a Management Agreement; provided that should a reverse merger as described in Clause 22.13 (*Merger*) be completed, the Borrowers shall have the right to i) terminate the Technical Management Agreements and enter into new technical management agreements with the Approved Technical Manager on terms similar to those agreed in the Technical Management Agreements in place on the date of this Agreement and ii) terminate the Commercial Management Agreement and provide respectively for the entering into a new commercial management agreement between Parent Guarantor A for and on behalf of the Borrowers and the Approved Commercial Manager, on terms similar to those agreed in the Commercial Management Agreement in place on the date of this Agreement.
- (d) appoint a manager of that Ship other than the Approved Commercial Manager and the Approved Technical Manager or agree to any alteration to the terms of an Approved Manager's appointment;
- (e) deactivate or layup that Ship; or
- (f) put that Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed USD 750,000 (or the equivalent in any other currency) unless that person has first given to the Security Agent and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or its Earnings for the cost of such work or for any other reason.

24.16 Notice of Mortgage

Each Borrower shall keep the relevant Mortgage registered against the Ship owned by it as a valid first preferred mortgage, carry on board that Ship a certified copy of the relevant Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of that Ship a framed printed notice stating that that Ship is mortgaged by that Borrower to the Security Agent.

24.17 Sharing of Earnings

No Borrower shall enter into any agreement or arrangement for the sharing of any Earnings other than for the purposes of this Agreement.

24.18 Notification of compliance

Each Borrower shall promptly provide the Facility Agent from time to time with evidence (in such form as the Facility Agent requires) that it is complying with this Clause 24 (*General Ship Undertakings*).

25 SECURITY COVER

25.1 Minimum required security cover

Clause 25.2 (*Provision of additional security; prepayment*) applies if the Facility Agent notifies the Borrowers that:

- (i) the aggregate Market Value of all Ships then subject to a Mortgage; plus
- (ii) the net realisable value of additional security previously provided under this Clause 25 (*Security Cover*),

is below 125 per cent, of the Loan.

25.2 Provision of additional security; prepayment

- (a) If the Facility Agent serves a notice on the Borrowers under Clause 25.1 (*Minimum required security cover*), the Borrowers shall, on or before the date falling one Month after the date (the "**Prepayment Date**") on which the Facility Agent's notice is served, prepay such part of the Loan as shall eliminate the shortfall.
- (b) A Borrower may, instead of making a prepayment as described in paragraph (a) above, provide, or ensure that a third party has provided, additional security which, in the opinion of the Facility Agent acting on the instructions of the Majority Lenders:
 - (i) has a net realisable value at least equal to the shortfall; and
 - (ii) is documented in such terms as the Facility Agent may approve or require,before the Prepayment Date; and conditional upon such security being provided in such manner, it shall satisfy such prepayment obligation.

25.3 Value of additional vessel security

The net realisable value of any additional security which is provided under Clause 25.2 (*Provision of additional security; prepayment*) and which consists of Security over a vessel shall be the Market Value of the vessel concerned, determined in accordance with Clause 25.7 (*Provision of Valuations*).

25.4 Valuations binding

Any valuation under this Clause 25 (*Security Cover*) shall be binding and conclusive as regards each Borrower.

25.5 Provision of information

- (a) Each Borrower shall promptly provide the Facility Agent and any Approved Valuer acting under this Clause 25 (*Security Cover*) with any information which the Facility Agent or the Approved Valuer may request for the purposes of the valuation.
- (b) If a Borrower fails to provide the information referred to in paragraph (a) above by the date specified in the request, the valuation may be made on any basis and assumptions which the Approved Valuer or the Facility Agent considers prudent.

25.6 Prepayment mechanism

Any prepayment pursuant to Clause 25.2 (*Provision of additional security; prepayment*) shall be made in accordance with the relevant provisions of Clause 7 (*Prepayment and Cancellation*) and shall be treated as a voluntary prepayment pursuant to Clause 7.2 (*Voluntary prepayment of Loan*) but ignoring any restriction as to prepayments being made on the last day of the Interest Period.

25.7 Provision of valuations

The Facility Agent shall obtain two valuations for the determination of the average Market Value of any Ship and any other vessel over which additional Security has been or is to be created in accordance with Clause 25.3 (*Value of additional vessel security*), twice a year on each of June 30 and December 30 of each year, unless an Event of Default has occurred and is continuing whereby there will be no restriction as to the number of valuations which may be obtained by the Facility Agent at the Borrowers' expense. The valuations will be provided by two Approved Valuers, one appointed by the Facility Agent and one appointed by the Borrowers (such valuations to be made without, unless required by the Facility Agent, physical inspection, and on the basis of a sale for prompt delivery for cash at arms' length on normal commercial terms as between a willing buyer and a willing seller, without taking into account the benefit of any Charter or other engagement concerning the relevant Ship). If the variance between the two valuations obtained is more than 15 per cent, then a third valuation to be obtained by the Facility Agent from an Approved Valuer and the arithmetic mean of the three valuations will be the average Market Value of each Ship.

26 ACCOUNTS AND APPLICATION OF EARNINGS

26.1 Accounts

No Borrower may, without the prior consent of the Facility Agent, maintain any bank account other than its Earnings Account and the Retention Account.

26.2 Payment of Earnings; minimum liquidity

- (a) Each Borrower shall ensure that, subject only to the provisions of the General Assignment to which it is a party, all the Earnings in respect of the Ship owned by it are paid in to its Earnings Account.

- (b) Each Borrower shall ensure that at all times throughout the Security Period, a minimum liquidity in the amount of USD 350,000 is standing to the credit of its Earnings Account.

26.3 Monthly retentions

The Borrowers shall ensure that, in each calendar month following the Utilisation Date, on such dates as the Facility Agent may from time to time specify, there is transferred to the Retention Account out of the aggregate Earnings received by the Borrowers in their respective Earnings Accounts during the preceding calendar month:

- (a) one-third of the amount of any Repayment Instalment falling due under Clause 6.1 (*Repayment of Loan*) on the next Repayment Date; and
- (b) the relevant fraction of the aggregate amount of interest on the Loan which is payable under this Agreement in respect of any Interest Period then current.

The “**relevant fraction**” is a fraction of which:

- (i) the numerator is one; and
- (ii) the denominator is:
 - (A) the number of months comprised in the relevant then current Interest Period; or
 - (B) if the period is shorter (than that set out in (A)), the number of months from the later of the commencement of the relevant current Interest Period or the last due date for payment of interest on the Loan or the relevant part of the Loan to the next due date for payment of interest on the Loan or the relevant part of the Loan under this Agreement.

26.4 Shortfall in Earnings

- (a) if the aggregate of the credit balance on each Earnings Account is insufficient in any calendar month for the required amount to be transferred to the Retention Account under Clause 26.3 (*Monthly retentions*), the Borrowers shall make up the amount of the insufficiency on demand from the Facility Agent.
- (b) Without prejudicing the Facility Agent’s right to make such demand at any time, the Facility Agent may, if so authorised by the Majority Lenders, permit the Borrowers to make up all or part of the insufficiency by increasing the amount of any transfer under Clause 26.3 (*Monthly retentions*) from the Earnings received in the next or subsequent calendar months.

26.5 Application of Earnings

The Earnings on each Earnings Account shall be used in the following order of application:

- (a) FIRSTLY, for and towards the retentions pursuant to Clause 26.3 (*Monthly retentions*);
- (b) SECONDLY, for and towards the operating expenses for the relevant Ship;
- (c) THIRDLY, for and towards the maintenance of the minimum liquidity requirement pursuant to Clause 26.2(b) (*Payment of Earnings; minimum liquidity*);

FOURTHLY, for and towards the liabilities of each Transaction Obligor (including, but not limited to, the repayment of principal, interest, default interest and all relevant costs, expenses and indemnities) under this Agreement and the other Finance Documents to the extent not already covered by the retentions set out in paragraph (a) above; (e) FIFTHLY, any credit balance shall be available to the Borrowers to be used for any purpose not inconsistent with the Borrowers' other obligations under this Agreement.

26.6 Application of retentions

- (a) The Security Agent has sole signing rights in relation to the Retention Account.
- (b) Until an Event of Default occurs, the Facility Agent shall instruct the Security Agent to release to it, on each Repayment Date and on each interest Payment Date, for distribution to the Finance Parties in accordance with Clause 34.2 (*Distributions by the Facility Agent*) so much of the then balance on the Retention Account as equals:
 - (i) any Repayment Instalment due on that Repayment Date; and
 - (ii) the amount of interest payable on that Interest Payment Date,in discharge of the Borrowers' liability for that Repayment Instalment or that interest as the case may be.

26.7 Interest accrued on Retention Account

Any credit balance on the Retention Account shall bear interest at the rate from time to time offered by the Account Bank to its customers for dollar deposits of similar amounts and for periods similar to those for which such balances appear to the Account Bank likely to remain on the Retention Account.

26.8 Release of accrued interest

Interest accruing under Clause 26.7 (*Interest accrued on Retention Account*) shall be credited to the Retention Account and, to the extent not applied previously pursuant to Clause 26.6 (*Application of retentions*), shall be released to the Borrowers at the end of the Security Period.

26.9 Location of Accounts

Each Borrower shall promptly:

- (a) comply with any requirement of the Facility Agent as to the location or relocation of its Earnings Account and the Retention Account (or either of them); and
- (b) execute any documents which the Facility Agent specifies to create or maintain in favour of the Security Agent Security over (and/or rights of set-off, consolidation or other rights in relation to) the Earnings Accounts and the Retention Account.

27 EVENTS OF DEFAULT

27.1 General

Each of the events or circumstances set out in this Clause 27 (*Events of Default*) is an Event of Default except for Clause 27.18 (*Acceleration*) and Clause 27.19 (*Enforcement of security*).

27.2 Non-payment

A Transaction Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within three Business Days of its due date.

27.3 Specific obligations

A breach occurs of Clause 4.4 (*Waiver of conditions precedent*), Clause 21 (*Financial Covenants*), Clause 22.10 (*Title*), Clause 22.11 (*Negative pledge*), Clause 22.20 (*Unlawfulness, invalidity and ranking; Security imperilled*), Clause 23.2 (*Maintenance of obligatory insurances*), Clause 23.3 (*Terms of obligatory insurances*), Clause 23.5 (*Renewal of obligatory insurances*), Clause 25 (*Security Cover*).

27.4 Other obligations

- (a) A Transaction Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 27.2 (*Non-payment*) and Clause 27.3 (*Specific obligations*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 5 Business Days of the Facility Agent giving notice to the Borrowers or (if earlier) any Transaction Obligor becoming aware of the failure to comply.

27.5 Misrepresentation

Any representation or statement made or deemed to be made by a Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

27.6 Cross default

- (a) Any Financial Indebtedness of any Obligor is not paid when due (unless contested in good faith) nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor is declared to be due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default (however described) unless the relevant Obligor has satisfied the Facility Agent that such cancellation or suspension will not have any negative impact on the ability of that Obligor to satisfy its debts as they fall due.
- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of any Obligor due and payable prior to its specified maturity as a result of an event of default (however described).

- (e) No Event of Default will occur under this Clause 27.6 (*Cross default*) in respect of a person other than a Borrower if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than USD 100,000 (or its equivalent in any other currency).

27.7 Insolvency

- (a) A Transaction Obligor:

- (i) is unable or admits inability to pay its debts as they fall due;
- (ii) is declared to be unable to pay its debts under applicable law;
- (iii) suspends or threatens to suspend making payments on any of its debts; or
- (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.

Provided that should such Transaction Obligor, for any reason, including without limitation, any actual or anticipated financial difficulties, commences, with prior written notice to the Facility Agent, negotiations with one or more of its creditors (including the Facility Agent for account of the Lenders) with a view to rescheduling, deferring, re-organising or suspending any of its indebtedness, the negotiations themselves or the entering, as a result of such negotiations, into any agreement or contract with one or more of its creditors (including the Facility Agent for account of the Lenders) setting out terms for any rescheduling, deferral, re-organization or suspension of its indebtedness, shall not in itself constitute an Event of Default.

- (b) A moratorium is declared in respect of any indebtedness of any Transaction Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

27.8 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Transaction Obligor;
- (ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor;
- (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Transaction Obligor or any of its assets; or
- (iv) enforcement of any Security over any assets of any Transaction, or any analogous procedure or step is taken in any jurisdiction.

- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement.

27.9 Creditors' process

Any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of a Transaction Obligor (other than an arrest or detention of a Ship referred to in Clause 27.13 (*Arrest*)) and is not discharged within 30 days.

27.10 Unlawfulness, invalidity and ranking

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation of a Transaction Obligor under the Finance Documents is or ceases to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force and effect or to be continuing or is or purports to be determined or any Transaction Security is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) Any Transaction Security proves to have ranked after, or loses its priority to, any other Security.

27.11 Security imperilled

Any Security created or intended to be created by a Finance Document is in any way imperilled or in jeopardy.

27.12 Cessation of business

Any Transaction Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business,

27.13 Arrest

Any arrest of a Ship or its detention in the exercise or the purported exercise of any lien or claim unless it is redelivered to the full control of the relevant Borrower within 30 days of such arrest or detention (or such longer period as may be required in the circumstances based on the assessment of the Facility Agent acting with the authorisation of the Majority Lenders).

27.14 Expropriation

The authority or ability of any Transaction Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Transaction Obligor or any of its assets other than:

- (a) an arrest or detention of a Ship referred to in Clause 27.13 (*Arrest*); or
- (b) any Requisition.

27.15 Repudiation and rescission of agreements

Any Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document (other than a Charter where the prior approval of the Facility Agent has been obtained for rescission pursuant to the Finance Documents) or any of the Transaction Security or evidences an intention to rescind or repudiate a Transaction Document or any Transaction Security.

27.16 Litigation

Any litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency are started or threatened, or any judgment or order of a court, arbitral body or agency is made, in relation to any of the Transaction Documents or the transactions contemplated in any of the Transaction Documents or against any member of the Group or its assets which has or is reasonably likely to have a Material Adverse Effect.

27.17 Material adverse change

Any event or circumstance occurs which has a Material Adverse Effect.

27.18 Acceleration

On and at any time after the occurrence of an Event of Default the Facility Agent may, and shall if so directed by the Majority Lenders:

- (a) by notice to the Borrowers:
 - (i) cancel the Total Commitments, whereupon they shall immediately be cancelled;
 - (ii) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon it shall become immediately due and payable; and/or
 - (iii) declare that all or part of the Loan be payable on demand, whereupon it shall immediately become payable on demand by the Facility Agent acting on the instructions of the Majority Lenders; and/or
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents, and the Facility Agent may serve notices under sub-paragraphs (i), (ii) or (iii) of paragraph (a) above simultaneously or on different dates and any Servicing Party may take any action referred to in paragraph (b) above or Clause 27.19 (*Enforcement of security*) if no such notice is served or simultaneously with or at any time after the service of any of such notice.

27.19 Enforcement of security

On and at any time after the occurrence of an Event of Default the Security Agent may, and shall if so directed by the Majority Lenders, take any action which, as a result of the Event of Default or any notice served under Clause 27.18 (*Acceleration*), the Security Agent is entitled to take under any Finance Document or any applicable law or regulation.

SECTION 9
CHANGES TO PARTIES

28 CHANGES TO THE LENDERS

28.1 Assignments and transfers by the Lenders

Subject to this Clause 28 (*Changes to the Lenders*) and without prejudice to any other rights available to it as a matter of applicable law, a Lender (the “**Existing Lender**”) may, at any time and subject to consultation with the Parent Guarantors and/or the Borrowers (but without the need for consent of the Parent Guarantors or the Borrowers):

- (i) assign any of its rights; or
- (ii) transfer by novation any of its rights and obligations (including, for the avoidance of doubt, its Commitment), under the Finance Documents to
 - (i) another Lender;
 - (ii) any Affiliate of a Lender;
 - (iii) any other first class bank or financial institution;
 - (iv) any member of the European System of Central Banks;
 - (v) any insurance company, trust, capital investment company; or
 - (vi) following the occurrence of an Event of Default that is continuing past its cure period, any other person (the “**New Lender**”).

28.2 Conditions of assignment or transfer

- (a) An assignment will only be effective on:
 - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Secured Parties as it would have been under if it had been an Original Lender; and
 - (ii) performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.
- (b) Each Obligor on behalf of itself and each Transaction Obligor agrees that all rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender’s title and of any rights or equities which the Borrower or any other Transaction Obligor had against the Existing Lender.

- (c) A transfer will only be effective if the procedure set out in Clause 28.5 (*Procedure for transfer*) is complied with.
- (d) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, a Transaction Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross Up and Indemnities*) or under that clause as incorporated by reference or in full in any other Finance Document or Clause 13 (*Increased Costs*),then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (d) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.
- (e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

28.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of USD 2,500 unless otherwise agreed with or waived by the Facility Agent.

28.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Transaction Obligor;
 - (iii) the performance and observance by any Transaction Obligor of its obligations under the Transaction Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document, and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties and the Secured Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its related entities throughout the Security Period.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 28 (*Changes to the Lenders*); or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Transaction Obligor of its obligations under the Transaction Documents or otherwise.

28.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate.
- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 28.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security, each of the Transaction Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
 - (ii) each of the Transaction Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Transaction Obligor and the New Lender have assumed and/or acquired the same in place of that Transaction Obligor and the Existing Lender;

- (iii) the Facility Agent, the Security Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the Arranger and the Existing Lenders shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a “Lender”.

28.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 28.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 28.6 (*Procedure for assignment*) to assign their rights under the Finance Documents (but not, without the consent of the relevant Transaction Obligor or unless in accordance with Clause 28.5 (*Procedure for transfer*), to obtain a release by that Transaction Obligor from the obligations owed to that Transaction Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*).

28.7 Copy of Transfer Certificate or Assignment Agreement to Borrowers

The Facility Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrowers a copy of that Transfer Certificate or Assignment Agreement.

28.8 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 28 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities, except that no such charge, assignment or Security shall:
 - (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by a Transaction Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

28.9 Syndication and Securitisation

The Obligors shall assist the Facility Agent in achieving a successful syndication or securitisation (or similar transaction) in respect of the Facility and the Finance Documents. The Obligors shall, if requested by the Agent, provide such information as may be required to produce a customary information memorandum and also make available members of senior management for any meetings that potential syndicate lenders may request.

28.10 Pro rata interest settlement

- (a) If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a "*pro rata* basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 28.5 (*Procedure for transfer*) or any assignment pursuant to Clause 28.6 (*Procedure for assignment*)) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
 - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

- (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 28.9 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 28.9 (*Pro rata interest settlement*) references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 28.9 (*Pro rata interest settlement*) but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

29 CHANGES TO THE TRANSACTION OBLIGORS

29.1 Assignment or transfer by Transaction Obligors

No Transaction Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents, without the prior written consent of the Facility Agent.

29.2 Release of security

- (a) If a disposal of any asset subject to security created by a Security Document is made in the following circumstances:
 - (i) the disposal is permitted by the terms of any Finance Document;
 - (ii) the Majority Lenders agree to the disposal;
 - (iii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or
 - (iv) the disposal is being effected by enforcement of a Security Document,the Security Agent may release the asset(s) being disposed of from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).
- (b) If the Security Agent is satisfied that a release is allowed under this Clause 29.2 (*Release of security*) (at the request and expense of the Borrowers) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Transaction Obligor under the Finance Documents.

SECTION 10
THE FINANCE PARTIES

30 THE FACILITY AGENT AND THE ARRANGER

30.1 Appointment of the Facility Agent

- (a) Each of the Arranger and the Lenders appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arranger and the Lenders authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

30.2 Instructions

- (a) The Facility Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in a Finance Document;
 - (ii) where a Finance Document requires the Facility Agent to act in a specified manner or to take a specified action;

- (iii) in respect of any provision which protects the Facility Agent's own position in its personal capacity as opposed to its role of Facility Agent for the relevant Finance Parties.
- (e) If giving effect to instructions given by the Majority Lenders would in the Facility Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 43 (*Amendments and Waivers*), the Facility Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Facility Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where it has not received any instructions as to the exercise of that discretion the Facility Agent shall do so having regard to the interests of all the Finance Parties.
- (g) The Facility Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 30.2 (*Instructions*), in the absence of instructions, the Facility Agent shall not be obliged to take any action (or refrain from taking action) even if it considers acting or not acting to be in the best interests of the Finance Parties. The Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Finance Parties.
- (i) The Facility Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

30.3 Duties of the Facility Agent

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to Clause 28.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Facility Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.

- (f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent, the Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

30.4 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

30.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Facility Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) Neither the Facility Agent nor the Arranger shall be bound to account to other Finance Party for any sum or the profit element of any sum received by it for its own account.

30.6 Application of receipts

Except as expressly stated to the contrary in any Finance Document, any moneys which the Facility Agent receives or recovers in its capacity as Facility Agent shall be applied by the Facility Agent in accordance with Clause 34.5 (*Application of receipts; partial payments*).

30.7 Business with the Group

The Facility Agent and the Arranger may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

30.8 Rights and discretions

- (a) The Facility Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

- (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing, as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 27.2 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iii) any notice or request made by any Borrower (other than a Utilisation Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Arranger is obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

30.9 Responsibility for documentation

Neither the Facility Agent nor the Arranger is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Arranger, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party or Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

30.10 No duty to monitor

The Facility Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

30.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to paragraph (e) of Clause 34.11 (*Disruption to Payment Systems etc.*) or any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or

- (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
- (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Facility Agent may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent or the Arranger to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,on behalf of any Finance Party and each Finance Party confirms to the Facility Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Arranger.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent’s liability, any liability of the Facility Agent arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

30.12 Lenders' indemnity to the Facility Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 34.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.

30.13 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Facility Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent may appoint a successor Facility Agent.
- (d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 30 (*The Facility Agent and the Arranger*) and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Facility Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Facility Agent shall make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Facility Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.

- (f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.4 (*Indemnity to the Facility Agent*) and this Clause 30 (*The Facility Agent and the Arranger*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Facility Agent. Any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Borrowers.
- (i) The consent of any Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Facility Agent.

30.14 Confidentiality

- (a) In acting as Facility Agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Facility Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Facility Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

30.15 Relationship with the other Finance Parties

- (a) Subject to Clause 28.9 (*Pro rata interest settlement*), the Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and

- (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,
unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Each Finance Party shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.
- (c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 37.5 (*Electronic communication*) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 37.2 (*Addresses*) and sub-paragraph (ii) of paragraph (a) of Clause 37.5 (*Electronic communication*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

30.16 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Facility Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Facility Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

30.17 Deduction from amounts payable by the Facility Agent

If any Party owes an amount to the Facility Agent under the Finance Documents, the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

30.18 Full freedom to enter into transactions

Without prejudice to Clause 30.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Facility Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
 - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
 - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to any Borrower or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Facility Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

31 THE SECURITY AGENT

31.1 Trust

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 31 (*The Security Agent*) and the other provisions of the Finance Documents.

- (b) Each other Finance Party authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

31.2 Parallel Debt (Covenant to pay the Security Agent)

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of an Obligor:
 - (i) shall become due and payable at the same time as its Corresponding Debt;
 - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For purposes of this Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent:
 - (i) is the independent and separate creditor of each Parallel Debt;
 - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
 - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).
- (d) The Parallel Debt of an Obligor shall be:
 - (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Corresponding Debt has increased,and the Corresponding Debt of an Obligor shall be decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged,
in each case provided that the Parallel Debt of an Obligor shall never exceed its Corresponding Debt.
- (e) All amounts received or recovered by the Security Agent in connection with this Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 34.5 (*Application of receipts; partial payments*).
- (f) This Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) shall apply, with any necessary modifications, to each Finance Document.

31.3 Enforcement through Security Agent only

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

31.4 Instructions

- (a) The Security Agent shall:
- (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by:
 - (A) all Lenders (or the Facility Agent on their behalf) if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders (or the Facility Agent on their behalf); and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or the Facility Agent on their behalf) (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in a Finance Document;
 - (ii) where a Finance Document requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Secured Parties.

- (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 31.27 (*Application of receipts*);
 - (B) Clause 31.28 (*Permitted Deductions*); and
 - (C) Clause 31.29 (*Prospective liabilities*).
- (e) If giving effect to instructions given by the Majority Lenders would in the Security Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 43 (*Amendments and Waivers*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
 - (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to sub-paragraph (iv) of paragraph (d) above,the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 31.4 (*Instructions*), in the absence of instructions, the Security Agent may (but shall not be obliged to) take such action in the exercise of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.
- (i) The Security Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

31.5 Duties of the Security Agent

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

31.6 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor.
- (b) The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

31.7 Business with the Group

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

31.8 Rights and discretions

- (a) The Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked;
 - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,
as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the other Finance Parties through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to any Finance Party.

- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Secured Parties) that:
- (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iii) any notice or request made by any Borrower (other than a Utilisation Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (c) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Facility Agent or the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Security Agent's gross negligence or wilful misconduct.
- (h) Unless a Finance Document expressly provides otherwise the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under the Finance Documents.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

31.9 Responsibility for documentation

None of the Security Agent, any Receiver or Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Arranger, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property;
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

31.10 No duty to monitor

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

31.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate), none of the Security Agent nor any Receiver or Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or

- (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, Insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Security Agent, that Receiver or that Delegate (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,
- on behalf of any Finance Party and each Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate, any liability of the Security Agent or any Receiver or Delegate arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

31.12 Lenders' indemnity to the Security Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Agent and every Receiver, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the Security Agent's or Receiver's gross negligence or wilful misconduct) in acting as Security Agent or Receiver under the Finance Documents (unless the Security Agent or Receiver has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall within three days of any demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.

31.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent may appoint a successor Security Agent.
- (d) The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer, by way of a document expressed as a deed, of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged, by way of a document executed as a deed, from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 31.24 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of Clause 14.5 (*Indemnity to the Security Agent*) and this Clause 31 (*The Security Agent*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Security Agent. Any fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

- (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrowers.
- (h) The consent of any Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Agent.

31.14 Confidentiality

- (a) In acting as Security Agent for the Finance Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Security Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Security Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

31.15 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

31.16 Reliance and engagement letters

Each Secured Party confirms that the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Security Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

31.17 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Transaction Obligor to any of the Security Assets;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Transaction Obligor to take, any step to perfect its title to any of the Security Assets or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Finance Document.

31.18 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Security Assets;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,
 - (iv) and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.
- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders request it to do so in writing and the Security Agent fails to do so within 14 days after receipt of that request.

31.19 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

31.20 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of any such delegate or sub delegate.

31.21 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties; or
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the Borrowers and the Finance Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

31.22 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Transaction Obligor may have to any of the Security Assets and shall not be liable for or bound to require any Transaction Obligor to remedy any defect in its right or title.

31.23 Releases

Upon a disposal of any of the Security Assets pursuant to the enforcement of the Transaction Security by a Receiver, a Delegate or the Security Agent, the Security Agent is irrevocably authorised (at the cost of the Obligors and without any consent, sanction, authority or further confirmation from any other Secured Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

31.24 Winding up of trust

If the Security Agent, with the approval of the Facility Agent determines that:

- (a) all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and
 - (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Transaction Obligor pursuant to the Finance Documents,
- then
- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
 - (ii) any Security Agent which has resigned pursuant to Clause 31.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

31.25 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

31.26 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement and the other Finance Documents. Where there are any inconsistencies between (i) the Trustee Acts 1925 and 2000 and (ii) the provisions of this Agreement and any other Finance Document, the provisions of this Agreement and any other Finance Document shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement and any other Finance Document shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

31.27 Application of receipts

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document, under Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or in connection with the realisation or enforcement of all or any part of the Security Property (for the purposes of this Clause 31 (*The Security Agent*), the “**Recoveries**”) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the remaining provisions of this Clause 31 (*The Security Agent*), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) (other than pursuant to Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or any Receiver or Delegate;
- (b) in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Secured Parties, for application towards the discharge of all sums due and payable by any Transaction Obligor under any of the Finance Documents in accordance with Clause 34.5 (*Application of receipts; partial payments*);
- (c) if none of the Transaction Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Transaction Obligor; and
- (d) the balance, if any, in payment or distribution to the relevant Transaction Obligor.

31.28 Permitted Deductions

The Security Agent may, in its discretion:

- (a) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
- (b) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

31.29 Prospective liabilities

Following enforcement of any of the Transaction Security, the Security Agent may, in its discretion, or at the request of the Facility Agent, hold any Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later payment to the Facility Agent for application in accordance with Clause 31.27 (*Application of receipts*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and

- (b) any part of the Secured Liabilities,
that the Security Agent or, in the case of paragraph (b) only, the Facility Agent, reasonably considers, in each case, might become due or owing at any time in the future.

31.30 Investment of proceeds

Prior to the payment of the proceeds of the Recoveries to the Facility Agent for application in accordance with Clause 31.27 (*Application of receipts*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of Clause 31.27 (*Application of receipts*).

31.31 Currency conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

31.32 Good discharge

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Facility Agent on behalf of the Secured Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Facility Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

31.33 Amounts received by Obligors

If any of the Obligors receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, that Obligor will hold the amount received or recovered on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement.

31.34 Full freedom to enter into transactions

Without prejudice to Clause 31.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Security Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);

- (b) to deal in and enter into and arrange transactions relating to:
 - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
 - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrowers or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Security Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

32 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

33 SHARING AMONG THE FINANCE PARTIES

33.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from a Transaction Obligor other than in accordance with Clause 34 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due to it under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 34 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and

- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 34.5 (*Application of receipts; partial payments*).

33.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Transaction Obligor and distribute it among the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 34.5 (*Application of receipts; partial payments*) towards the obligations of that Transaction Obligor to the Sharing Finance Parties.

33.3 Recovering Finance Party’s rights

On a distribution by the Facility Agent under Clause 33.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from a Transaction Obligor, as between the relevant Transaction Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Transaction Obligor.

33.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and
- (b) as between the relevant Transaction Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Transaction Obligor.

33.5 Exceptions

- (a) This Clause 33 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Transaction Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

SECTION 11
ADMINISTRATION

34 PAYMENT MECHANICS

34.1 Payments to the Facility Agent

- (a) On each date on which a Transaction Obligor or a Lender is required to make a payment under a Finance Document, that Transaction Obligor or Lender shall make an amount equal to such payment available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Facility Agent) and with such bank as the Facility Agent, in each case, specifies.

34.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 34.3 (*Distributions to a Transaction Obligor*) and Clause 34.4 (*Clawback and pre-funding*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London), as specified by that Party or, in the case of the Advance, to such account of such person as may be specified by the Borrowers in a Utilisation Request.

34.3 Distributions to a Transaction Obligor

The Facility Agent may (with the consent of the Transaction Obligor or in accordance with Clause 35 (*Set-Off*)) apply any amount received by it for that Transaction Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Transaction Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

34.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

- (c) If the Facility Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrowers before receiving funds from the Lenders then if and to the extent that the Facility Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrowers:
- (i) the Facility Agent shall notify the Borrowers of that Lender's identity and the Borrowers shall on demand refund it to the Facility Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if the Lender fails to do so, the Borrowers shall on demand pay to the Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

34.5 Application of receipts; partial payments

- (a) If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of, and any other amounts owing to, the Facility Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
 - (ii) **secondly**, in or towards any accrued interest and fees due but unpaid to the Lenders under this Agreement;
 - (iii) **thirdly**, in or towards payment any principal due but unpaid to the Lenders under this Agreement; and
 - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary, or instruct the Security Agent to vary (as applicable), the order set out in sub-paragraphs (ii) to (iv) of paragraph (a) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by a Transaction Obligor.

34.6 No set-off by Transaction Obligors

All payments to be made by a Transaction Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

34.7 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

34.8 Currency of account

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from a Transaction Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

34.9 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the Borrowers); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Borrowers) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

34.10 Currency Conversion

- (a) For the purpose of, or pending any payment to be made by any Servicing Party under any Finance Document, such Servicing Party may convert any moneys received or recovered by it from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

34.11 Disruption to Payment Systems etc.

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by a Borrower that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by a Borrower, consult with the Borrowers with a view to agreeing with the Borrowers such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Borrowers in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Borrowers shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 43 (*Amendments and Waivers*);
- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 34.11 (*Disruption to Payment Systems etc.*); and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

35 SET-OFF

A Finance Party may set off any matured obligation due from a Transaction Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Transaction Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

36 BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each Party acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;

- (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

37 NOTICES

37.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

37.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents are:

- (a) in the case of the Borrowers, that specified in Schedule 1 (*The Parties*);
- (b) in the case of each Lender or any other Obligor, that specified in Schedule 1 (*The Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or before the date on which it becomes a Party;
- (c) in the case of the Facility Agent, that specified in Schedule 1 (*The Parties*); and
- (d) in the case of the Security Agent, that specified in Schedule 1 (*The Parties*),

or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice,

37.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 37.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to a Servicing Party will be effective only when actually received by that Servicing Party and then only if it is expressly marked for the attention of the department or officer of that Servicing Party specified in Schedule 1 (*The Parties*) (or any substitute department or officer as that Servicing Party shall specify for this purpose).

- (c) All notices from or to a Transaction Obligor shall be sent through the Facility Agent unless otherwise specified in any Finance Document.
- (d) Any communication or document made or delivered to the Borrowers in accordance with this Clause will be deemed to have been made or delivered to each of the Transaction Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

37.4 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 37.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

37.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5.00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 37.5 (*Electronic communication*).

37.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:

- (i) in English; or
- (ii) if not in English, and if so required by the Facility Agent, accompanied by a certified English translation prepared by a translator approved by the Facility Agent and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

38 CALCULATIONS AND CERTIFICATES

38.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

38.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

38.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

39 PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

40 REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

41 SETTLEMENT OR DISCHARGE CONDITIONAL

Any settlement or discharge under any Finance Document between any Finance Party and any Transaction Obligor shall be conditional upon no security or payment to any Finance Party by any Transaction Obligor or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.

42 IRREVOCABLE PAYMENT

If the Facility Agent considers that an amount paid or discharged by, or on behalf of, a Transaction Obligor or by any other person in purported payment or discharge of an obligation of that Transaction Obligor to a Secured Party under the Finance Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Transaction Obligor or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Finance Documents.

43 AMENDMENTS AND WAIVERS

43.1 Required consents

- (a) Subject to Clause 43.2 (*All Lender matters*) and Clause 43.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and, in the case of an amendment, the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 43 (*Amendments and Waivers*).
- (c) Without prejudice to the generality of Clause 30.8 (*Rights and discretions*), the Facility Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Paragraph (c) of Clause 28.9 (*Pro rata interest settlement*) shall apply to this Clause 43 (*Amendments and Waivers*).

43.2 All Lender matters

Subject to Clause 43.4 (*Replacement of Screen Rate*), an amendment of or waiver or consent in relation to any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of “Majority Lenders” in Clause 1.1 (*Definitions*);
- (b) a postponement to or extension of the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
- (f) a change to any Obligor other than in accordance with Clause 29 (*Changes to the Transaction Obligors*);
- (g) any provision which expressly requires the consent of all the Lenders;

- (h) this Clause 43 (*Amendments and Waivers*);
- (i) any change to the preamble (Background), Clause 2 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Utilisation*), Clause 6.2 (*Effect of cancellation and prepayment on scheduled repayments*), Clause 7.33 (*Mandatory prepayment on sale or Total Loss*), Clause 8 (*Interest*), Clause 24.9 (*Compliance with laws etc.*), Clause 24.11 (*Sanctions and Ship trading*), Clause 26 (*Accounts and application of Earnings*), Clause 28 (*Changes to the Lenders*), Clause 33 (*Sharing among the Finance Parties*), Clause 47 (*Governing Law*) or Clause 48 (*Enforcement*);
- (j) any release of, or material variation to, any Transaction Security, guarantee, indemnity or subordination arrangement set out in a Finance Document (except in the case of a release of Transaction Security as it relates to the disposal of an asset which is the subject of the Transaction Security and where such disposal is expressly permitted by the Majority Lenders or otherwise under a Finance Document);
- (k) (other than as expressly permitted by the provisions of any Finance Document), the nature or scope of:
 - (i) the guarantees and indemnities granted under Clause 17 (*Guarantee and Indemnity – Parent Guarantor*);
 - (ii) the joint and several liability of the Borrowers under Clause 18 (*Joint and Several Liability of the Borrowers*);
 - (iii) the Security Assets; or
 - (iv) the manner in which the proceeds of enforcement of the Transaction Security are distributed,
(except in the case of sub-paragraphs (iii) and (iv) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- (l) the release of the guarantees and indemnities granted under Clause 17 (*Guarantee and Indemnity – Parent Guarantor*) or the release of the joint and several liability of the Borrowers under Clause 18 (*Joint and Several Liability of the Borrowers*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document,
shall not be made, or given, without the prior consent of all the Lenders.

43.3 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of a Servicing Party or the Arranger (each in their capacity as such) may not be effected without the consent of that Servicing Party or the Arranger, as the case may be.
- (b) The Borrowers and the Facility Agent, the Arranger or the Security Agent, as applicable, may amend or waive a term of a Fee Letter to which they are party.

43.4 Replacement of Screen Rate

- (a) Subject to Clause 43.3 (*Other exceptions*), if the Screen Rate is not available for dollars, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to dollars, in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that benchmark rate) may be made with the consent of the Majority Lenders and the Borrowers.
- (b) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within three Business Days (or such longer time period in relation to any request which the Borrowers and the Facility Agent may agree) of that request being made:
 - (i) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
 - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

43.5 Obligor Intent

Without prejudice to the generality of Clauses 1.2 (*Construction*) and 17.4 (*Waiver of defences*), 18.2 (*Waiver of defences*), each Obligor expressly confirms that it intends that any guarantee contained in this Agreement or any other Finance Document and any Security created by any Finance Document shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

44 CONFIDENTIAL INFORMATION

44.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 44.2 (*Disclosure of Confidential Information*) and Clause 44.3 (*Disclosure to numbering service providers*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

44.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its

confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

(b) to any person:

- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer, including for the purposes of Clause 28.9 (*Syndication and Securitisation*)) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 30.15 (*Relationship with the other Finance Parties*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraph (i) or (ii) of paragraph (b) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 28.8 (*Security over Lenders' rights*);
- (viii) who is a Party, a member of the Group or any related entity of a Transaction Obligor;
- (ix) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
- (x) with the consent of the Parent Guarantors;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to sub-paragraphs (i), (ii) and (iii) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to sub-paragraph (iv) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (C) in relation to sub-paragraphs (v), (vi) and (vii) of paragraph (b) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered in to a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/ Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrowers and the relevant Finance Party;
 - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Transaction Obligors.

44.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Transaction Obligors the following information:
 - (i) names of Transaction Obligors;
 - (ii) country of domicile of Transaction Obligors;
 - (iii) place of formation of Transaction Obligors;
 - (iv) date of this Agreement;
 - (v) Clause 47 (*Governing Law*);
 - (vi) the names of the Facility Agent and the Arranger;

- (vii) date of each amendment and restatement of this Agreement;
 - (viii) amount of Total Commitments;
 - (ix) currency of the Facility;
 - (x) type of Facility;
 - (xi) ranking of Facility;
 - (xii) Termination Date for Facility;
 - (xiii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xii) above; and
 - (xiv) such other information agreed between such Finance Party and the Borrowers,
to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Transaction Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) Each Obligor represents, on behalf of itself and the other Transaction Obligors, that none of the information set out in sub-paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.

44.4 Entire agreement

This Clause 44 (*Confidential Information*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

44.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

44.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrowers:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (v) of paragraph (b) of Clause 44.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 44 (*Confidential Information*).

44.7 Continuing obligations

The obligations in this Clause 44 (*Confidential Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

45 CONFIDENTIALITY OF FUNDING RATES

45.1 Confidentiality and disclosure

- (a) The Facility Agent and each Obligor agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Facility Agent may disclose:
 - (i) any Funding Rate to the Borrowers pursuant to Clause 8.4 (*Notification of rates of interest*); and
 - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender.
- (c) The Facility Agent and each Obligor may disclose any Funding Rate to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives, if any person to whom that Funding Rate is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;

(iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and

(iv) any person with the consent of the relevant Lender.

45.2 Related obligations

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender, as the case may be:
- (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 45.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 45 (*Confidentiality of Funding Rates*).

45.3 No Event of Default

No Event of Default will occur under Clause 27.4 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 45 (*Confidentiality of Funding Rates*).

46 COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 12
GOVERNING LAW AND ENFORCEMENT

47 GOVERNING LAW

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

48 ENFORCEMENT

48.1 Jurisdiction

- (a) Unless specifically provided in another Finance Document in relation to that Finance Document, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute regarding the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a “Dispute”).
- (b) The Obligors accept that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Obligor will argue to the contrary.
- (c) This Clause 48.1 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

48.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor:
 - (i) irrevocably appoints Saville & Co as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrowers (on behalf of all the Obligors) must immediately (and in any event within three days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
THE PARTIES
PART A
THE OBLIGORS

Name of Borrower	Place of Formation	Registration number (or equivalent, if any)	Address for Communication
Philippos Marine LLC	Marshall Islands	961953	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
Menelaos Marine LLC	Marshall Islands	962291	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
Aristoteles Marine LLC	Marshall Islands	962290	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
Name of Parent Guarantor	Place of Formation	Registration number (or equivalent, if any)	Address for Communication
Poseidon Containers Holdings LLC	Marshall Islands	961853	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece

Triton Containers
Holdings LLC

Marshall Islands

Fax no: +30 210 80 84
224

c/o Technomar
Shipping Inc.
3-5 Menandrou Street
145 61 Kifissia
Greece

Fax no: +30 210 80 84
224

PART B
THE ORIGINAL LENDERS

Name of Original Lender—Commitment

Crédit Agricole Corporate and Investment Bank – USD 80,000,000

Address for Communication

12 place des Etats-Unis
92547
Montrouge Cedex
France
Fax: +33 141 89 19 34
Attn: Shipping Department/Ms. Typhaine
Hirgorom

PART C
THE SERVICING PARTIES

Name of Facility Agent

Crédit Agricole Corporate and Investment Bank

Address for Communication

12 place des Etats-Unis
92547
Montrouge Cedex
France
Fax: +33 1 41 89 19 34
Attn: Shipping Department/Ms. Typhaine
Hirgorom

Name of Security Agent

Crédit Agricole Corporate and Investment Bank

Address for Communication

12 place des Etats-Unis
92547
Montrouge Cedex
France
Fax: +33 1 41 89 19 34
Attn: Shipping Department/Ms. Typhaine
Hirgorom

SCHEDULE 2

CONDITIONS PRECEDENT

PART A

CONDITIONS PRECEDENT TO INITIAL UTILISATION REQUEST

1 Obligors

- 1.1 A copy of the constitutional documents of each Transaction Obligor.
- 1.2 A copy of a resolution of the board of directors of each Transaction Obligor:
 - (a) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (b) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, a Utilisation Request and each Selection Notice) to be signed and/or despatched by it under, or in connection with, the Finance Documents to which it is a party.
- 1.3 An original of the power of attorney of any Transaction Obligor authorising a specified person or persons to execute the Finance Documents to which it is a party.
- 1.4 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above.
- 1.5 A copy of a resolution signed by the relevant Shareholder as the holder of the issued shares in each Borrower, approving the terms of, and the transactions contemplated by, the Finance Documents to which that Borrower is a party.
- 1.6 A certificate of each Transaction Obligor (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on that Transaction Obligor to be exceeded.
- 1.7 A certificate of each Transaction Obligor that is incorporated outside the UK (signed by a director) certifying either that (i) it has not delivered particulars of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or (ii) it has a UK Establishment and specifying the name and registered number under which it is registered with the Registrar of Companies.
- 1.8 A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document relating to it specified in this Part A of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2 Finance Documents

- 2.1 A duly executed original of any Finance Document not otherwise referred to in this Schedule 2 (*Conditions Precedent*) other than the Additional Guarantee.
- 2.2 A duly executed original of any other document required to be delivered by each Finance Document if not otherwise referred to this Schedule 2 (*Conditions Precedent*).
- 2.3 A duly executed original of the Letter of Ownership.

3 Security

- 3.1 A duly executed original of the Account Security in relation to each Account (and of each document to be delivered pursuant to it).
- 3.2 A duly executed copy of the Junior Facility Agreement.

4 Legal opinions

- 4.1 A legal opinion of Watson Farley & Williams LLP, legal advisers to the Arranger, the Facility Agent and the Security Agent in England, substantially in the form distributed to the Original Lenders before signing this Agreement.
- 4.2 If a Transaction Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Arranger, the Facility Agent and the Security Agent in the relevant jurisdiction, substantially in the form distributed to the Original Lenders before signing this Agreement.

5 Other documents and evidence

- 5.1 Evidence that any process agent referred to in Clause 48.2 (*Service of process*), if not an Obligor, has accepted its appointment.
- 5.2 A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary or desirable (if it has notified the Borrowers accordingly) in connection with the entry into and performance of the transactions contemplated by any Transaction Document or for the validity and enforceability of any Transaction Document.
- 5.3 The Original Financial Statements of each Obligor.
- 5.4 The original of any mandates or other documents required in connection with the opening or operation of the Accounts,
- 5.5 Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and Expenses*) have been paid or will be paid by the Utilisation Date.
- 5.6 Declaration of ultimate beneficial ownership for each Obligor.
- 5.7 Such evidence as the Facility Agent may require for the Finance Parties to be able to satisfy each of their “know your customer” or similar identification procedures in relation to the transactions contemplated by the Finance Documents.

PART B
CONDITIONS PRECEDENT TO UTILISATION

1 Borrowers

A certificate of an authorised signatory of each Borrower certifying that each copy document which it is required to provide under this Part B of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at the Utilisation Date.

2 Ship and other security

- 2.1 A duly executed original of the Mortgage and the General Assignment in respect of each Ship and of each document to be delivered under or pursuant to each of them together with documentary evidence that the Mortgage in respect of each Ship has been duly recorded as a valid first preferred ship mortgage in accordance with the laws of the jurisdiction of its Approved Flag.
- 2.2 The duly executed Shares Security in respect of each Borrower (and of each document to be delivered under each of them)
- 2.3 Documentary evidence that each Ship:
- (a) is definitively and permanently registered in the name of the relevant Borrower under the Approved Flag applicable to relevant Ship;
 - (b) is in the absolute and unencumbered ownership of the relevant Borrower save as contemplated by the Finance Documents;
 - (c) maintains the Approved Classification with the Approved Classification Society free of all recommendations and conditions of the Approved Classification Society; and
 - (d) is insured in accordance with the provisions of this Agreement and all requirements in this Agreement in respect of insurances have been complied with.
- 2.4 Documents establishing that each Ship will, as from the Utilisation Date, be managed commercially by the Approved Commercial Manager and managed technically by the Approved Technical Manager on terms acceptable to the Facility Agent acting with the authorisation of all of the Lenders, together with:
- (a) a Manager's Undertaking for each of the Approved Technical Manager and the Approved Commercial Manager; and
 - (b) copies of the Approved Technical Manager's Document of Compliance and of each Ship's Safety Management Certificate (together with any other details of the applicable Safety Management System which the Facility Agent requires) and of any other documents required under the ISM Code and the ISPS Code including, without limitation, an ISSC.
- 2.5 An opinion from an independent insurance consultant acceptable to the Facility Agent on such matters relating to the Insurances as the Facility Agent may require.
- A valuation of each Ship, addressed to the Facility Agent on behalf of the Finance Parties, stated to be for the purposes of this Agreement in such form as the Facility Agent may accept.

3 Legal opinions

Legal opinions of the legal advisers to the Arranger, the Facility Agent and the Security Agent in the jurisdiction of the Approved Flag of each Ship and such other relevant jurisdictions as the Facility Agent may require.

4 Other documents and evidence

- 4.1 Evidence acceptable to the Facility Agent that the due diligence process relating to the reverse merger described in Clause 22.13 (*Merger*) has been successfully completed.
- 4.2 Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and Expenses*) have been paid or will be paid by the Utilisation Date.

SCHEDULE 3
REQUESTS
PART A
UTILISATION REQUEST

From: Philippos Marine LLC
Menelaos Marine LLC
Aristoteles Marine LLC

To: Crédit Agricole Corporate and Investment Bank

Dated: [•]

Dear Sirs

Philippos Marine LLC, Menelaos Marine LLC, Aristoteles Marine LLC – USD 80,000,000 Facility Agreement dated [•] October 2018 (the “Agreement”)

- 1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2 We wish to borrow the Advance under the Loan on the following terms:

Proposed Utilisation Date:	[•] (or, if that is not a Business Day, the next Business Day)
Amount:	[•]
Interest Period for the Advance:	[•]
- 3 You are authorised and requested to deduct from the Advance prior to funds being remitted the following amounts set out against the following items:

Deductible Items	USD
Underwriting and structuring fee	
Net proceeds of Advance	_____
- 4 We confirm that each condition specified in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*) of the Agreement as they relate to the Advance to which this Utilisation Request refers is satisfied on the date of this Utilisation Request.
- 5 The net proceeds of the Advance should be credited to [account].

6 This Utilisation Request is irrevocable.

Yours faithfully

[•]
authorised signatory for
Philippos Marine LLC

[•]
authorised signatory for
Menelaos Marine LLC

[•]
authorised signatory for
Aristoteles Marine LLC

PART A
SELECTION NOTICE

From: Philippos Marine LLC
Menelaos Marine LLC
Aristoteles Marine LLC

To: Crédit Agricole Corporate and Investment Bank

Dated: [•]

Dear Sirs

Philippos Marine LLC, Menelaos Marine LLC, Aristoteles Marine LLC–USD 80,000,000 Facility Agreement dated [•] (the “Agreement”)

- 1 We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
- 2 We request [that the next Interest Period for the Loan be [•]] OR [an Interest Period for a part of the Loan in an amount equal to [•] (which is the amount of the Repayment Instalment next due) ending on [•] (which is the Repayment Date relating to that Repayment Instalment) and that the Interest Period for the remaining part of the Loan shall be [•].
- 3 This Selection Notice is irrevocable.

Yours faithfully

[•]
authorised signatory for
Philippos Marine LLC

[•]
authorised signatory for
Menelaos Marine LLC

[•]
authorised signatory for
Aristoteles Marine LLC

SCHEDULE 4
FORM OF TRANSFER CERTIFICATE

To: Credit Agricole Corporate and Investment Bank as Facility Agent

From: [The Existing Lender] (the “Existing Lender”) and [The New Lender] (the “New Lender”)

Dated: [•]

Dear Sirs

Philippos Marine LLC, Menelaos Marine LLC, Aristoteles Marine LLC—USD 80,000,000 Facility Agreement dated [•] (the “Agreement”)

- 1 We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to Clause 28.5 (*Procedure for transfer*) of the Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all of the Existing Lender’s rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender’s Commitment and participation in the Loan under the Agreement as specified in the Schedule in accordance with Clause 28.5 (*Procedure for transfer*) of the Agreement.
 - (b) The proposed Transfer Date is [•].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 37.2 (*Addresses*) of the Agreement are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 28.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
- 4 This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 5 This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 6 This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender’s interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender’s Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

SCHEDULE 5
FORM OF ASSIGNMENT AGREEMENT

To: Crédit Agricole Corporate and Investment Bank as Facility Agent and Philippos Marine LLC, Menelaos Marine LLC and Aristoteles Marine LLC as Borrowers, for and on behalf of each Transaction Obligor

From: [the Existing Lender] (the “**Existing Lender**”) and [the New Lender] (the “**New Lender**”)

Dated: [•]

Dear Sirs

Philippos Marine LLC, Menelaos Marine LLC, Aristoteles Marine LLC – USD 80,000,000 Facility Agreement dated [•] (the “Agreement”)

- 1 We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
- 2 We refer to Clause 28.6 (*Procedure for assignment*) of the Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender’s Commitment and participations in the Loan under the Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitments and participations in the Loan under the Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
 - (d) All rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender’s title and of any rights or equities which the Borrower or any other Transaction Obligor had against the Existing Lender.
- 3 The proposed Transfer Date is [•].
- 4 On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
- 5 The Facility Office and address, fax, number and attention details for notices of the New Lender for the purposes of Clause 37.2 (*Addresses*) of the Agreement are set out in the Schedule.
- 6 The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 28.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement.

- 7 This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 28.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrowers*) of the Agreement, to the Borrowers (on behalf of each Transaction Obligor) of the assignment referred to in this Assignment Agreement.
- 8 This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
- 9 This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 10 This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment rights and obligations to be transferred by assignment, release and accession

[insert relevant details]

[Facility office address, fax number and attention details for notices
and account details for payments]

[Existing Lender]

[New Lender]

By: [•]

By: [•]

This Assignment Agreement is accepted by the Facility Agent and the Transfer Date is confirmed as [•].

Signature of this Assignment Agreement by the Facility Agent constitutes confirmation by the Facility Agent of receipt of notice of the assignment referred to herein, which notice the Facility Agent receives on behalf of each Finance Party.

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK

By:

SCHEDULE 6
FORM OF COMPLIANCE CERTIFICATE

To: Crédit Agricole Corporate and Investment Bank as Facility Agent

From: Poseidon Containers Holdings LLC

Dated: [●]

Dear Sirs

Philippos Marine LLC, Menelaos Marine LLC, Aristoteles Marine LLC – USD 80,000,000 Facility Agreement dated [●] (the “Agreement”)

- 1 We refer to the Agreement. This is a Compliance Certificate. 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: [Insert details of covenants outlined in Clause 21 (*Financial Covenants*) to be certified]
- 3 [We confirm that no Default is continuing.]

Signed: _____
Chief Financial Officer of
Poseidon Containers Holdings LLC

of
Poseidon Containers Holdings LLC

SCHEDULE 7
DETAILS OF THE SHIPS

<u>Ship name</u>	<u>Name of the Borrower owner</u>	<u>Type</u>	<u>IMO Number</u>	<u>Approved Flag</u>	<u>Approved Classification Society</u>	<u>Approved Classification</u>
Alexandra	Philippos Marine LLC	Container ship	9635676	Marshall Islands	Rina Services	C +, + AUT-UMS; BwM-E – sequential; INWATERSURVEY; LASHING, MON-SHAFT, ROUT DEPENDENT LASHING
UASC Bubiyan	Aristoteles Marine LLC	Container ship	9686900	Marshall Islands	DNV GL	100 A5 Container ship BWM (D2) DG IW RSD (F25) + MC AUT CM-PS EP-D
UASC Yas	Menelaos Marine LLC	Container ship	9686912	Marshall Islands	DNV GL	100 A5 Container ship BWM (D2) DG IW LC RSCS RSD (F25) + MC AUT CM-PS EP-D

SCHEDULE 8

TIMETABLES

Delivery of a duly completed Utilisation Request (Clause 5.1 (*Delivery of a Utilisation Request*)) or a Selection Notice (Clause 9.1 (*Selection of Interest Periods*))

Two Business Days before the intended Utilisation Date (Clause 5.1 (*Delivery of a Utilisation Request*)) or the expiry of the preceding Interest Period (Clause 9.1 (*Selection of Interest Periods*))

Facility Agent notifies the Lenders of the Advance in accordance with Clause 5.4 (*Lenders' participation*)

Three Business Days before the intended Utilisation Date.

LIBOR is fixed

Quotation Day as of 11:00 am London time

BORROWERS

SIGNED by
Attorney-in-fact
for and on behalf of
PHILIPPOS MARINE LLC
in the presence of:

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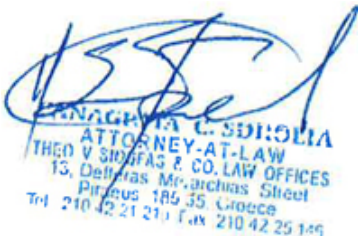


AIKATERINI C. EMMANOUIL

Witness' signature:
Witness' name:
Witness' address:

*Panagiotas Sotiriou
Defteras Menarchias
13, Piraeus*

)
)
)



Stamp: PANAGIOTA C. SOTIRIOU
ATTORNEY-AT-LAW
THEO V SIOGIFAS & CO. LAW OFFICES
13, Defteras Menarchias Street
Piraeus 185 35, Greece
Tel: 210 42 21 21 Fax: 210 42 25 189

SIGNED by
Attorney-in-fact
for and on behalf of
MENELAOS MARINE LLC
in the presence of:

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AIKATERINI C. EMMANOUIL

Witness' signature:
Witness' name:
Witness' address:

*Panagiotas Sotiriou
Defteras Menarchias
13, Piraeus*

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)
)



Stamp: PANAGIOTA C. SOTIRIOU
ATTORNEY-AT-LAW
THEO V SIOGIFAS & CO. LAW OFFICES
13, Defteras Menarchias Street
Piraeus 185 35, Greece
Tel: 210 42 21 21 Fax: 210 42 25 189

SIGNED by
Attorney-in-fact
for and on behalf of
ARISTOTELES MARINE LLC
in the presence of:

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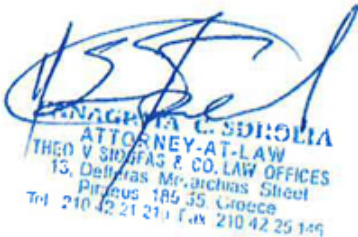


AIKATERINI C. EMMANOUIL

Witness' signature:
Witness' name:
Witness' address:

*Panagiotas Sotiriou
Defteras Menarchias
13, Piraeus*

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)
)



Stamp: PANAGIOTA C. SOTIRIOU
ATTORNEY-AT-LAW
THEO V SIOGIFAS & CO. LAW OFFICES
13, Defteras Menarchias Street
Piraeus 185 35, Greece
Tel: 210 42 21 21 Fax: 210 42 25 189

PARENT GUARANTORS

SIGNED by
Attorney-in-fact
for and on behalf of
POSEIDON CONTAINERS HOLDINGS LLC
in the presence of:

)
)
)
)
)


AIKATERINI C. EMMANOUIL

Witness' signature:

Witness' name:

Witness' address:

*Panagiota Sbroliou
De Pteron Menurkipon
J3, Piraeus*

)
)
)



SIGNED by
Attorney-in-fact
for and on behalf of
TRITON CONTAINERS HOLDINGS LLC
in the presence of:

)
)
)
)
)


AIKATERINI C. EMMANOUIL

Witness' signature:

Witness' name:

Witness' address:

*Panagiota Sbroliou
De Pteron Menurkipon
J3, Piraeus*

)
)
)



ORIGINAL LENDERS

SIGNED by
Attorney-in-fact
for and on behalf of
**CREDIT AGRICOLE CORPORATE
AND INVESTMENT BANK**
in the presence of:

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)
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)
)
)

Witness' signature:

Witness' name:

Witness' address:

)
)
)

ARRANGER

SIGNED by)
Attorney-in-fact)
for and on behalf of)
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

FACILITY AGENT

SIGNED by)
Attorney-in-fact)
for and on behalf of)
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

SECURITY AGENT

SIGNED by)
Attorney-in-fact)
for and on behalf of)
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

PARENT GUARANTORS

SIGNED by)
Attorney-in-fact)
for and on behalf of)
POSEIDON CONTAINERS HOLDINGS LLC)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

SIGNED by)
Attorney-in-fact)
for and on behalf of)
TRITON CONTAINERS HOLDINGS LLC)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)


ORIGINAL LENDERS

SIGNED by)
Attorney-in-fact)
for and on behalf of)
CREDIT AGRICOLE CORPORATE)

AND INVESTMENT BANK)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)


Carolin Wagnev



Sabrina Fischer
Watson Farley & Williams LLP
Neuer Wall 88
20354 Hamburg

ARRANGER

SIGNED by)
Attorney-in-fact)
for and on behalf of)
CREDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)
in the presence of:)


Carolin Wagner

Witness' signature:)
Witness' name:)
Witness' address:)



Sabrina Fischer
Watson Farley & Williams LLP
Newport Wat 88
20354 Hamburg

FACILITY AGENT

SIGNED by)
Attorney-in-fact)
for and on behalf of)
CREDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)
in the presence of:)


Carolin Wagner

Witness' signature:)
Witness' name:)
Witness' address:)



Sabrina Fischer
Watson Farley & Williams LLP
Newport Wat 88
20354 Hamburg

SECURITY AGENT

SIGNED by)
Attorney-in-fact)
for and on behalf of)
CREDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)
in the presence of:)


Carolin Wagner

Witness' signature:)
Witness' name:)
Witness' address:)


Sabrina Fischer
Watson Farley & Williams LLP
Newport Wat 88
20354 Hamburg

Dated 3 October 2018

US\$38,500,000

TERM LOAN FACILITY

**PHILIPPOS MARINE LLC
ARISTOTELES MARINE LLC
MENELAOS MARINE LLC**
as joint and several Borrowers

and

**TRITON CONTAINERS HOLDINGS LLC
POSEIDON CONTAINERS HOLDINGS LLC**
as Guarantors

and

WILMINGTON TRUST, NATIONAL ASSOCIATION
as Facility Agent

and

WILMINGTON TRUST, NATIONAL ASSOCIATION
as Security Agent

JUNIOR FACILITY AGREEMENT

relating to
the refinancing certain existing indebtedness
secured on m.v. "ALEXANDRA", "UASC BUBIYAN" and "UASC YAS"

**WATSON FARLEY
&
WILLIAMS**

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PARTIES

- (1) **PHILIPPOS MARINE LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands as a borrower (**"Borrower A"**)
- (2) **ARISTOTELES MARINE LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands as a borrower (**"Borrower B"**)
- (3) **MENELAOS MARINE LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands as a borrower (**"Borrower C"**)
- (4) **TRITON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands as guarantor (the **"Guarantor A"**)
- (5) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands as guarantor (the **"Guarantor B"**)
- (6) **THE FINANCIAL INSTITUTIONS** listed in Part B of Schedule 1 (*The Parties*) as lenders (the **"Original Lenders"**)
- (7) **WILMINGTON TRUST, NATIONAL ASSOCIATION** as agent of the other Finance Parties (the **"Facility Agent"**)
- (8) **WILMINGTON TRUST, NATIONAL ASSOCIATION** as security agent for the Secured Parties (the **"Security Agent"**)

BACKGROUND

The Lenders have agreed to make available to the Borrowers a facility of US\$38,500,000 for the purpose of refinancing part of the Existing Indebtedness in respect of the Ships.

OPERATIVE PROVISIONS

SECTION 1

INTERPRETATION

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“Account Bank” means Credit Agricole Corporate and Investment Bank acting through its office at 12, place des Etats-Unis, CS 70052, 92547 Montrouge Cedex, France or any replacement bank or other financial institution as may be approved by the Facility Agent acting with the authorisation of the Majority Lenders.

“Account Security” means a document creating second priority Security over each Earnings Account in agreed form.

“Additional Guarantee” means a guarantee to be executed by the New Parent in favour of the Security Agent on such terms and in such form as may be agreed between the Facility Agent (acting on the instructions of the Majority Lenders) and the New Parent.

“Affiliate” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“Approved Brokers” means any firm or firms of insurance brokers approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders, such approval not to be unreasonably withheld.

“Approved Classification” means:

- (a) in relation to Ship A, C X container ship; unrestricted navigation with the Approved Classification Society of Ship A;
- (a) in relation to Ship B, X 100 A5 Container ship BWM (D2) DG IW RSD(F25) X MC AUT CM-PS EP-D with the Approved Classification Society of Ship B; and
- (b) in relation to Ship C, X 100 A5 Container ship BWM (D2) DG IW LC RSCS(F25) X MC AUT CM-PS EP-D with the Approved Classification Society of Ship C,

or, in relation to each Ship, the equivalent classification with another Approved Classification Society.

“Approved Classification Society” means:

- (a) in relation to Ship A, RINA SERVICES S.p.A; and
- (b) in relation to Ship B and Ship C, DNV GL,

or any other classification society for that Ship approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders, such consent not to be unreasonably withheld.

“Approved Commercial Manager” means, in relation to a Ship, Conchart Commercial Inc., a corporation incorporated in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands, or any other person approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders as the commercial manager of that Ship.

“Approved Flag” means, in relation to a Ship, the flag of the Republic of Liberia, Marshall Islands, Panama or such other flag approved in writing by the Facility Agent acting with the authorisation of the Lenders, such consent not to be unreasonably withheld.

“Approved Manager” means, in relation to a Ship, the Approved Commercial Manager or the Approved Technical Manager of that Ship.

“Approved Technical Manager” means, in relation to a Ship, Technomar Shipping Inc., a corporation incorporated in the Republic of Liberia whose registered office is at 80 Broad Street, Monrovia, Liberia and with management office at 3-5 Menandrou Street, Kifissia 145 61, Athens, Greece or any other person approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders as the technical manager of that Ship.

“Approved Valuer” means any of Clarksons-Platou, Barry Rogliano Salles, Kontiki Marine and Howe Robinson and any other firm or firms of independent sale and purchase shipbrokers approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders.

“Assignment Agreement” means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor, assignee and the Facility Agent (acting with the authorisation of the Majority Lenders).

“Authorisation” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, legalisation or registration.

“Availability Period” means the period commencing from and including the date of this Agreement to and ending on and including the date falling 3 months after the date of this Agreement.

“Available Commitment” means a Lender’s Commitment minus:

- (a) the amount of its participation in the outstanding Loan; and
- (b) in relation to any proposed Utilisation, the amount of its participation in the Loan that is due to be made on or before the proposed Utilisation Date.

“Available Facility” means the aggregate for the time being of each Lender’s Available Commitment.

“Bail-In Action” means the exercise of any Write-down and Conversion Powers.

“Bail-In Legislation” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“Borrower” means Borrower A, Borrower B or Borrower C.

“Break Costs” means the amount (if any) by which:

- (a) the interest which a Lender should have received pursuant to the terms of this Agreement for the period from the date of receipt of all or any part of its participation in the Loan or an Unpaid Sum to the last day of the current Interest Period in relation to the Loan, the relevant part of the Loan or that Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period,
exceeds
- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Frankfurt, Hamburg, New York, Paris and Athens.

“Charter” means, in relation to a Ship, any charter relating to that Ship, or other contract for its employment, whether or not already in existence.

“Charter Assignment” means, in relation to a Ship, any assignment creating second priority Security over the Initial Charter in respect of that Ship or any other Charter which is a bareboat charter or other contract of employment for a term which exceeds 12 months (including any optional extensions and any redelivery allowance) and any related Charter Guarantee in agreed form.

“Charter Guarantee” means, when applicable, any guarantee, bond, letter of credit or other instrument (whether or not already issued) supporting a Charter, the form of which shall not be subject to the Facility Agent’s prior approval.

“Charterer” means any person who, as charterer, is a party to a Charter.

“Code” means the US Internal Revenue Code of 1986.

“Commercial Management Agreement” means, in relation to a Ship, the agreement entered into between Guarantor A (or any of its parent companies) for and on behalf of the Borrower owning that Ship and the Approved Commercial Manager regarding the commercial management of that Ship.

“Commitment” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “Commitment” in Part B of Schedule 1 (*The Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,
to the extent not cancelled, reduced or transferred by it under this Agreement.

“Compliance Certificate” means a certificate in the form set out in Schedule 6 (*Form of Compliance Certificate*) or in any other form agreed between the Guarantors and the Facility Agent (acting on the instructions of the Majority Lenders).

“Confidential Information” means all information relating to any Transaction Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 43 (*Confidential Information*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

“Confidentiality Undertaking” means a confidentiality undertaking in substantially the appropriate form recommended by the LMA from time to time or in any other agreed form.

“Corresponding Debt” means any amount, other than any Parallel Debt, which an Obligor owes to a Secured Party under or in connection with the Finance Documents.

“Deed of Release” means a deed releasing any Existing Security in agreed form.

“Default” means an Event of Default or a Potential Event of Default.

“Delegate” means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

“Dispute” has the meaning given to it in Clause 46.1 (*Jurisdiction*).

“Disruption Event” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties or, if applicable, any Transaction Obligor; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party or, if applicable, any Transaction Obligor preventing that, or any other, Party or, if applicable, any Transaction Obligor:
 - (i) from performing its payment obligations under the Finance Documents; or

- (ii) from communicating with other Parties or, if applicable, any Transaction Obligor in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party or, if applicable, any Transaction Obligor whose operations are disrupted.

“Document of Compliance” has the meaning given to it in the ISM Code.

“dollars”, “USD” and “\$” mean the lawful currency, for the time being, of the United States of America.

“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 Agent and which arise out of or in connection with or relate to the use or operation of that Ship, including (but not limited to):

- (a) the following, save to the extent that any of them is, with the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders), (such consent not to be unreasonably withheld by the Majority Lenders) pooled or shared with any other person:
 - (i) all freight, hire and passage moneys including, without limitation, all moneys payable under, arising out of or in connection with a Charter or a Charter Guarantee;
 - (ii) the proceeds of the exercise of any lien on sub-freights;
 - (iii) compensation payable to the Borrower owning that Ship or the Security Agent in the event of requisition of that Ship for hire or use;
 - (iv) remuneration for salvage and towage services;
 - (v) demurrage and detention moneys;
 - (vi) without prejudice to the generality of sub-paragraph (i) above, damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of that Ship;
 - (vii) all monies which are at any time payable to the Borrower owning that Ship in relation to general average contribution; and
- (b) if and whenever that Ship is employed on terms whereby any moneys falling within sub-paragraphs (i) to (vii) of paragraph (a) 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 that Ship.

“Earnings Account” means, in relation to a Borrower:

- (a) an account in the name of that Borrower with the Account Bank designated “[*Name of Borrower*] - Earnings Account”; or
- (b) any other account in the name of that Borrower with the Account Bank which may, with the prior written consent of the Facility Agent, be opened in the place of the account referred to in paragraph (a) above, irrespective of the number or designation of such replacement account; or
- (c) any sub-account of any account referred to in paragraphs (a) or (b) above.

“EEA Member Country” means any member state of the European Union, Iceland, Liechtenstein and Norway.

“Environmental Approval” means any present or future permit, ruling, variance or other Authorisation required under Environmental Laws.

“Environmental Claim” means any claim by any governmental, judicial or regulatory authority or any other person which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any Environmental Law and, for this purpose, **“claim”** includes a claim for damages, compensation, contribution, injury, fines, losses and penalties or any other payment of any kind, including in relation to clean-up and removal, 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:

- (a) any release, emission, spill or discharge of Environmentally Sensitive Material whether within a Ship or from a Ship into any other vessel or into or upon the air, sea, land or soils (including the seabed) or surface water; or
- (b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water from a vessel other than any Ship and which involves a collision between any Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which a Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or a Ship and/or any Transaction Obligor and/or any operator or manager of a 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, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water otherwise than from a Ship and in connection with which a Ship is actually or potentially liable to be arrested and/or where any Transaction Obligor and/or any operator or manager of a Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action, other than in accordance with an Environmental Approval.

“Environmental Law” means any present or future law relating to pollution or protection of human health or the environment, to conditions in the workplace, to the carriage, generation, handling, storage, use, release or spillage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material.

“Environmentally Sensitive Material” means and includes all contaminants, oil, oil products, toxic substances 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.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor thereto.

“ERISA Affiliate” means each person (and defined in Section 3(9) of ERISA) which together with a Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“EU Bail-In Legislation Schedule” means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

“Event of Default” means any event or circumstance specified as such in Clause 26 (*Events of Default*).

“Existing Facility Agreement” means the facility agreement dated 25 January 2013 (as supplemented and amended by a supplemental letter dated 14 January 2015, a first supplemental agreement dated 14 September 2015, a second supplemental letter dated 17 November 2015, a deferral letter dated 14 October 2016, a second supplemental agreement dated 27 January 2017, a deferral letter dated 13 April 2018 and deferral letter dated 29 June 2018) and made between (inter alios) (i) the Borrowers as joint and several borrowers, (ii) Guarantor A as guarantor and (iii) DVB Bank SE as lender, in respect of a facility of (originally) up to US\$232,000,000.

“Existing Indebtedness” means, at any date, any outstanding indebtedness of the Borrowers and Guarantor A on that date under the Existing Facility Agreement.

“Existing Lender” has the meaning given to it in Clause 27.1 (*Assignments and transfers by the Lenders*).

“Existing Security” means any Security created to secure the Existing Indebtedness.

“Facility” means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

“Facility Office” means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than 5 Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.

“FATCA” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

“FATCA Application Date” means:

- (a) in relation to a “withholdable payment” described in section 1473(l)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a “withholdable payment” described in section 1473(l)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

“FATCA Deduction” means a deduction or withholding from a payment under a Finance Document required by FATCA.

“FATCA Exempt Party” means a Party that is entitled to receive payments free from any FATCA Deduction.

“Fee Letter” means any letter or letters dated on or about the date of this Agreement between any Finance Party and any Obligor setting out any of the fees referred to in Clause 10 (*Fees*).

“Fee Repayment Date” means, in respect of the Final Repayment Fee, the date falling on the earlier of:

- (a) the Termination Date;
- (b) the date on which the Loan is prepaid or repaid in full or in part (including but not limited to any mandatory prepayments made pursuant to Clauses 7.2 (*Change of control*), 7.3 (*Voluntary prepayment of the Loan*) and 7.4 (*Mandatory prepayment on sale or Total Loss*)); and
- (c) the date on which the Facility Agent (acting on the instructions of the Majority Lenders) takes any action as a result of the occurrence of an Event of Default which is continuing and a notice is served under Clause 26.18 (*Acceleration*).

“Final Repayment Fee” means, in respect of a Fee Repayment Date, a final repayment fee in the amount specified in Schedule 8 (*Final Repayment Fee Schedule*) relevant to each quarter period, such first quarter period commencing on the Utilisation Date.

“Finance Document” means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) the Side Letter;
- (d) the Utilisation Request;
- (e) any Security Document;
- (f) the Intercreditor Agreement;
- (g) any Subordination Agreement;
- (h) the Additional Guarantee;
- (i) any other document which is executed for the purpose of establishing any priority or subordination arrangement in relation to the Secured Liabilities; or
- (j) any other document designated as such by the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrower.

“Finance Party” means the Facility Agent, the Security Agent or a Lender.

“Financial Indebtedness” means any indebtedness for or in relation to:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“GAAP” means generally accepted accounting principles in the United States of America including GAAP.

“General Assignment” means, in relation to a Ship, the general assignment creating second priority Security over the Earnings, the Insurances and any Requisition Compensation in relation to that Ship in agreed form.

“Group” means together the Guarantors and each of their respective Subsidiaries from time to time.

“Guarantor” means, together, Guarantor A and Guarantor B.

“Holding Company” means, in relation to a person, any other person in relation to which it is a Subsidiary.

“IFRS” means International Financial Reporting Standards promulgated by the International Accounting Standards Board, as amended from time to time, together with its pronouncements thereon from time to time.

“Indemnified Person” means:

- (a) for the purposes of Clause 13.2 (*Other indemnities*), each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate;
- (b) for the purposes of Clause 13.4 (*Indemnity to the Facility Agent*), the Facility Agent, each Affiliate of the Facility Agent and each director, officer and employee; and

- (c) for the purposes of Clause 13.5 (*Indemnity to the Security Agent*), the Security Agent and every Receiver and Delegate, each Affiliate of the Security Agent, Receiver and Delegate and each director, officer and employee.

“Initial Charter” means:

- (a) in relation to Ship A, the time charter dated 12 March 2018 and made between Borrower A and OCEAN NETWORK EXPRESS PTE. LTD, of Singapore in relation to the employment of Ship A for a charter rate of \$20,750 p/d until latest 7 June 2019 (with earliest redelivery on 7 March 2019);
- (b) in relation to Ship B, the time charter dated 15 December 2014 and made between Borrower B and originally United Arab Shipping Co (SAG) as subsequently novated on 28 August 2017 with Hapag Lloyd Aktiengesellschaft, Hamburg and as amended by Addendum no.1 date 12 January 2018 in relation to the employment of Ship B for a charter rate of \$20,000 p/d until latest 5 May 2019 (with earliest redelivery on 5 February 2019); and
- (c) in relation to Ship C, the time charter dated 15 December 2014 and made between Borrower C and originally United Arab Shipping Co (SAG) as subsequently novated on 28 August 2017 with Hapag Lloyd Aktiengesellschaft, Hamburg and as amended by Addendum no.1 dated 12 January 2018 in relation to the employment of Ship C for a charter rate of \$20,000 p/d until latest 5 May 2019 (with earliest redelivery on 7 March 2019 and including a 1 year option at a charter rate of \$30,000 p/d).

“Insurances” means, in relation to a Ship:

- (a) all policies and contracts of insurance, including entries of that Ship in any protection and indemnity or war risks association, effected for the account of that Borrower in relation to that Ship, the Earnings or otherwise in relation to that Ship whether before, on or after the date of this Agreement; and
- (b) all rights and other assets relating to, or derived from, any of such policies, contracts or entries, including any rights to a return of premium and any rights in relation to any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement.

“Intercreditor Agreement” means an intercreditor agreement in agreed form executed or to be executed by (amongst others) the Borrowers, the Security Agent and Credit Agricole Corporate and Investment Bank as senior security agent and arranger.

“Interest Payment Date” has the meaning given to it in Clause 8.2 (*Payment of interest*).

“Interest Period” means, in relation to the Loan or any part of the Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

“ISM Code” means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time.

“ISPS Code” means the International Ship and Port Facility Security (ISPS) Code as adopted by the International Maritime Organization’s (IMO) Diplomatic Conference of December 2002, as the same may be amended or supplemented from time to time.

“ISSC” means an International Ship Security Certificate issued under the ISPS Code.

“Legal Reservations” means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the legal opinions delivered as conditions precedent to the funding of the Loan.

“Lender” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 27 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with this Agreement.

“Letter of Ownership” means a letter to be provided to the Facility Agent, from such entities or individuals, and in such form as may be acceptable to, the Facility Agent (acting on the instructions of the Majority Lenders) for the purposes of this Agreement.

“LLC Shares”, in respect of a Borrower, shall have the meaning ascribed thereto in that Borrower’s limited liability company agreement.

“LMA” means the Loan Market Association.

“Loan” means the loan to be made available under the Facility or the aggregate principal amount outstanding for the time being of that loan under the Facility and a **“part of the Loan”** means any part of the Loan as the context may require.

“Major Casualty” means, in relation to a Ship, any casualty to that Ship in relation to which the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds \$750,000 or the equivalent in any other currency.

“Majority Lenders” means:

- (a) if the Loan has not yet been advanced, a Lender or Lenders whose Commitments aggregate more than 66 $\frac{2}{3}$ per cent. of the Total Commitments; or
- (b) at any other time, a Lender or Lenders whose participations in the Loan aggregate more than 66 $\frac{2}{3}$ per cent. of the amount of the Loan then outstanding or, if the Loan has been repaid or prepaid in full, a Lender or Lenders whose participations in the Loan immediately before repayment or prepayment in full aggregate more than 66 $\frac{2}{3}$ per cent. of the Loan immediately before such repayment or prepayment.

“Management Agreement” means a Technical Management Agreement or a Commercial Management Agreement.

“Manager’s Undertaking” means, in relation to each Ship and each Management Agreement, each letter of undertaking from the Approved Technical Manager and the Approved Commercial Manager subordinating the rights of the Approved Technical Manager and the Approved Commercial Manager respectively against that Ship and the Borrower owning that Ship to the rights of the Finance Parties in agreed form.

“Market Value” means, in relation to a Ship or any other vessel, an amount equal to the market value of that Ship or vessel shown by the average of two valuations at the cost of the Borrowers, each prepared:

- (a) as at a date not more than 30 days previously;
- (b) by two Approved Valuers (one of which is appointed by the Facility Agent (acting on the instructions of the Majority Lenders) and the other which is appointed by the Borrowers and if the Borrowers fail to appoint one, both of which are appointed by the Facility Agent acting on the instructions of the Majority Lenders);
- (c) with or without physical inspection of that Ship or vessel (as the Facility Agent may require, acting on the instructions of the Majority Lenders); and
- (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, free of any Charter,

Provided that:

- (i) If one such valuation in respect of a Ship obtained pursuant to sub- paragraph (ii) above differs by at least 10 per cent. from the lower valuation, then a third valuation for that Ship shall be obtained from an Approved Valuer, selected by the Borrowers and appointed by the Facility Agent (acting on the instructions of the Majority Lenders) and such valuation shall be addressed to the Facility Agent and the Market Value of that Ship shall be the arithmetic average of all three such valuations; and
- (ii) for the purpose of determining the compliance with the financial covenants set out in Clause 20 (*Financial Covenants*) the market value of a vessel owned by a member of the Group (other than the Borrowers) shall be determined in accordance with the relevant provisions of the credit facility agreement financing such vessel,

and for the avoidance of doubt, the Facility Agent shall not be required to verify that any valuation is prepared on the criteria set out in sub-paragraphs (i) to (iv) above and shall be entitled to rely on any notification referred to in sub-paragraphs (a) and (b) above.

“Material Adverse Effect” means in the reasonable opinion of the Majority Lenders a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of any Obligor; or
- (b) the ability of any Obligor to perform its obligations under any Finance Document; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or intended to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

“Minimum Liquidity Amount” has the meaning given to it in Clause 20.1 (*Borrower’s minimum liquidity*).

“Month” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

“Mortgage” means, in relation to a Ship, a second priority or second preferred (as applicable) ship mortgage on that Ship and, if applicable, the deed of covenant collateral thereto, in agreed form.

“Mortgaged Ship” means a Ship which is subject to a Mortgage at the relevant time.

“New Parent” means a company which will be the ultimate parent company of Guarantor B following the completion of any merger or a reverse merger as described in Clause 21.14 (*Merger*) during the Security Period.

“New Lender” has the meaning given to it in Clause 27.1 (*Assignments and transfers by the Lenders*).

“Obligor” means a Borrower or a Guarantor.

“OFAC” means the Office of Foreign Assets Control of the US Department of Treasury.

“Original Financial Statements” means:

- (a) in relation to a Guarantor, the audited consolidated financial statements of the Group for its financial year ended 31 December 2017; and
- (b) in relation to a Borrower, its unaudited financial statements for its financial year ended 31 December 2017.

“Original Jurisdiction” means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated or formed as at the date of this Agreement.

“Overseas Regulations” means the Overseas Companies Regulations 2009 (SI 2009/1801).

“Parallel Debt” means any amount which an Obligor owes to the Security Agent under Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or under that clause as incorporated by reference or in full in any other Finance Document.

“Participating Member State” means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“Party” means a party to this Agreement.

“PATRIOT Act” means the United States Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Improvement and Reauthorization Act of 2005 (H.R. 3199).

“Permitted Charter” means, in relation to a Ship:

- (a) the Initial Charter in respect of that Ship;
- (b) any other Charter in respect of that Ship:
 - (i) which is a time, voyage or consecutive voyage charter;
 - (ii) the duration of which does not exceed and is not capable of exceeding, by virtue of any optional extensions, 12 months;
 - (iii) which is entered into on *bona fide* arm’s length terms at the time at which that Ship is fixed; and
 - (iv) in relation to which not more than two months’ hire is payable in advance,

and any other Charter which is approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders (such approval not to be unreasonably withheld).

“Permitted Financial Indebtedness” means:

- (a) any Financial Indebtedness incurred under the Finance Documents;
- (b) any Financial Indebtedness incurred under the Senior Finance Documents in compliance with the terms of the Intercreditor Agreement;
- (c) until (and including) the Utilisation Date, the Existing Indebtedness; and
- (d) any Financial Indebtedness that is subordinated to all Financial Indebtedness incurred under the Finance Documents pursuant to a Subordination Agreement or otherwise and which is, in the case of any such Financial Indebtedness of a Borrower, the subject of Subordinated Debt Security.

“Permitted Security” means:

- (a) until the Utilisation Date, any Existing Security;
- (b) any Security created by the Senior Finance Documents in compliance with the terms of the Intercreditor Agreement;
- (c) any Security created by the Finance Documents;
- (d) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (e) liens for unpaid master’s and crew’s wages in accordance with first class ship ownership and management practice;
- (f) liens for salvage;
- (g) liens for master’s disbursements incurred in the ordinary course of trading; and

- (h) any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of a Ship and not as a result of any default or omission by the Borrower owning that Ship and subject, in the case of liens for repair or maintenance, to Clause 23.15 (*Restrictions on chartering, appointment of managers etc.*).

“Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA that is subject to Title IV of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed to by any Obligor or any of their respective ERISA Affiliates.

“Potential Event of Default” means any event or circumstance specified in Clause 26 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

“Prohibited Person” means any person (whether designated by name or by reason of being included in a class of persons) against whom Sanctions are imposed.

“Protected Party” has the meaning given to it in Clause 11.1 (*Definitions*).

“Receiver” means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

“Related Fund” in relation to a fund (the **“first fund”**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

“Relevant Interbank Market” means the London interbank market.

“Relevant Jurisdiction” means, in relation to a Transaction Obligor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to any of the Transaction Security created, or intended to be created, by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

“Repeating Representation” means each of the representations set out in Clause 18 (*Representations*) except Clause 18.10 (*Insolvency*), Clause 18.11 (*No filing or stamp taxes*) and Clause 18.12 (*Deduction of Tax*) and Clause 18.26 (*Financial Indebtedness*) and any representation of any Transaction Obligor made in any other Finance Document that is expressed to be a “Repeating Representation” or is otherwise expressed to be repeated.

“Representative” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

“Requisition” means, in relation to a Ship:

- (a) any expropriation, confiscation, requisition (excluding a requisition for hire or use which does not involve a requisition for title) 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 (whether *de jure* or *de facto*) by any

government or official authority or by any person or persons claiming to be or to represent a government or official authority unless it is within 30 days redelivered to the full control of that Borrower (or any other longer period as the Facility Agent (acting on the instructions of the Majority Lenders) may accept in writing); and

- (b) any capture or seizure of that Ship (including any hijacking or theft) by any person whatsoever, unless it is within 45 days redelivered to the full control of that Borrower (or any other longer period the Facility Agent may (acting on the instructions of the Majority Lenders) accept in writing).

“Requisition Compensation” includes all compensation or other moneys payable to a Borrower by reason of any Requisition or any arrest or detention of a Ship in the exercise or purported exercise of any lien or claim.

“Resolution Authority” means any body which has authority to exercise any Write-down and Conversion Powers.

“Safety Management Certificate” has the meaning given to it in the ISM Code.

“Safety Management System” has the meaning given to it in the ISM Code.

“Sanctions” means any sanctions, embargoes, freezing provisions, prohibitions or other restrictions relating to trading, doing business, investment, exporting, financing or making assets available (or other activities similar to or connected with any of the foregoing):

- (a) imposed by law or regulation of the United Kingdom, the Council of the European Union, the United Nations or its Security Council or the United States of America regardless of whether the same is or is not binding on any Transaction Obligor; or
- (b) otherwise imposed by any law or regulation binding on a Transaction Obligor or to which a Transaction Obligor is subject (which shall include without limitation, any extra territorial sanctions imposed by law or regulation of the United States of America).

“Secured Liabilities” means all present and future obligations and liabilities, (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under or in connection with each Finance Document.

“Secured Party” means each Finance Party from time to time party to this Agreement, a Receiver or any Delegate.

“Security” means a mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

“Security Assets” means those assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

“Security Cover Ratio” means, at any relevant time, the aggregate of (i) the aggregate Market Value of the Mortgaged Ships and (ii) the net realisable value of any additional security provided at that time under Clause 24.1 (*Minimum required security cover*), at that time expressed as a percentage of the Senior Loan.

“Security Document” means:

- (a) any Shares Security;
- (b) any Mortgage;

- (c) any General Assignment;
- (d) any Charter Assignment;
- (e) any Account Security;
- (f) any Manager's Undertaking;
- (g) any Subordinated Debt Security;
- (h) any other document (whether or not it creates Security) which is executed as security for the Secured Liabilities; or
- (i) any other document designated as such by the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrowers.

"Senior Event of Default" has the meaning given to "Event of Default" in the Senior Facility Agreement;

"Senior Facility Agreement" means the facility agreement dated 3 October 2018 (as same may be amended and/or supplemented from time to time) and made between (amongst others) (i) the Borrowers, (ii) the Guarantors and (iii) Crédit Agricole Corporate and Investment Bank as arranger, lender, security agent, facility agent and account bank in respect of a loan facility of up to \$80,000,000.

"Senior Finance Documents" has the meaning given to "Finance Documents" in the Senior Facility Agreement.

"Senior Loan" has the meaning given to "Loan" in the Senior Facility Agreement.

"Senior Mandatory Prepayment Amount" shall have the meaning given to **"Relevant Amount"** in clause 7.3 of the Senior Facility Agreement.

"Security Period" means the period starting on the date of this Agreement and ending on the date on which the Facility Agent is satisfied (acting on the instructions of the Majority Lenders) that there is no outstanding Commitment in force and that the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full.

"Security Property" means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in relation to the Secured Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Security Agent as trustee for the Secured Parties;
- (c) the Security Agent's interest in any turnover trust created under the Finance Documents;
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties,

except:

- (i) rights intended for the sole benefit of the Security Agent; and
- (ii) any moneys or other assets which the Security Agent has transferred to the Facility Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement.

“Servicing Party” means the Facility Agent or the Security Agent.

“Shareholder” means:

- (a) in respect of Borrower A, Guarantor A; and
- (b) in respect of Borrower B and Borrower C, Triton NB.

“Shares Security” means, in relation to a Borrower, a document creating second priority Security over the LLC Shares in that Borrower in agreed form.

“Ship” means Ship A, Ship B or Ship C.

“Ship A” means the 2013-built container carrier type of vessel of 6,700 TEU, having IMO Number 9635676 and registered in the name of Borrower A under the Approved Flag with the name “ALEXANDRA”.

“Ship B” means the 2015-built container carrier type of vessel of 6,877 TEU, having IMO Number 9686900 and registered in the name of Borrower B under the Approved Flag with the name “UASC BUBIYAN”.

“Ship C” means the 2015-built container carrier type of vessel of 6,877 TEU, having IMO Number 9686912 and registered in the name of Borrower C under the Approved Flag with the name “UASC YAS”.

“Side Letter” means a side letter executed between the Obligors and the Facility Agent, in the agreed form.

“Specified Time” means a day or time determined in accordance with Schedule 7 (*Timetables*).

“Subordinated Creditor” means:

- (a) an Obligor; or
- (b) any other person who becomes a Subordinated Creditor in accordance with this Agreement.

“Subordinated Debt Security” means a second priority Security over Subordinated Liabilities granted or to be granted by a Subordinated Creditor in favour of the Security Agent in an agreed form.

“Subordinated Finance Document” means:

- (a) a Subordinated Loan Agreement; and
- (b) any other document relating to or evidencing Subordinated Liabilities.

“Subordinated Liabilities” means all indebtedness owed or expressed to be owed by any Borrower to the Subordinated Creditor whether under the Subordinated Finance Documents or otherwise.

“Subordinated Loan Agreement” means a loan agreement to be made between (i) a Borrower and (ii) a Subordinated Creditor.

“Subordination Agreement” means a subordination agreement entered into or to be entered into by Subordinated Creditor and the Security Agent in agreed form.

“Subsidiary” means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

“Tax” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“Tax Credit” has the meaning given to it in Clause 11.1 (*Definitions*).

“Tax Deduction” has the meaning given to it in Clause 11.1 (*Definitions*).

“Tax Payment” has the meaning given to it in Clause 11.1 (*Definitions*).

“Technical Management Agreement” means, in relation to a Ship, the agreement entered into between the Borrower owning that Ship and the Approved Technical Manager regarding the technical management of that Ship.

“Termination Date” means the date falling on the fifth anniversary of the Utilisation Date.

“Third Parties Act” has the meaning given to it in Clause 1.5 (*Third party rights*).

“Total Commitments” means the aggregate of the Commitments, being \$38,500,000 at the date of this Agreement.

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

- (a) actual, constructive, compromised, agreed or arranged total loss of that Ship; or
- (b) any Requisition of that Ship unless that Ship is returned to the full control of the Borrower owning that Ship within 45 days of such Requisition (or such later period agreed by the Facility Agent acting with the authorisation of the Majority Lenders).

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

- (a) in the case of an actual loss of that Ship, the date on which it occurred or, as notified to the Facility Agent by an Obligor, 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 earlier 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 relevant Borrower 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, the date (or the most likely date) on which it appears to the Majority Lenders that the event constituting the total loss occurred.

“Transaction Document” means:

- (a) a Finance Document; or
- (b) any other document designated as such by the Facility Agent (acting on the instructions of the Majority Lenders) and any Borrower.

“Transaction Obligor” means an Obligor, any Approved Manager or any other person who executes a Transaction Document (other than a Finance Party, any Charterer and any Affiliate of a Guarantor which is a Subordinated Creditor).

“Transaction Security” means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

“Transfer Certificate” means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the parties to such transfer certificate.

“Transfer Date” means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

“Triton NB” means Triton NB LLC, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands;

“UK Establishment” means a UK establishment as defined in the Overseas Regulations.

“Unpaid Sum” means any sum due and payable but unpaid by a Transaction Obligor under the Finance Documents.

“US” means the United States of America.

“US Tax Obligor” means:

- (a) a person which is resident for tax purposes in the US; or
- (b) a person some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

“Utilisation” means the utilisation of the Facility.

“Utilisation Date” means the date of the Utilisation, being the date on which the Loan is to be advanced.

“Utilisation Request” means a notice substantially in the form set out in Part A of Schedule 3 (*Requests*).

“VAT” means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

“Write-down and Conversion Powers” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the **“Account Bank”**, the **“Facility Agent”**, any **“Finance Party”**, any **“Lender”**, any **“Obligor”**, any **“Party”**, any **“Secured Party”**, the **“Security Agent”**, any **“Transaction Obligor”** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
 - (ii) **“assets”** includes present and future properties, revenues and rights of every description;
 - (iii) a liability which is **“contingent”** means a liability which is not certain to arise and/or the amount of which remains unascertained;
 - (iv) **“document”** includes a deed and also a letter, fax or telex;
 - (v) **“expense”** means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Tax including VAT;
 - (vi) a **“Finance Document”**, a **“Security Document”** or **“Transaction Document”** or any other agreement or instrument is a reference to that Finance Document, Security Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (vii) a **“group of Lenders”** includes all the Lenders;
 - (viii) **“indebtedness”** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (ix) **“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 States of America, the United Nations or its Security Council;
 - (x) **“proceedings”** means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;
 - (xi) a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (xii) a **“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;
 - (xiii) a provision of law is a reference to that provision as amended or re-enacted;
 - (xiv) a time of day is a reference to New York time unless specified to the contrary;
 - (xv) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
 - (xvi) words denoting the singular number shall include the plural and vice versa; and
 - (xvii) **“including”** and **“in particular”** (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.
- (b) The determination of the extent to which a rate is “for a period equal in length” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
 - (c) Section, Clause and Schedule headings are for ease of reference only and are not to be used for the purposes of construction or interpretation of the Finance Documents.
 - (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under, or in connection with, any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (e) A Potential Event of Default is “continuing” if it has not been remedied or waived and an Event of Default is **“continuing”** if it has not been waived.

1.3 Construction of insurance terms

In this Agreement:

“approved” means, for the purposes of Clause 22 (*Insurance Undertakings*), approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders).

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

“obligatory insurances” means all insurances effected, or which any Borrower is obliged to effect, under Clause 22 (*Insurance Undertakings*) or any other provision of this Agreement or of another Finance Document.

“policy” 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) (1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/10/83) (1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision.

“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 23 of the Institute Time Clauses (Hulls) (1/10/83).

1.4 Agreed forms of Finance Documents

References in Clause 1.1 (*Definitions*) to any Finance Document being in “agreed form” are to that Finance Document:

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by any Borrower and the Facility Agent); or
- (b) in any other form agreed in writing between any Borrower and the Facility Agent acting with the authorisation of the Majority Lenders or, where Clause 42.2 (*All Lender matters*) applies, all the Lenders.

1.5 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **“Third Parties Act”**) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Subject to Clause 42.3 (*Other exceptions*) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate, Affiliate or for the purpose of Clause 13.2 (*Other indemnities*), Clause 13.4 (*Indemnity to the Facility Agent*) and Clause 13.5 (*Indemnity to the Security Agent*), any Indemnified Person, or any other person described in paragraph (b) of Clause 29.10 (*Exclusion of liability*) or paragraph (b) of Clause 30.11 (*Exclusion of liability*), may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

SECTION 2

THE FACILITY

2 THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrowers a dollar term loan facility in one advance in an aggregate amount not exceeding the Total Commitments.

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from a Transaction Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of the Loan or any other amount owed by a Transaction Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by that Transaction Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.3 Borrowers' Agent

- (a) Each Borrower by its execution of this Agreement irrevocably appoints the Guarantor A to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Guarantor A on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including the Utilisation Request), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Borrower notwithstanding that they may affect the Borrowers, without further reference to or the consent of that Borrower; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Borrower pursuant to the Finance Documents to the Guarantor A,

and in each case the Borrowers shall be bound as though that Borrower itself had given the notices and instructions (including, without limitation, the Utilisation Request) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Guarantor A or given to the Guarantor A under any Finance Document on behalf of a Borrower or in connection with any Finance Document (whether or not known to any Borrower) shall be binding for all purposes on that Borrower as if that Borrower had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Guarantor A and any Borrower, those of the Guarantor A shall prevail.

3 PURPOSE

3.1 Purpose

Each Borrower shall apply all amounts borrowed by it under the Facility only for the purpose stated in the preamble (*Background*) to this Agreement.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4 CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Borrowers may not deliver the Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Part A of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders).

4.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if:

- (a) on the date of the Utilisation Request and on the proposed Utilisation Date and before the Loan is advanced:
 - (i) no Default is continuing or would result from the drawing of the proposed Loan; and
 - (ii) the Repeating Representations to be made by each Transaction Obligor are true;
- (b) the Facility Agent has received on or before the Utilisation Date, or the Majority Lenders are satisfied they will receive when the Loan is made available, all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders).

4.3 Notification of satisfaction of conditions precedent

- (a) The Facility Agent shall promptly send to the Lenders all of the conditions precedent referred to in Clause 4.1 (Initial conditions precedent) and Clause 4.2 (Further conditions precedent) which it has received.
- (b) Each Lender shall promptly confirm to the Facility Agent in writing that it is satisfied as to the satisfaction of the conditions precedent referred to in Clause 4.1 (Initial conditions precedent) and Clause 4.2 (Further conditions precedent).
- (c) The Facility Agent shall notify the Borrowers and the Lenders promptly upon receipt of those confirmations referred to in paragraph (b) above from all of the Lenders.
- (d) Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (c) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.4 Waiver of conditions precedent

If the Majority Lenders, at their discretion, permit the Loan to be borrowed before any of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*) or Clause 4.2 (*Further conditions precedent*) has been satisfied, the Borrowers shall ensure that that condition is satisfied within five Business Days after the Utilisation Date or such later date as the Facility Agent, acting with the authorisation of the Majority Lenders, may agree in writing with the Borrowers.

SECTION 3

UTILISATION

5 UTILISATION

5.1 Delivery of Utilisation Request

- (a) The Borrowers may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.
- (b) The Borrowers may not deliver more than one Utilisation Request.

5.2 Completion of Utilisation Request

- (a) The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
 - (iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*).
- (b) Only one advance may be requested in the Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in the Utilisation Request must be dollars.
- (b) The amount of the Loan must be an amount which is not more \$38,500,000.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met or, as the case may be, waived, each Lender shall make its participation in the Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in the Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately before advancing the Loan.
- (c) Subject to receiving a Utilisation Request, the Facility Agent shall notify each Lender of the amount of the Loan and the amount of its participation in the Loan by the Specified Time.

5.5 Cancellation of Commitments

The Commitments which are unutilised at the end of the Availability Period shall then be cancelled.

5.6 Retentions and payment to third parties

The Borrowers irrevocably authorise the Facility Agent:

- (a) to deduct from the proceeds of the Loan any fees then payable to the Finance Parties in accordance with Clause 10 (*Fees*), any solicitors fees (pre-agreed) and disbursements

reasonably incurred together with any applicable VAT and any other items listed as deductible items in the Utilisation Request and to apply them in payment of the items to which they relate; and

- (b) on the Utilisation Date, to pay to, or for the account of, the Borrowers the amounts which the Facility Agent receives from the Lenders in respect of the Loan. That payment shall be made:
 - (i) to the account which the Borrowers specify in the Utilisation Request; and
 - (ii) in like funds as the Facility Agent received from the Lenders in respect of the Loan.

5.7 Disbursement of Loan to third party

Payment by the Facility Agent under Clause 5.6 (*Retentions and payment to third parties*) to a person other than a Borrower shall constitute the advance of the Loan 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 participation in the Loan.

5.8 Prepositioning of funds

If, in respect of the Utilisation of the Loan, the Facility Agent (acting on the instructions of the Lenders), at the request of the Borrowers and on terms acceptable to all the Lenders and the Borrowers, prepositions funds with any bank:

- (a) the Lenders shall, prior to any such pre-positioning of funds, provide an instruction letter to the Facility Agent in form and substance acceptable to the Facility Agent; and
- (b) each Borrower and each Guarantor:
 - (i) agree to pay interest on the amount of the funds so prepositioned at the rate described in Clause 8.1 (*Calculation of interest*) on the basis of successive interest periods of one day and so that interest shall be paid together with the first payment of interest on the Loan after the Utilisation Date in respect of it or, if the Utilisation Date does not occur, within three Business Days of demand by the Facility Agent (acting on the instructions of the Lenders); and
 - (ii) shall, without duplication, indemnify each Finance Party against any costs, loss or liability it may incur in connection with such arrangement.

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

6 REPAYMENT

6.1 Repayment of Loan

The Borrowers shall repay the Loan in a single instalment on the Termination Date.

6.2 Termination Date

On the Termination Date, the Borrowers shall additionally pay to the Facility Agent for the account of the Finance Parties all other sums then accrued and owing under the Finance Documents.

6.3 Reborrowing

No Borrower may reborrow any part of the Facility which is repaid.

7 PREPAYMENT AND CANCELLATION

7.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Loan or it becomes unlawful for that Lender to do so:

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the Borrowers, the Available Commitment of that Lender will be immediately cancelled; and
- (c) the Borrowers shall prepay that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Facility Agent has notified the Borrowers or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled or terminated in the amount of the participation prepaid.

Any prepayment under this Clause 7.1 (*Illegality*) shall be subject to the payment of the applicable Final Repayment Fee payable under Clause 10.3 (*Final Repayment Fee*) but otherwise without premium or penalty.

7.2 Change of control

If a Change of Control occurs the Borrowers and the Guarantors shall promptly notify the Facility Agent upon becoming aware of that event and if the Majority Lenders so require, the Facility Agent shall (acting on the instructions of the Majority Lenders), by not less than 7 days' notice to the Borrowers, cancel the Facility and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility will be cancelled and the Loan and all such outstanding interest and other amounts will become immediately due and payable.

For the purpose of this paragraph (a), a “Change of Control” occurs if:

- (i) during the Security Period (and should no reverse merger as described in Clause 21.14 (*Merger*) be completed):
 - (A) a change occurs in the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (1) cast, or control the casting of, all of the votes that might be cast at a general meeting of either Guarantor; or
 - (2) appoint or remove all, or the majority, of the directors or other equivalent officers of either Guarantor; or
 - (3) give directions with respect to the operating and financial policies of either Guarantor with which the directors or other equivalent officers of that Guarantor are obliged to comply; and/or
 - (B) a change occurs in the beneficial holding of all of the issued share capital or equity interests of either Guarantor (excluding any part of that issued share capital or equity interests that carries no right to participate beyond a specified amount in a distribution of either profits or capital) and/or,

in each case ((A) and (B) above) from the position of each Guarantor as disclosed to the Facility Agent prior to the execution of this Agreement; and
 - (C) any change in the direct or indirect legal or beneficial ownership or control of any of the Borrowers.
- (ii) if a reverse merger as described in Clause 21.14 (*Merger*) is completed (and at any time after its completion):
 - (A) at any time during the six month period following the date of the reverse merger as described in Clause 21.14 (*Merger*) the owners that hold voting rights in the New Parent (as disclosed to the Facility Agent) immediately following such merger cease to own (either directly or through one or more of their affiliates) collectively an amount that is more than 50 per cent, of the voting rights of the New Parent (or its successor); or
 - (B) Mr George Giouroukos ceases to be the Executive Chairman (or any other equivalent executive officer position) of the New Parent other than by reason of death or other incapacity in managing his affairs.

7.3 Voluntary prepayment of Loan

- (a) Subject to paragraph (b) below, the Borrowers may, if they give the Facility Agent not less than 5 Business Days’ (or such shorter period as the Majority Lenders and the Facility Agent may agree) prior written notice, prepay the whole (or any part) of the Loan.
- (b) The Loan shall only be prepaid pursuant to this Clause 7.3 (Voluntary prepayment of Loan) after the first anniversary of the Utilisation Date and at three-Monthly intervals thereafter.

7.4 Mandatory prepayment on sale or Total Loss

- (a) If a Ship is sold or becomes a Total Loss, the Borrowers shall on the Relevant Date prepay subject to the provisions of the Intercreditor Agreement, an amount equal to the Relevant Amount.
- (b) In this Clause 7.4 (*Mandatory prepayment on sale or Total Loss*):

“Relevant Amount” means, in respect of a sale or Total Loss of a Ship, any surplus proceeds after the required Senior Mandatory Prepayment Amount has been pre-paid in accordance with the terms and conditions of the Senior Facility Agreement.

“Relevant Date” means:

- (i) in the case of a sale of a Ship, on or before the date on which the sale is completed by delivery of that Ship to the buyer; or
- (ii) in the case of a Total Loss of a Ship, the date falling on the earlier of (i) the date falling 180 days after the Total Loss Date and (ii) the date of receipt by the Security Agent of the proceeds of insurance relating to such Total Loss.

7.5 Right of repayment and cancellation in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by a Transaction Obligor is required to be increased under paragraph (c) of Clause 11.2 (*Tax gross-up*) or under that clause as incorporated by reference or in full in any other Finance Document; or
 - (ii) any Lender claims indemnification from a Borrower under Clause 11.3 (*Tax indemnity*) or Clause 12.1 (*Increased costs*),the Borrowers may whilst the circumstance giving rise to the requirement for that increase or indemnification continues give the Facility Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender’s participation in the Loan.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrowers have given notice of cancellation under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrowers in that notice), the Borrowers shall repay that Lender’s participation in the Loan.

7.6 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 (*Prepayment and Cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment and, if relevant, the part of the Loan to be prepaid or cancelled.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) No Borrower may reborrow any part of the Facility which is prepaid.
- (d) No Borrower shall repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

- (f) If the Facility Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrowers or the affected Lenders, as appropriate.
- (g) If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

7.7 Application of prepayments

- (a) Any prepayment of any part of the Loan other than a prepayment pursuant to Clause 7.1 (*Illegality*) and Clause 7.5 (*Right of repayment and cancellation in relation to a single Lender*) shall be applied pro rata, including but not limited prepayments made under Clause 7.3 (*Voluntary prepayment of Loan*) and Clause 7.4 (*Mandatory prepayment on Sale or Total Loss*) to each Lender's participation in that part of the Loan.
- (b) The Relevant Amount in connection with any prepayment made pursuant to Clause 7.4 (*Mandatory prepayment on sale or Total Loss*) shall be applied against (i) the Loan or any part thereof, after deducting the relevant proportional Final Repayment Fee that is payable under Clause 10.3 (*Final Repayment Fee*) by the Borrowers in connection with such prepayment, and (ii) payment of such proportional Final Repayment Fee.

7.8 Final Repayment Fee

Any prepayment under this Clause 7 (*Prepayment and cancellation*), (including but not limited prepayments made under Clause 7.3 (*Voluntary prepayment of Loan*) and Clause 7.4 (*Mandatory prepayment on Sale or Total Loss*) shall be subject to the payment of the applicable non-refundable Final Repayment Fee payable under Clause 10.3 (*Final Repayment Fee*) but otherwise without premium or penalty.

SECTION 5

COSTS OF UTILISATION

8 INTEREST

8.1 Calculation of interest

The rate of interest on the Loan or any part of the Loan for each Interest Period is 10 per cent, per annum.

8.2 Payment of interest

The Borrowers shall pay accrued interest on the Loan or any part of the Loan on the last day of each Interest Period (each an “**Interest Payment Date**”).

8.3 Default interest

- (a) If a Transaction Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 2 per cent, per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted part of the Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Facility Agent (acting on the instructions of the Lenders). Any interest accruing under this Clause 8.3 (*Default interest*) shall be immediately payable by the Obligor on demand by the Facility Agent (acting on the instructions of the Lenders).
- (b) If an Unpaid Sum consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period relating to the Loan or that part of the Loan:
- (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan or that part of the Loan; and
 - (ii) the rate of interest applying to that Unpaid Sum during that first Interest Period shall be 2 per cent, per annum higher than the rate which would have applied if that Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

9 INTEREST PERIODS

9.1 Commencement of Interest Periods

The first Interest Period for the Loan shall start on the Utilisation Date and end on the last day of the current calendar quarter and each subsequent Interest Period shall start on the last day of the preceding Interest Period.

9.2 Duration of normal Interest Periods

Each Interest Period (other than the first Interest Period, whose duration shall be determined in accordance with Clause 9.1 (*Commencement of Interest Periods*)) shall be 3 months.

9.3 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10 FEES

10.1 Servicing Parties fee

The Borrowers shall pay to the Servicing Parties (for their own account) a non-refundable agency fee in the amount and at the times agreed in a Fee Letter.

10.2 Upfront fee

The Borrowers shall pay to the Facility Agent a non-refundable upfront fee (for the account of the Lenders pro-rata to their Commitments) in the amount \$577,500 (representing 1.5 per cent, of the Total Commitments) on the date of this Agreement.

10.3 Final Repayment Fee

The Borrowers shall pay to the Facility Agent (for the account of the Lenders pro-rata to their Commitments) on the relevant Fee Repayment Date a non-refundable Final Repayment Fee.

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

11 TAX GROSS UP AND INDEMNITIES

11.1 Definitions

(a) In this Agreement:

“Protected Party” means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

“Tax Credit” means a credit against, relief or remission for, or repayment of any Tax.

“Tax Deduction” means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

“Tax Payment” means either the increase in a payment made by an Obligor to a Finance Party under Clause 11.2 (*Tax gross-up*) or a payment under Clause 11.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 11 (*Tax Gross Up and Indemnities*) reference to **“determines”** or **“determined”** means a determination made in the absolute discretion of the person making the determination.

11.2 Tax gross-up

(a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrowers shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrowers and that Obligor.

(c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

11.3 Tax indemnity

- (a) The Obligors shall (within three Business Days of demand by the Facility Agent acting on the instructions of a Protected Party or claiming on its own behalf) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 11.2 (*Tax gross-up*); or
 - (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Obligors.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 11.3 (*Tax indemnity*), notify the Facility Agent.

11.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was received; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

11.5 Stamp taxes

The Obligors shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability which that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

11.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this sub-paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
- (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 11.6 (VAT) to any Party shall, at any time when that Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or representative or head) of that group or unity at the relevant time (as the case may be).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party’s VAT registration and such other information as is reasonably requested in connection with such Finance Party’s VAT reporting requirements in relation to such supply.

11.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
- (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party; and
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to sub-paragraph (i) of paragraph (a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything and sub-paragraph (iii) of paragraph (a) above shall not oblige any other Party to do anything which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with sub-paragraphs (i) or (ii) of paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If a Borrower is a US Tax Obligor, or the Facility Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
- (i) where a Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where a Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
 - (iii) where a Borrower is not a US Tax Obligor, the date of a request from the Facility Agent,
- supply to the Facility Agent:
- (i) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or

- (ii) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrowers.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrowers.
- (h) The Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

11.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify each Obligor and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

12 INCREASED COSTS

12.1 Increased costs

- (a) Subject to Clause 12.3 (*Exceptions*), the Borrowers shall, within three Business Days of a demand by the Facility Agent (acting on the instructions of a Lender or claiming on its own behalf), pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
 - (ii) compliance with any law or regulation made,in each case after the date of this Agreement; or
 - (iii) the implementation, application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.

- (b) In this Agreement:
- (i) **“Basel III”** means:
 - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
 - (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
 - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.
 - (ii) **“CRD IV”** means:
 - (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012;
 - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and
 - (C) any other law or regulation which implements Basel III.
 - (iii) **“Increased Costs”** means:
 - (A) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
 - (B) an additional or increased cost; or
 - (C) a reduction of any amount due and payable under any Finance Document,
which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

Notwithstanding anything above to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directives promulgated thereunder, are deemed to have been introduced or adopted after the date of this Agreement, regardless of the date enacted or adopted.

12.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 12.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrowers.
- (b) Each Finance Party shall provide a certificate confirming the amount of its Increased Costs.

12.3 Exceptions

Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 11.3 (*Tax indemnity*) (or would have been compensated for under Clause 11.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 11.3 (*Tax indemnity*) applied);
- (d) compensated for by any payment made pursuant to Clause 13.3 (*Mandatory Cost*); or
- (e) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

13 OTHER INDEMNITIES

13.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
 - (i) making or filing a claim or proof against that Obligor; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,that Obligor shall, as an independent obligation, on demand, indemnify each Secured Party to which that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

13.2 Other indemnities

- (a) Each Obligor shall, on demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:
 - (i) the occurrence of any Event of Default;
 - (ii) a failure by a Transaction Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 32 (*Sharing among the Finance Parties*);
 - (iii) funding, or making arrangements to fund, its participation in the Loan requested by the Borrowers in the Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or

- (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrowers.
- (b) Each Obligor shall, on demand, indemnify each Finance Party, each Indemnified Person, against any cost, loss or liability incurred by that Indemnified Person pursuant to or in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry, in connection with or arising out of the entry into and the transactions contemplated by the Finance Documents, having the benefit of any Security constituted by the Finance Documents or which relates to the condition or operation of, or any incident occurring in relation to, any Ship unless such cost, loss or liability is caused by the gross negligence or wilful misconduct of that Indemnified Person.
- (c) Without limiting, but subject to any limitations set out in paragraph (b) above, the indemnity in paragraph (b) above shall cover any cost, loss or liability incurred by each Indemnified Person in any jurisdiction:
 - (i) arising or asserted under or in connection with any law relating to safety at sea, the ISM Code, any Environmental Law or any Sanctions; or
 - (ii) in connection with any Environmental Claim.
- (d) Any Affiliate or any officer or employee of a Finance Party or of any of its Affiliates may rely on this Clause 13.2 (*Other indemnities*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

13.3 Mandatory Cost

Each Borrower shall, on demand by the Facility Agent (on the request of a relevant Lender), pay to the Facility Agent for the account of the relevant Lender, such amount which any Lender certifies in a notice to the Facility Agent to be its good faith determination of the amount necessary to compensate it for complying with:

- (a) in the case of a Lender lending from a Facility Office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank or any other authority or agency which replaces all or any of its functions in respect of loans made from that Facility Office; and
- (b) in the case of any Lender lending from a Facility Office in the United Kingdom, any reserve asset, special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England (or any other governmental authority or agency) and/or paying any fees to the Financial Conduct Authority and/or the Prudential Regulation Authority (or any other governmental authority or agency which replaces all or any of their functions),

which, in each case, is referable to that Lender's participation in the Loan.

13.4 Indemnity to the Facility Agent

Each Obligor shall, on demand, indemnify each Indemnified Person against:

- (a) any cost, loss or liability incurred by the Facility Agent as a result of:
 - (i) investigating (acting on the instructions of the Majority Lenders) any event which the Majority Lenders reasonably believe is a Default; or
 - (ii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents or as may be required by the Majority Lenders; and

- (b) any cost, loss or liability incurred by the Indemnified Person (otherwise than by reason of the Indemnified Person's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 33.11 (*Disruption to Payment Systems etc.*) notwithstanding the Indemnified Person's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Finance Documents.

13.5 Indemnity to the Security Agent

- (a) Each Obligor shall, on demand, indemnify each Indemnified Person against any cost, loss or liability incurred by any of them:
 - (i) in relation to or as a result of:
 - (A) any failure by a Borrower to comply with its obligations under Clause 15 (*Costs and Expenses*);
 - (B) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (C) the taking, holding, protection or enforcement of the Finance Documents and the Transaction Security;
 - (D) the exercise of any of the rights, powers, discretions, authorities and remedies vested in that Indemnified Person by the Finance Documents or by law;
 - (E) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
 - (F) any action by any Transaction Obligor which vitiates, reduces the value of, or is otherwise prejudicial to, the Transaction Security; and
 - (G) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents,
 - (ii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property or the performance of the terms of this Agreement or the other Finance Documents (otherwise, in each case, than by reason of the relevant Indemnified Person's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 13.5 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

14 MITIGATION BY THE FINANCE PARTIES

14.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrowers, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) or paragraph (a) of Clause 13.3 (*Mandatory Cost*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

- (b) Paragraph (a) above does not in any way limit the obligations of any Transaction Obligor under the Finance Documents.

14.2 Limitation of liability

- (a) Each Obligor shall, on demand, indemnify each Finance Party for all documented costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 14.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 14.1 (*Mitigation*) if either:
 - (i) a Default has occurred and is continuing; or
 - (ii) in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

15 COSTS AND EXPENSES

15.1 Transaction expenses

The Obligors shall, on demand, pay the Facility Agent and the Security Agent the amount of all documented costs and expenses (including legal fees) reasonably incurred by any Secured Party in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) any other Finance Documents executed after the date of this Agreement.

15.2 Amendment costs

If:

- (a) a Transaction Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 33.9 (*Change of currency*); or
- (c) a Transaction Obligor requests, and the Security Agent agrees to (acting on the instructions of the Majority Lenders), the release of all or any part of the Security Assets from the Transaction Security,

the Obligors shall, within 5 days of demand, reimburse each of the Facility Agent and the Security Agent for the amount of all documented costs and expenses (including legal fees) reasonably incurred by each Secured Party in responding to, evaluating, negotiating or complying with that request or requirement.

15.3 Enforcement and preservation costs

The Obligors shall, on demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

SECTION 7

GUARANTEE

16 GUARANTEE AND INDEMNITY

16.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each Transaction Obligor other than the Guarantors of all such other Transaction Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever a Transaction Obligor other than the Guarantors does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Transaction Obligor other than the Guarantors not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the Guarantors under this indemnity will not exceed the amount it would have had to pay under this Clause 16 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

16.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Transaction Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

16.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Transaction Obligor or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of an Guarantor under this Clause 16 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

16.4 Waiver of defences

The obligations of the Guarantors under this Clause 16 (*Guarantee and Indemnity*) and in respect of any Transaction Security will not be affected or discharged by an act, omission, matter or thing which, but for this Clause 16.4 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Clause 16 (*Guarantee and Indemnity*) or in respect of any Transaction Security (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;

- (b) the release of any other Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect or delay in perfecting, or refusal or neglect to take up or enforce, or delay in taking or enforcing any rights against, or security over assets of, any Transaction Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Transaction Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

16.5 Immediate recourse

The Guarantors waive any right they may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person (including without limitation to commence any proceedings under any Finance Document or to enforce any Transaction Security) before claiming or commencing proceedings under this Clause 16 (*Guarantee and Indemnity*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

16.6 Appropriations

Until all amounts which may be or become payable by the Transaction Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantors shall not be entitled to the benefit of the same; and
- (b) hold in a non-interest-bearing suspense account any moneys received from the Guarantors or on account of any Guarantor's liability under this Clause 16 (*Guarantee and Indemnity*).

16.7 Deferral of Guarantor's rights

All rights which the Guarantors at any time have (whether in respect of this guarantee, a mortgage or any other transaction) against any Borrower, any other Transaction Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents and until the end of the Security Period and unless the Facility Agent otherwise directs (acting on the instructions of the Majority Lenders), the Guarantors will not exercise any rights which they may have (whether in respect of any Finance Document to which they are a Party or any other transaction) by reason of performance by the Guarantors of their obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 16 (*Guarantee and Indemnity*):

- (a) to be indemnified by a Transaction Obligor;
- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Transaction Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which the Guarantors have given a guarantee, undertaking or indemnity under Clause 16.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Transaction Obligor; and/or
- (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Secured Party.

If the Guarantors receive any benefit, payment or distribution in relation to such rights they shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Transaction Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct (acting on the instructions of the Majority Lenders) for application in accordance with Clause 33 (*Payment Mechanics*).

16.8 Additional security

This guarantee and any other Security given by the Guarantors is in addition to and is not in any way prejudiced by, and shall not prejudice, any other guarantee or Security or any other right of recourse now or subsequently held by any Secured Party or any right of set-off or netting or right to combine accounts in connection with the Finance Documents.

16.9 Applicability of provisions of Guarantee to other Security

Clauses 16.2 (*Continuing guarantee*), 16.3 (*Reinstatement*), 16.4 (*Waiver of defences*), 16.5 (*Immediate recourse*), 16.6 (*Appropriations*), 16.7 (*Deferral of Guarantor's rights*) and 16.8 (*Additional security*) shall apply, with any necessary modifications, to any Security which a Guarantor creates (whether at the time at which it signs this Agreement or at any later time) to secure the Secured Liabilities or any part of them.

17 JOINT AND SEVERAL LIABILITY OF THE BORROWERS

17.1 Joint and several liability

All liabilities and obligations of the Borrowers under this Agreement shall, whether expressed to be so or not, be joint and several.

17.2 Waiver of defences

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 any other Borrower;
- (b) any Lender or the Security Agent entering into any rescheduling, refinancing or other arrangement of any kind with any other Borrower;

- (c) any Lender or the Security Agent releasing any other Borrower or any Security created by a Finance Document;
- (d) any time, waiver or consent granted to, or composition with any other Borrower or other person;
- (e) the release of any other Borrower or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (f) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any other Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (g) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other Borrower or any other person;
- (h) any amendment, novation, supplement, extension, restatement (however fundamental, and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (i) any unenforceability, illegality or invalidity of any obligation or any person under any Finance Document or any other document or security; or
- (j) any insolvency or similar proceedings.

17.3 Principal Debtor

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 no Borrower shall, in any circumstances, be construed to be a surety for the obligations of any other Borrower under this Agreement.

17.4 Borrower restrictions

- (a) Subject to paragraph (b) below, during the Security Period no Borrower shall:
 - (i) claim any amount which may be due to it from any other Borrower whether in respect of a payment made under, or matter arising out of, this Agreement or any Finance Document, or any matter unconnected with this Agreement or any Finance Document;
 - (ii) take or enforce any form of security from any other Borrower for such an amount, or in any way seek to have recourse in respect of such an amount against any asset of any other Borrower;
 - (iii) set off such an amount against any sum due from it to any other Borrower;
 - (iv) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving any other Borrower; or
 - (v) exercise or assert any combination of the foregoing.
- (b) If during the Security Period, the Facility Agent (acting on the instructions of the Majority Lenders), by notice to a Borrower, requires it to take any action referred to in paragraph (a) above in relation to any other Borrower, that Borrower shall take that action as soon as practicable after receiving the Facility Agent's notice.

17.5 Deferral of Borrowers' rights

Until all amounts which may be or become payable by the Borrowers under or in connection with the Finance Documents have been irrevocably paid in full and unless the Facility Agent (acting on the instructions of the Majority Lenders) otherwise directs, no Borrower will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

- (a) to be indemnified by any other Borrower; or
- (b) to claim any contribution from any other Borrower in relation to any payment made by it under the Finance Documents.

SECTION 8

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

18 REPRESENTATIONS

18.1 General

Each Obligor makes the representations and warranties set out in this Clause 18 (*Representations*) to each Finance Party on the date of this Agreement.

18.2 Status

- (a) It is a limited liability company, duly formed and validly existing in good standing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

18.3 LLC Shares and ownership

- (a) In the case of the Borrower A, the aggregate number of limited liability company interests that it is authorised to issue is 500 LLC Shares, all of which have been issued to the Guarantor A.
- (b) In the case of the Borrower B, the aggregate number of limited liability company interests that it is authorised to issue is 500 LLC Shares, all of which have been issued to Triton NB.
- (c) In the case of the Borrower C, the aggregate number of limited liability company interests that it is authorised to issue is 500 LLC Shares, all of which have been issued to Triton NB.
- (d) In the case of the Guarantor A, its limited liability company interest is unitized and no limitation on the number of units is established within its limited liability company agreement. The legal title to and beneficial interest in the limited liability company interests in the Borrowers is held free of any Security other than Permitted Security or any other claim by the Guarantor A.
- (e) In the case of the Guarantor B, its limited liability company interest is unitized and no limitation on the number of units is established within its limited liability company agreement.
- (f) In the case of Triton NB, its limited liability company interest is unitised into a maximum of 500 LLC Shares, all of which have been issued to Guarantor A.
- (g) Provided that, and, for as long as, no reverse merger or other merger as described in Clause 21.14 (*Merger*) is completed, the ultimate beneficial ownership and control of each Obligor is maintained by those person(s) advised to the Facility Agent in writing prior to the date of this Agreement.
- (h) None of the LLC Shares in any Borrower are subject to any option to purchase, pre-emption rights or similar rights.

18.4 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and, subject to the Legal Reservations which may be applicable at any relevant time, and enforceable obligations.

18.5 Validity, effectiveness and ranking of Security

- (a) Each Finance Document to which it is a party does now or, as the case may be, will upon execution and delivery create the Security it purports to create over any assets to which such Security, by its terms, relates, and such Security will, subject to the Legal Reservations which may be applicable at any relevant time, when created or intended to be created, be valid and effective.
- (b) No third party has or will have any Security (except for Permitted Security) over any assets that are the subject of any Transaction Security granted by it.
- (c) The Transaction Security granted by it to the Security Agent or any other Secured Party has or will when created or intended to be created have first ranking priority or such other priority it is expressed to have in the Finance Documents and is not subject to any prior ranking or *pari passu* ranking security save for any security mandatorily preferred by law.
- (d) No concurrence, consent or authorisation of any person is required for the creation of or otherwise in connection with any Transaction Security.

18.6 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, each Transaction Document to which it is a party do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any Obligor; or
- (c) any agreement or instrument binding upon it or any Obligor or any Obligor's assets or constitute a default or termination event (however described) under any such agreement or instrument.

18.7 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise:
 - (i) its entry into, performance and delivery of, each Transaction Document to which it is or will be a party and the transactions contemplated by those Transaction Documents; and
 - (ii) in the case of each Borrower, its registration of its Ship under an Approved Flag.
- (b) No limit on its powers will be exceeded as a result of the borrowing, granting of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

18.8 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
- (b) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect.

18.9 Governing law and enforcement

- (a) The choice of governing law of each Transaction Document to which it is a party will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in relation to a Transaction Document to which it is a party in the jurisdiction of the governing law of that Transaction Document will be recognised and enforced in its Relevant Jurisdictions.

18.10 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 26.8 (*Insolvency proceedings*); or
 - (b) creditors' process described in Clause 26.9 (*Creditors' process or Ship arrest*),
- has been taken or, to its knowledge, threatened in relation to a Transaction Obligor (other than an Approved Manager); and none of the circumstances described in Clause 26.7 (*Insolvency*) applies to a Transaction Obligor (other than an Approved Manager).

18.11 No filing or stamp taxes

Under the laws of its Relevant Jurisdictions it is not necessary that the Finance Documents to which it is a party be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by those Finance Documents except registration of each Mortgage at the Approved Flag's Ships Registry which registration filings and fees will be made and paid promptly after the date of that Mortgage.

18.12 Deduction of Tax

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to which it is a party.

18.13 No default

- (a) No Event of Default and, on the date of this Agreement and on the Utilisation Date, no Default is continuing or might reasonably be expected to result from the making of the Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject.

18.14 No misleading information

- (a) Any factual information provided by any Transaction Obligor for the purposes of this Agreement was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) The financial projections contained in any such information have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.

- (c) Nothing has occurred or been omitted from any such information and no information has been given or withheld that results in any such information being untrue or misleading in any material respect.

18.15 Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) Its Original Financial Statements fairly present its financial condition as at the end of the relevant financial year and results of operations during the relevant financial year (consolidated in the case of the Guarantors).
- (c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group since 31 December 2017.
- (d) Its most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*):
 - (i) have been prepared in accordance with Clause 19.4 (*Requirements as to financial statements*); and
 - (ii) fairly present its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Guarantors).
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition (or the business or consolidated financial condition of the Group, in the case of the Guarantors).

18.16 *Pari passu* ranking

Its payment obligations under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

18.17 No proceedings pending or threatened

- (a) No litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any other Transaction Obligor.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or any other Transaction Obligor.

18.18 Valuations

- (a) All information supplied by it or on its behalf to an Approved Valuer for the purposes of a valuation delivered to the Facility Agent in accordance with this Agreement was true and accurate as at the date it was supplied or (if appropriate) as at the date (if any) at which it is stated to be given.

- (b) It has not omitted to supply any information to an Approved Valuer which, if disclosed, would adversely affect any valuation prepared by such Approved Valuer.
- (c) There has been no change to the factual information provided pursuant to paragraph (a) above in relation to any valuation between the date such information was provided and the date of that valuation which, in either case, renders that information untrue or misleading in any material respect.

18.19 No breach of laws

- (a) It has not breached any law or regulation which breach has a Material Adverse Effect.
- (b) No Transaction Obligor is in violation of and nor shall it violate any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at <http://ustreas.gov/offices/enforcement/ofac> or as otherwise published from time to time, in each case, as applicable to it.

18.20 No Charter

Except as disclosed by a Borrower to the Facility Agent in writing on or before the date of this Agreement, no Ship is subject to any Charter other than a Permitted Charter.

18.21 Compliance with Environmental Laws

All Environmental Laws relating to the ownership, operation and management of each Ship (as now conducted and as reasonably anticipated to be conducted in the future) and the terms of all Environmental Approvals have been complied with.

18.22 No Environmental Claim

No Environmental Claim has been made or threatened against any Transaction Obligor or any Ship.

18.23 No Environmental Incident

No Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred.

18.24 ISM and ISPS Code compliance

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

18.25 Taxes paid

- (a) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes.

18.26 Financial Indebtedness

- (a) No Borrower has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness incurred in the ordinary course of owning its business of trading, chartering and operating its Ship.

- (b) No Guarantor has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness and any Financial Indebtedness incurred in the ordinary course of its business (including, without limitation, any guarantees that Guarantor has issued or may issue at any time securing the obligations of any of its present or future Subsidiaries and any other guarantee having been previously granted by that Guarantor as at the date of this Agreement and disclosed to the Lenders).

18.27 Overseas companies

No Transaction Obligor has delivered particulars, whether in its name stated in the Finance Documents or any other name, of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or, if it has so registered, it has provided to the Facility Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

18.28 Good title to assets

It has good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

18.29 Ownership

- (a) Subject to paragraph (i) below, Borrower A is the sole legal and beneficial owner of all rights and interests which any charter creates in favour of that Borrower in relation to Ship A.
- (b) Subject to paragraph (i) below, Borrower B is the sole legal and beneficial owner of all rights and interests which any charter creates in favour of that Borrower in relation to Ship B.
- (c) Subject to paragraph (i) below, Borrower C is the sole legal and beneficial owner of all rights and interests which any charter creates in favour of that Borrower in relation to Ship C.
- (d) Subject to paragraph (i) below, Borrower A is the sole legal and beneficial owner of Ship A, the Earnings and the Insurances in relation to Ship A.
- (e) Subject to paragraph (i) below, Borrower B is the sole legal and beneficial owner of Ship B, the Earnings and the Insurances in relation to Ship B.
- (f) Subject to paragraph (i) below, Borrower C is the sole legal and beneficial owner of Ship C, the Earnings and the Insurances in relation to Ship C.
- (g) Subject to paragraph (i) below, with effect on and from the date of its creation or intended creation, each Transaction Obligor will be the sole legal and beneficial owner of any asset that is the subject of any Transaction Security created or intended to be created by such Transaction Obligor.
- (h) The constitutional documents of each Transaction Obligor do not and could not restrict or inhibit any transfer of the limited liability company interests of any Borrower on creation or enforcement of the security conferred by the Security Documents.
- (i) Until (and including) the Utilisation Date the application of paragraphs (a) to (h) above is subject to any rights granted by the Transaction Obligors securing obligations under the Existing Facility Agreement.

18.30 Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in Greece (other than the Guarantors) and it has no “establishment” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

18.31 Place of business

No Transaction Obligor has a place of business in any country other than Greece or, in respect of the Guarantors, the United States of America **Provided that** if a reverse merger is completed pursuant to Clause 21.14 (*Merger*) the place of business of the Guarantors may cease to be the United States of America in which case the Obligors undertake to inform the Facility Agent immediately upon such change.

18.32 No employee or pension arrangements

No Borrower has any employees or any liabilities under any pension scheme.

18.33 Sanctions

(a) No Transaction Obligor:

- (i) is a Prohibited Person;
- (ii) is owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Person;
- (iii) owns or controls a Prohibited Person; or
- (iv) has, to the best of its knowledge, a Prohibited Person serving as a director, officer or employee.

(b) No proceeds of the Loan shall be made available, directly or indirectly, to or for the benefit of a Prohibited Person nor shall they be otherwise directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions.

18.34 US Tax Obligor

No Transaction Obligor is a US Tax Obligor.

18.35 Margin Regulations; Investment Company Act

(a) No Borrower is engaged, nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States.

(b) No Borrower is, or is it required to be, registered as an “investment company” under the United States of America Investment Company Act of 1940

18.36 Patriot Act

To the extent applicable each Borrower is in compliance with (i) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto and (ii) the PATRIOT Act. No part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

18.37 Repetition

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of the Utilisation Request and the first day of each Interest Period.

19 INFORMATION UNDERTAKINGS

19.1 General

The undertakings in this Clause 19 (*Information Undertakings*) remain in force throughout the Security Period unless the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders), may otherwise permit.

19.2 Financial statements

The Borrowers and the Guarantors shall supply to the Facility Agent in sufficient copies for all the Lenders:

(a) as soon as they become available, but in any event within 180 days after the end of each of its financial years:

- (i) the unaudited financial statements for that financial year of each Borrower; and
- (ii) the audited consolidated financial statements for that financial year of each Guarantor;

provided that should a merger be completed, the Borrowers and the Guarantors shall have no further obligation to provide the audited consolidated financial statements referred to in paragraph (a)(ii) above.

(b) as soon as the same become available, but in any event within 90 days after the end of each 6-month period ending on 30 June and 31 December of each of its financial years:

- (i) the unaudited financial statements for that 6-month period of each Borrower; and
- (ii) the unaudited consolidated financial statements of each Guarantor for that 6-month period; and

(c) as soon as possible, but in no event later than 90 days after the end of each financial year of each Borrower, a budget in a format approved by the Facility Agent which shows all anticipated income and expenditure in respect of each Ship during the next financial year of each Borrower.

In the case of paragraph (a) above, if the merger is completed the Guarantor shall not be obliged to provide any financial information which is publicly available and may be accessed by the Facility Agent.

19.3 Compliance Certificate

(a) The Parent Guarantor B shall supply to the Facility Agent, with each set of financial statements delivered pursuant to sub-paragraph (ii) of paragraph (b) of Clause 19.2 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 20 (*Financial Covenants*) as at the date as at which those financial statements were drawn up.

(b) Each Compliance Certificate shall be signed by the chief financial officer of the Guarantor B.

19.4 Requirements as to financial statements

- (a) Each set of financial statements delivered by a Borrower pursuant to Clause 19.2 (*Financial statements*) shall be certified by a senior officer of that Borrower or chief financial officer of the company as fairly presenting its financial condition and operations as at the date as at which those financial statements were drawn up.
- (b) Each Borrower shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 19.2 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in GAAP, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Facility Agent:
 - (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent (acting on the instructions of the Lenders), to enable the Lenders to determine whether Clause 20 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

19.5 Information: miscellaneous

Each Obligor shall and shall procure that each other Obligor shall supply to the Facility Agent (acting on the instructions of the Majority Lenders) (in sufficient copies for all the Lenders, if the Facility Agent (acting on the instructions of the Majority Lenders) so requests):

- (a) promptly upon the Facility Agent's request, all documents dispatched by it to its equity holders or shareholders (or any class of them), as applicable, or its creditors;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) which are current, threatened or pending against it, and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against it and which might have a Material Adverse Effect;
- (d) promptly, its constitutional documents where these have been amended or varied;
- (e) promptly, such further information and/or documents regarding:
 - (i) each Ship, goods transported on each Ship, its Earnings or its Insurances;
 - (ii) the Security Assets;
 - (iii) compliance of the Transaction Obligors with the terms of the Finance Documents;

- (iv) the financial condition, business and operations of any Obligor, as any Finance Party (through the Facility Agent) may reasonably request; and
- (f) promptly, such further information and/or documents as any Finance Party (through the Facility Agent) may reasonably request so as to enable such Finance Party to comply with any laws applicable to it or as may be required by any regulatory authority.

19.6 Notification of Default

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor shall, notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Facility Agent, (acting on the instructions of the Majority Lenders) each Borrower shall supply to the Facility Agent a certificate signed by a senior officer on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

19.7 Use of websites

- (a) Each Obligor may satisfy its obligation under the Finance Documents to which it is a party to deliver any information in relation to those Lenders (the “**Website Lenders**”) which accept this method of communication by posting this information onto an electronic website designated by the Borrowers and the Facility Agent (the “**Designated Website**”) if:
 - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the relevant Obligor and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the relevant Obligor and the Facility Agent (acting on the instructions of the Majority Lenders).

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then that Lender shall notify the Facility Agent and the Facility Agent shall notify the Obligors accordingly and each Obligor shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form.

- (b) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Obligors or any of them and the Facility Agent.
- (c) An Obligor shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or

- (v) if that Obligor becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If an Obligor notifies the Facility Agent under sub-paragraph (i) or (v) of paragraph (c) above, all information to be provided by the Obligors under this Agreement after the date of that notice shall be supplied in paper form unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Obligors shall comply with any such request within 10 Business Days.

19.8 “Know your customer” checks

- (a) Each Obligor shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by a Servicing Party (for itself or on behalf of any other Finance Party) or any Lender (for itself or on behalf of any prospective new Lender) in order for such Finance Party or any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents including without limitation obtaining, verifying and recording certain information and documentation that will allow the Facility Agent and each of the Lenders to identify each Transaction Obligor in accordance with the requirements of the PATRIOT Act.
- (b) Each Lender shall promptly upon the request of a Servicing Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Servicing Party (for itself) in order for that Servicing Party to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

19.9 Anti-money laundering

Each Borrower shall promptly upon the request of a Servicing Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by a Servicing Party (for itself) in order for that Servicing Party to be satisfied it has complied with all applicable anti-money laundering laws.

20 FINANCIAL COVENANTS

20.1 Borrowers’ minimum liquidity

- (a) Each Borrower shall maintain from the Utilisation Date and at all times throughout the Security Period at least \$350,000 (the “**Minimum Liquidity Amount**”) in its Earnings Account.
- (b) Any amount deposited by a Borrower in an Earnings Account for the purpose of satisfying any minimum liquidity requirement under the Senior Facility Agreement shall be taken into account for the purpose of determining compliance of that Borrower with its obligations under paragraph (a) of this Clause 20.1 (*Borrowers’ minimum liquidity*).

20.2 Guarantor B's financial covenants

Guarantor B shall maintain from the Utilisation Date and at all times during the Security Period (and, in respect of paragraphs (a) and (b) below, as of 1 January 2020 and at all times thereafter during the Security Period):

- (a) the Value Adjusted Leverage Ratio shall not exceed 75 per cent.;
- (b) as of 1 January 2020, the minimum Net Worth shall not be less than \$50,000,000;
- (c) the Book Leverage Ratio shall not exceed during the period commencing on:
 - (i) the Utilisation Date and ending on 31 December 2018 (inclusive), 85 per cent.; and
 - (ii) 1 January 2019 and at all times thereafter, 75 per cent.; and
- (d) at all times during the Security Period, the Consolidated Liquidity to be the higher of:
 - (i) \$12,500,000; and
 - (ii) the product of the aggregate of \$300,000 and the number of trading Fleet Vessels as at the date of determination.

20.3 Financial definitions

The expressions used in this Clause shall be construed in accordance with GAAP, and for purposes of this Agreement:

“Book Leverage Ratio” means the ratio of Total Consolidated Long Term Debt to Total Assets, as shown in the applicable Financial Statements for the Guarantor B for any accounting period and determined in accordance with GAAP.

“Consolidated Liquidity” means, in respect of, Guarantor B, in respect of any 6-month accounting period ending on 30 June and 31 December of each financial year of Guarantor B, the aggregate amount of free, unencumbered cash held by Guarantor B, including cash equivalents, and/or committed but not called-in equity.

“Financial Statements” means the annual audited consolidated financial statements or, as the case may be, the semi-annual unaudited consolidated financial statements, each in respect of the Guarantor B and the Group, to be provided by the Guarantor B to the Facility Agent in accordance with Clause 19.2 (*Financial statements*).

“Fleet Market Value” means in relation to a Fleet Vessel, the Market Value of such Fleet Vessel.

“Fleet Vessels” means, on the date of this Agreement, together m.vs. “MAIRA” (having IMO Number 9203502), “NIKOLAS” (having IMO Number 9203526), “NEWYORKER” (having IMO Number 9209104), “ORCA I” (having IMO Number 9318113), “AGIOS DIMITRIOS” (having IMO Number 9349605), “MARY” (having IMO Number 9635664), “KATHERINE” (having IMO Number 9641235), “DOLPHIN II” (having IMO Number 9318125), “ATHENA” (having IMO Number 9275361), “KRISTINA” (having IMO Number 9641223), “TASMAN” (having IMO Number 9189342), “DIMITRIS Y” (having IMO Number 9189354), and “IAN H” (having IMO Number 9189500) and each other ship wholly owned at any relevant time by direct or indirect subsidiaries of Guarantor B (and in the singular a **“Fleet Vessel”**).

“Net Worth” means equity payments already advanced in respect of the Fleet Vessel less accumulated dividends plus retained earnings of the Fleet Vessels, as each such term is defined in the applicable Financial Statements for the Guarantor B determined in accordance with GAAP.

“Total Assets” means, in respect of the Guarantor B, the amount of total assets of Guarantor B at any time on a consolidated basis which would be included in the applicable Financial Statements for the Guarantor B as total assets determined in accordance with GAAP.

“Total Consolidated Long Term Debt” means, in respect of the Guarantor B, the amount of total liabilities of the Guarantor B (as such term is defined in the applicable Financial Statements of that Guarantor) at any time on a consolidated basis which would be included in the applicable Financial Statements of that Guarantor as total long term debt in accordance with GAAP including the current portion of long term debt (as such term is defined in the applicable Financial Statements for the Guarantor B).

“Value Adjusted Leverage Ratio” means the ratio of Total Consolidated Long Term Debt to Value Adjusted Total Assets, as shown in the applicable Financial Statement of the Guarantor B for any accounting period and determined in accordance with GAAP.

“Value Adjusted Total Assets” means the Total Assets of the Guarantor B adjusted in each case for the difference of the book value of the Fleet Vessels (as evidenced in the most recent Financial Statements) and the Fleet Market Value.

20.4 Most favoured nation

- (a) The Obligors undertake to procure that, throughout the duration of the Security Period, the Finance Parties shall receive no less favourable treatment under this Agreement in relation to any covenant (including, without limitation, the covenants set out in Clauses 20 (*Financial covenants*) and 24.1 (*Minimum required security cover*)) or condition than that provided or to be provided under the Senior Facility Agreement (by way of amendment or supplement to the Senior Facility Agreement) or any agreement refinancing or otherwise substituting the Senior Facility Agreement.
- (b) Notwithstanding paragraph (a) above, the Obligors shall promptly advise the Facility Agent of those arrangements and covenants in advance and shall, upon the Facility Agent’s request (acting on the instructions of the Lenders), enter into such documentation supplemental to the Finance Documents, as the Lenders may require in order to achieve parity with the creditors under the Senior Facility Agreement and to the extent permitted by the provisions of the Intercreditor Agreement (or any other creditor under any agreement refinancing or otherwise substituting the Senior Facility Agreement).

21 GENERAL UNDERTAKINGS

21.1 General

The undertakings in this Clause 21 (*General Undertakings*) remain in force throughout the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit (and in the case of Clause 21.13 (*Disposals*), 21.16 (*Financial Indebtedness*) and 21.20 (b)(ii) (*Other transactions*) such permission not to be unreasonably withheld by the Majority Lenders or the Lenders (as the case may be).

21.2 Authorisations

Each Obligor shall, and shall procure that each other Transaction Obligor will (where applicable), promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of,
any Authorisation required under any law or regulation of a Relevant Jurisdiction or the state of the Approved Flag at any time of each Ship to enable it to:
 - (i) perform its obligations under the Transaction Documents to which it is a party;
 - (ii) ensure the legality, validity, enforceability or admissibility in evidence in any Relevant Jurisdiction or in the state of the Approved Flag at any time of each Ship of any Transaction Document to which it is a party; and
 - (iii) own and operate each Ship (in the case of each Borrower).

21.3 Corporate Existence

Each Obligor shall maintain its separate corporate existence, remain in goodstanding under the law of its jurisdiction of incorporation or formation and duly observe and conform to all requirements of any governmental authorities relating to the conduct of its business or to its properties or assets.

21.4 Compliance with laws

Each Obligor shall comply in all respects with all laws and regulations to which it may be subject if failure so to comply has or may reasonably have a Material Adverse Effect, including without limitation (i) the Trading with the Enemy Act and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order thereto) and (ii) the PATRIOT Act.

21.5 Environmental compliance

Each Obligor shall, and shall procure that each Approved Manager will:

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,
where failure to do so has a Material Adverse Effect.

21.6 Environmental Claims

Each Obligor shall, and shall procure that each Approved Manager will, promptly upon becoming aware of the same, inform the Facility Agent in writing of:

- (a) any Environmental Claim against any Transaction Obligor which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any Transaction Obligor,

where the claim, if determined against that Transaction Obligor, has a Material Adverse Effect.

21.7 Taxation

- (a) Each Obligor shall, and shall procure that each other Obligor will, pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
- (i) such payment is being contested in good faith;
 - (ii) adequate reserves are maintained for those Taxes and the costs required to contest them and have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 19.2 (*Financial statements*); and
 - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have a Material Adverse Effect.
- (b) Each Obligor shall procure that no other Obligor will, change its residence for Tax purposes.

21.8 Overseas companies

Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly inform the Facility Agent if it delivers to the Registrar particulars required under the Overseas Regulations of any UK Establishment and it shall comply with any directions given to it by the Facility Agent regarding the recording of any Transaction Security on the register which it is required to maintain under The Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009.

21.9 No change to centre of main interests

No Obligor shall change the location of its centre of main interest (as that term is used in Article 3(1) of the Regulation) from that stated in relation to it in Clause 18.30 (*Centre of main interests and establishments*) and it will create no “**establishment**” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

21.10 *Pari passu* ranking

Each Obligor shall, and shall procure that each other Transaction Obligor will, ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents to which such Obligor or Transaction Obligor is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

21.11 Title

- (a) Following the release on the Utilisation Date of the Security securing the Existing Indebtedness, each Borrower shall hold the legal title to, and own the entire beneficial interest in:
- (i) its Ship, its Earnings and its Insurances; and
 - (ii) with effect on and from its creation or intended creation, any other assets the subject of any Transaction Security created or intended to be created by that Borrower.
- (b) Each Guarantor shall hold the legal title to, and own the entire beneficial interest in with effect on and from its creation or intended creation, any assets the subject of any Transaction Security created or intended to be created by that Guarantor.

21.12 Negative pledge

(a)

- (i) No Borrower shall create any form of Security over any of its assets or revenues other than Permitted Security; and
- (ii) No Guarantor shall create any form of Security (other than Permitted Security), over any of its assets or revenues unless it is reasonably incurred in the normal course of its business (without limitation) of acquiring and financing vessels to be owned by that Guarantor or any of its present or future Subsidiaries.

(b) No Obligor shall:

- (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any Obligor or any other member of the Group;
- (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Permitted Security.

21.13 Disposals

- (a) The Borrowers shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset (including without limitation any Ship, its Earnings or its Insurances).
- (b) Paragraph (a) above does not apply to (i) any Charter as all Charters are subject to Clause 23.15 (*Restrictions on chartering, appointment of managers etc.*) and (ii) a sale of a Ship **Provided that** the Borrowers comply with the provisions of Clause 7 (*Prepayment and Cancellation*) and (ii) no Event of Default has occurred and is continuing at the relevant time or will result from the sale of that Ship.

21.14 Merger

No Obligor shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction, **Provided that** (a) any contributions that may be made by any affiliate of Guarantor A into Guarantor B and (b) a prospective reverse merger (the outline of which has been disclosed to the Facility Agent prior to the execution of this Agreement) involving Guarantor B, are permitted and, if any such reverse merger takes place which results in a New Parent, any further amalgamation, demerger, merger, consolidation or corporate reconstruction is permitted so long as (i) the New Parent remains the surviving entity of any such process; and (ii) no Default has occurred at the relevant time or would be triggered as a result of such process; and (iii) the process of any such further amalgamation, demerger, merger, consolidation or corporate reconstruction does not have a Material Adverse Effect.

21.15 Change of business

- (a) Each Guarantor shall procure that no substantial change is made to the general nature of its business from that carried on at the date of this Agreement.

- (b) No Borrower shall engage in any business other than the ownership and operation of its Ship.

21.16 Financial Indebtedness

No Obligor shall:

- (a) in the case of a Borrower, incur or permit to be outstanding any Financial Indebtedness except (A) Financial Indebtedness incurred in the normal course of its business of trading, chartering and operating its Ship and (B) Permitted Financial Indebtedness; and
- (b) in the case of a Guarantor, incur or permit to be outstanding Financial Indebtedness except for (A) Financial Indebtedness incurred in the ordinary course of its business (including, without limitation, the issuance of guarantees securing the obligations of any of its future or present Subsidiaries and any guarantee previously granted by that Guarantor as at the date of this Agreement and disclosed to the Facility Agent) and (B) Permitted Financial Indebtedness.

21.17 Expenditure

No Borrower shall incur any expenditure, except for expenditure reasonably incurred in the ordinary course of owning, operating, maintaining and repairing its Ship.

21.18 Limited liability company interests

No Borrower shall:

- (a) purchase, cancel or redeem any of its LLC Shares;
- (b) increase or reduce its LLC Shares; and
- (c) issue any further LLC Shares except to the Guarantor A and provided such new LLC Shares are made subject to the terms of the relevant Shares Security applicable to that Borrower immediately upon the issue of such new LLC Shares in a manner satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) and the terms of the relevant Shares Security are complied with.

21.19 Dividends

- (a) A Borrower or the Guarantor A may only make or pay any dividend or other distribution (in cash or in kind) in respect of its LLC shares once in each of its financial years if:
 - (i) the Security Cover Ratio at the relevant time is not less than 150 per cent.; and
 - (ii) no Default has occurred and is continuing at the relevant time or would result from such payment or distribution;
- (b) The Guarantor B may not make or pay any dividend or other distribution (in cash or in kind) in respect of its LLC shares unless:
 - (i) the Book Leverage Ratio (as such term is defined in Clause 20.3 (*Financial definitions*)) does not exceed 75 per cent.;
 - (ii) no Default has occurred and is continuing (including, without limitation any breach of the financial covenants set out in Clause 20.2 (*Guarantor B's financial covenants*)) at the relevant time or would result from such payment or distribution; and

- (iii) there is no breach of any covenant under any other loan facility or other credit agreement or guarantee securing the obligations of any of its Subsidiaries under a loan facility or other credit agreement, to which Guarantor B is a party.

21.20 Other transactions

No Borrower shall:

- (a) be the creditor in respect of any loan or any form of credit to any person other than another Transaction Obligor and where such loan or form of credit creates Permitted Financial Indebtedness;
- (b) give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person other than (i) any guarantee or indemnity given under the Finance Documents or (ii) any guarantee and indemnity issued in the ordinary course of its business of trading, chartering and operating the Ship owned by it having an aggregate maximum value of \$1,000,000 in respect of that Borrower or such higher value as may be requested by that Borrower and approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders);
- (c) enter into any material agreement other than:
 - (i) the Transaction Documents;
 - (ii) any other agreement expressly allowed under any other term of this Agreement or in the ordinary course of that Borrower's business of trading, operating and chartering the relevant Ship;
- (d) without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders), such consent not to be unreasonably withheld or delayed, enter into any transaction on terms which are, in any respect, less favourable to that Borrower than those which it could obtain in a bargain made at arms' length provided further that such consent of the Facility Agent (acting on the instructions of the Majority Lenders) shall not be required in the absence of an Event of Default having occurred and continuing; or
- (e) 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.

21.21 Unlawfulness, invalidity and ranking; Security imperilled

No Obligor shall, and the Obligors shall procure that no other Transaction Obligor will, do (or fail to do) or cause or permit another person to do (or omit to do) anything which is likely to:

- (a) make it unlawful for a Transaction Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of a Transaction Obligor under the Transaction Documents to cease to be legal, valid, binding or enforceable;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Transaction Security to rank after, or lose its priority to, any other Security; and
- (e) imperil or jeopardise the Transaction Security.

21.22 No Subsidiaries

No Borrower shall form or acquire any Subsidiaries.

21.23 Employees and ERISA Compliance

No Borrower shall employ any individual nor sponsor, maintain or become obligated to contribute to any Plan. However, without prejudice to the foregoing, each Borrower shall provide prompt written notice to the Facility Agent in the event that that Borrower becomes aware that it has incurred or is reasonably likely to incur any liability with respect to any Plan, that, individually or in the aggregate with any other such liability, would be reasonably expected to have a Material Adverse Effect.

21.24 Books and records

The Borrowers will keep proper books of record and account which will be accurate in all material respects and in which full, true and correct entries in accordance with GAAP will be made of all dealings or transactions in relation to its business and activities.

21.25 Further assurance

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly, and in any event within three (3) Business Days (or such other time period as may be specified by the Security Agent (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders)) of demand by the Security Agent (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Agent may specify (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) (and in such form as the Security Agent may require (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) in favour of the Security Agent or its nominee(s)):
- (i) to create, perfect, vest in favour of the Security Agent or protect the priority of the Security or any right of any kind created or intended to be created under or evidenced by the Finance Documents to which such Transaction Obligor is a party (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of any of the Secured Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent or confer on the Secured Parties Security over any property and assets of that Transaction Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Finance Documents;
 - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Transaction Security or to exercise any power specified in any Finance Document in respect of which the Security has become enforceable; and/or
 - (iv) to enable or assist the Security Agent to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.

- (b) Each Obligor shall, and shall procure that each other Transaction Obligor will, take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to the Finance Documents.
- (c) At the same time as an Obligor delivers to the Security Agent any document executed by itself or another Transaction Obligor pursuant to this Clause 21.25 (*Further assurance*), that Obligor shall deliver, or shall procure that such other Transaction Obligor will deliver, to the Security Agent a certificate signed by one of that Obligor's or Transaction Obligor's officers which shall:
 - (i) set out the text of a resolution of that Obligor's or Transaction Obligor's members, managers or directors, as applicable, specifically authorising the execution of the document specified by the Security Agent; and
 - (ii) state that either the resolution was duly passed at a meeting of the members, managers or directors, as applicable, validly convened and held, throughout which a quorum of members, managers or directors, as applicable, entitled to vote on the resolution was present, or that the resolution has been signed by all the members, managers or directors, as applicable, and is valid under that Obligor's or Transaction Obligor's articles of association or other constitutional documents.

21.26 Additional Guarantee

The Guarantors shall procure that any New Parent provides an Additional Guarantee upon the request of the Facility Agent (acting on the instructions of the Majority Lenders) within the first 6 months after the completion of any merger or a reverse merger as described in Clause 21.14 (*Merger*) **provided that** the Guarantors shall have no such obligation if:

- (a) any such merger or reverse merger is not consummated; or
- (b) the New Parent is restricted from granting the additional Guarantee by virtue of any law or any financing agreement or other contract to which it is a party as at the date of this Agreement.

22 INSURANCE UNDERTAKINGS

22.1 General

The undertakings in this Clause 22 (*Insurance Undertakings*) remain in force on and from the Utilisation Date and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

22.2 Maintenance of obligatory insurances

Each Borrower shall keep the Ship owned by it insured at its expense against:

- (a) hull and machinery plus freight interest and hull interest and/or increased value and any other usual marine risks (including excess risks);
- (b) war risks (including the London Blocking and Trapping addendum or its equivalent);
- (c) protection and indemnity risks (including liability for oil pollution for an amount of no less than \$1,000,000,000 and excess war risk P&I cover) on standard Club Rules, covered by a Protection and Indemnity association which is a member of the International Group of Protection and Indemnity Associations (or, if the International Group ceases to exist, any

other leading protection and indemnity association or other leading provider of protection and indemnity insurance) (including, without limitation, the proportion (if any) of any collision liability not covered under the terms of the hull cover);

- (d) freight, demurrage and defence;
- (e) any other risks against which the Facility Agent acting on the instructions of the Majority Lenders considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for that Borrower to insure and which are specified by the Facility Agent (acting on the instructions of the Majority Lenders) by notice to that Borrower.

22.3 Terms of obligatory insurances

Each Borrower shall effect such insurances:

- (a) in dollars;
- (b) in the case of hull and machinery and war risks, in an amount on an agreed value basis at least the greater of:
 - (i) 120 per cent, of the aggregate of the outstanding balance of the Loan and the Senior Loan; and
 - (ii) the Market Value of the Ship owned by it;
- (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 under basic protection and indemnity club entry and in the international marine insurance market (such amount currently being \$1,000,000,000);
- (d) hull and machinery plus freight interest and hull interest and/or increased value and any other usual marine risks (including excess risks);
- (e) war risks (including the London Blocking and Trapping addendum or its equivalent, Terrorism and War Protection and Indemnity);
- (f) protection and indemnity risks (including liability for oil pollution for an amount of no less than \$1,000,000,000 and excess war risk P&I cover) on standard Club Rules, covered by a Protection and Indemnity association which is a member of the International Group of Protection and Indemnity Associations (or, if the International Group ceases to exist, any other leading protection and indemnity association or other leading provider of protection and indemnity insurance) (including, without limitation, the proportion (if any) of any collision liability not covered under the terms of the hull cover);
- (g) freight, demurrage and defence;
- (h) on approved terms; and
- (i) through Approved Brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations.

22.4 Further protections for the Finance Parties

In addition to the terms set out in Clause 22.3 (*Terms of obligatory insurances*), each Borrower shall procure that the obligatory insurances effected by it shall:

- (a) subject always to paragraph (b), name that Borrower as the sole named insured unless the interest of every other named insured (including each Approved Manager as co-assured) is limited:
- (i) in respect of any obligatory insurances for hull and machinery and war risks;
 - (A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
 - (B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
 - (ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;
- and every other named insured has undertaken in writing to the Security Agent (in such form as it requires (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders) that any deductible shall be apportioned between that Borrower and every other named insured in proportion to the gross claims made or paid by each of them and that it shall do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;
- (b) whenever the Facility Agent requires (acting on the instructions of the Majority Lenders), name (or be amended to name) the Security Agent as additional named insured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Agent, but without the Security Agent being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
 - (c) name the Security Agent as loss payee with such directions for payment as the Facility Agent may specify (acting on the instructions of the Majority Lenders);
 - (d) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Agent shall be made without set off, counterclaim or deductions or condition whatsoever;
 - (e) provide that the obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Agent or any other Finance Party; and
 - (f) provide that the Security Agent may make proof of loss if that Borrower fails to do so,

22.5 Renewal of obligatory insurances

Each Borrower shall:

- (a) at least 10 days before the expiry of any obligatory insurance:
 - (i) notify the Facility Agent of the Approved Brokers (or other insurers) and any protection and indemnity or war risks association through or with which it proposes to renew that obligatory insurance and of the proposed terms of renewal; and
 - (ii) obtain the Facility Agent's approval (acting on the instructions of the Majority Lenders) to the matters referred to in sub-paragraph (i) above;

- (b) at least 14 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Facility Agent's approval pursuant to paragraph (a) above; and
- (c) procure that the Approved Brokers and/or the approved war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Facility Agent in writing of the terms and conditions of the renewal.

22.6 Copies of policies; letters of undertaking

Each Borrower shall ensure that the Approved Brokers provide the Security Agent, upon the Security Agent's request (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders), with:

- (a) *proforma* copies of all policies relating to the obligatory insurances which they are to effect or renew; and
- (b) a letter or letters or undertaking in a form required by the Facility Agent (acting on the instructions of the Majority Lenders) and including undertakings by the Approved Brokers that:
 - (i) 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 22.4 (*Further protections for the Finance Parties*);
 - (ii) they will hold such policies, and the benefit of such insurances, to the order of the Security Agent in accordance with such loss payable clause;
 - (iii) they will advise the Security Agent immediately of any material change to the terms of the obligatory insurances;
 - (iv) they will, if they have not received notice of renewal instructions from the relevant Borrower or its agents, notify the Security Agent not less than 14 days before the expiry of the obligatory insurances;
 - (v) if they receive instructions to renew the obligatory insurances, they will promptly notify the Facility Agent of the terms of the instructions;
 - (vi) they will not set off against any sum recoverable in respect of a claim relating to the Ship owned by that Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts; and
 - (vii) they will arrange for a separate policy to be issued in respect of the Ship owned by that Borrower forthwith upon being so requested by the Facility Agent.

22.7 Copies of certificates of entry

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provide the Security Agent with:

- (a) a certified copy of the certificate of entry for that Ship;
- (b) a letter or letters of undertaking in such form as may be required by the Facility Agent (acting on the instructions of Majority Lenders); and

- (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 that Ship.

22.8 Deposit of original policies

Each Borrower shall ensure that all policies relating to obligatory insurances effected by it are deposited with the Approved Brokers through which the insurances are effected or renewed.

22.9 Payment of premiums

Each Borrower shall punctually pay all premiums or other sums payable in respect of the obligatory insurances effected by it and produce all relevant receipts when so required by the Facility Agent (acting on the instructions of the Majority Lenders) or the Security Agent (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders).

22.10 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.

22.11 Compliance with terms of insurances

- (a) No Borrower shall do or 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.
- (b) Without limiting paragraph (a) above, each Borrower shall:
 - (i) 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 sub-paragraph (iii) of paragraph (b) of Clause 22.6 (*Copies of policies; letters of undertaking*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Facility Agent has not given its prior approval (acting on the instructions of the Majority Lenders);
 - (ii) not make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
 - (iii) make (and promptly supply copies to the Facility Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
 - (iv) not 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.

22.12 Alteration to terms of insurances

No Borrower shall make or agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance.

22.13 Settlement of claims

Each Borrower shall:

- (a) not settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty; and
- (b) do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

22.14 Provision of copies of communications

Each Borrower shall provide the Security Agent, immediately upon the Facility Agent's request (acting on the instructions of the Majority Lenders), with copies of all written communications between that Borrower and:

- (a) the Approved Brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters,
which relate directly or indirectly to:
 - (i) 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) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

22.15 Provision of information

Each Borrower shall promptly provide the Facility Agent (or any persons which it may designate) with any information which the Facility Agent (or any such designated person) requests (acting on the instructions of the Majority Lenders) 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 22.16 (*Mortgagee's interest and additional perils insurances*) or dealing with or considering any matters relating to any such insurances,

and the Borrower shall, forthwith upon demand, indemnify the Facility Agent in respect of all fees and other expenses incurred by or for the account of the Facility Agent in connection with any such report as is referred to in paragraph (a) above.

22.16 Mortgagee's interest and additional perils insurances

- (a) The Security Agent shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance and a mortgagee's interest additional perils insurance each in an amount of up to 120 per cent, of the Loan, on such terms, through such insurers and generally in such manner as the Security Agent acting on the instructions of the Majority Lenders may from time to time consider appropriate.

- (b) The Borrowers shall upon demand fully indemnify the Security Agent in respect of all premiums and other expenses which are incurred in connection with or with a view to effecting, maintaining or renewing any insurance referred to in paragraph (a) above or dealing with, or considering, any matter arising out of any such insurance.

23 SHIP UNDERTAKINGS

23.1 General

The undertakings in this Clause 23 (*Ship Undertakings*) remain in force on and from the date of this Agreement and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit in writing (and in the case of paragraph (c) of Clause 23.2(c), 23.3 (*Repair and classification*), 23.4 (*Modifications*), 23.5 (*Removal and installation of parts*) and 23.15 (*Restrictions on chartering, appointment of managers etc.*) such permission not to be unreasonably withheld).

23.2 Ship's names and registration

Each Borrower shall in respect of the Ship owned by it:

- (a) keep that Ship registered in its name under an Approved Flag from time to time at its port of registration;
- (b) not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperilled; and
- (c) not change the name of that Ship,

provided that any change of flag of a Ship shall be subject to:

- (i) that Ship remaining subject to Security securing the Secured Liabilities created by a second priority or preferred ship mortgage on that Ship and, if appropriate, a second priority deed of covenant collateral to that mortgage (or equivalent second priority Security) on substantially the same terms as the Mortgage on that Ship and on such other terms and in such other form as the Facility Agent, acting on the instructions of the Majority Lenders, shall approve or require; and
- (ii) the execution of such other documentation amending and supplementing the Finance Documents as the Facility Agent, acting on the instructions of the Majority Lenders, shall approve or require.

23.3 Repair and classification

Each Borrower shall keep the Ship owned by it in a good and safe condition and state of repair:

- (a) consistent with first class ship ownership and management practice; and
- (b) so as to maintain the Approved Classification free of overdue recommendations and conditions.

23.4 Modifications

No Borrower shall make any modification or repairs to, or replacement of, any Ship or equipment installed on it which would or might materially and adversely alter the structure, type or performance characteristics of that Ship or materially reduce its value.

23.5 Removal and installation of parts

- (a) Subject to paragraph (b) below, no Borrower shall remove any material part of any Ship, or any item of equipment installed on any Ship unless:
- (i) 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;
 - (ii) the replacement part or item is free from any Security in favour of any person other than the Security Agent; and
 - (iii) the replacement part or item becomes, on installation on that Ship, the property of that Borrower and subject to the security constituted by the Mortgage on that Ship.
- (b) 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 that Borrower.

23.6 Surveys

Each Borrower shall submit the Ship owned by it regularly to all periodic or other surveys which may be required for classification purposes and, if so required by the Facility Agent acting on the instructions of the Majority Lenders, provide the Facility Agent, with copies of all survey reports.

23.7 Inspection

- (a) Each Borrower shall permit the Security Agent (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) acting through surveyors or other persons appointed by it for that purpose to board the Ship owned by it at all reasonable times without interfering with the Ship's trading schedule, to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections.
- (b) The cost of all inspections under this Clause 23.7 (*Inspection*) shall be for the account of that Borrower in relation to the Ship owned by it once annually and at any time when an Event of Default has occurred and is continuing.

23.8 Prevention of and release from arrest

- (a) Each Borrower shall, in respect of the Ship owned by it, promptly discharge:
- (i) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against that Ship, its Earnings or its Insurances;
 - (ii) all Taxes, dues and other amounts charged in respect of that Ship, its Earnings or its Insurances; and
 - (iii) all other outgoings whatsoever in respect of that Ship, its Earnings or its Insurances.
- (b) Each Borrower shall as soon as reasonably practicable 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, take all steps necessary to procure its release by providing bail or otherwise as the circumstances may require.

23.9 Compliance with laws etc.

Each Borrower shall:

- (a) comply, or procure compliance with all laws or regulations:
 - (i) relating to its business generally; and
 - (ii) relating to the Ship owned by it, its ownership, employment, operation, management and registration, including, but not limited to, the ISM Code, the ISPS Code, all Environmental Laws, all Sanctions and the laws of the Approved Flag;
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals; and
- (c) without limiting paragraph (a) above, not employ the Ship owned by it nor allow its employment, operation or management in any manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and all Sanctions (or which would be contrary to Sanctions if Sanctions were binding on each Transaction Obligor).

23.10 ISPS Code

Without limiting paragraph (a) of Clause 23.9 (*Compliance with laws etc.*), each Borrower shall:

- (a) procure that the Ship owned by it and the company responsible for that Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain an ISSC for that Ship; and
- (c) notify the Facility Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

23.11 Sanctions and Ship trading

Without limiting Clause 23.9 (*Compliance with laws etc.*), each Borrower shall procure:

- (a) that the Ship owned by it shall not be used by or for the benefit of a Prohibited Person;
- (b) that such Ship shall not be used in trading in any manner contrary to Sanctions (or which could be contrary to Sanctions if Sanctions were binding on each Transaction Obligor);
- (c) that such Ship shall not be traded in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances; and
- (d) that each charterparty in respect of such Ship shall contain, for the benefit of that Borrower, language which gives effect to the provisions of paragraph (c) of Clause 23.9 (*Compliance with laws etc.*) as regards Sanctions and of this Clause 23.11 (*Sanctions and Ship trading*) and which permits refusal of employment or voyage orders if compliance would result in a breach of Sanctions (or which would result in a breach of Sanctions if Sanctions were binding on each Transaction Obligor).

23.12 Trading in war zones

In the event of hostilities in any part of the world (whether war is declared or not including, without limitation, any civil war), no Borrower shall cause or permit the Ship owned by it to be employed in carrying any goods which may be declared to be contraband of war or which may render such Ship liable to confiscation, seizure, detention or destruction, nor shall that Borrower permit such Ship to enter any area which is declared a war zone by any

governmental authority or by such Ship's insurers unless that employment or voyage is either (a) consented to in advance and in writing by the underwriters of such Ship's war risks insurances and fully covered by those insurances or (b) (to the extent not covered by those insurances) covered by additional insurance taken out by that Borrower at that Borrower's expense, which additional insurance shall be deemed to be part of the Insurances assigned under the General Assignment.

23.13 Provision of information

Without prejudice to Clause 19.5 (*Information: miscellaneous*) each Borrower shall promptly provide the Facility Agent with any information which it requests (acting on the instructions of the Majority Lenders) regarding:

- (a) that Ship, its employment, position and engagements;
 - (b) the Earnings of that Ship and payments and amounts due to its master and crew;
 - (c) any expenditure incurred, or likely to be incurred, in connection with the operation, maintenance or repair of that Ship and any payments made by it in respect of that Ship;
 - (d) any towages and salvages; and
 - (e) its compliance, the Approved Manager's compliance and the compliance of that Ship with the ISM Code and the ISPS Code,
- and, upon the Facility Agent's request (acting on the instructions of the Majority Lenders), promptly provide copies of any current Charter relating to that Ship, of any current Charter guarantee supporting such Charter, that Ship's Safety Management Certificate and any relevant Document of Compliance.

23.14 Notification of certain events

Each Borrower shall, in respect of the Ship owned by it, immediately notify the Facility Agent by email, confirmed forthwith by letter, of:

- (a) any casualty to that Ship which is or may reasonably become a Major Casualty;
- (b) any occurrence as a result of which that Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requisition of that Ship for hire;
- (d) any requirement or recommendation made in relation to that Ship by any insurer or classification society or by any competent authority which is not immediately complied with;
- (e) any arrest or detention of that Ship or any exercise or purported exercise of any lien on that Ship or the Earnings;
- (f) any intended dry docking of that Ship;
- (g) any Environmental Claim made against that Borrower or in connection with that Ship, or any Environmental Incident;
- (h) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, an Approved Manager or otherwise in connection with that Ship; or
- (i) 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 each Borrower shall keep the Facility Agent advised in writing on a regular basis and in such detail as the Facility Agent shall require (acting on the instructions of the Majority Lenders) as to that Borrower's, any such Approved Manager's or any other person's response to any of those events or matters.

23.15 Restrictions on chartering, appointment of managers etc.

No 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, voyage or consecutive voyage charter in respect of that Ship other than a Permitted Charter;
- (c) materially amend, supplement or terminate a Management Agreement,

Provided that should a merger be completed, the Borrowers shall be entitled to terminate (i) the Technical Management Agreements subject to entering into new technical management agreements with the Approved Technical Manager and on terms similar to those agreed in the Technical Management Agreements and (ii) the Commercial Management Agreements subject to entering into a new commercial management agreement between Guarantor B for and on behalf of the Borrowers and the Approved Commercial Manager and on terms similar to those agreed in the Commercial Management Agreement;

- (d) appoint a manager of that Ship other than the Approved Commercial Manager and the Approved Technical Manager or agree to any alteration to the terms of an Approved Manager's appointment;
- (e) de activate or lay up that Ship; or
- (f) put that Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed \$1,000,000 (or the equivalent in any other currency) unless that person has first given to the Security Agent (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders) and in terms satisfactory to it (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders) a written undertaking not to exercise any lien on that Ship or its Earnings for the cost of such work or for any other reason.

23.16 Notice of Mortgage

Each Borrower shall keep the relevant Mortgage registered against the Ship owned by it as a valid second priority or preferred mortgage (as applicable), carry on board that Ship a certified copy of the relevant Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of that Ship a framed printed notice stating that that Ship is mortgaged by that Borrower to the Security Agent.

23.17 Sharing of Earnings

No Borrower shall enter into any agreement or arrangement for the sharing of any Earnings.

23.18 Charter assignment

Provided that all approvals necessary under Clause 23.15 (*Restrictions on chartering, appointment of managers etc.*) have been previously obtained, each Borrower shall in relation to the Ship owned by it:

- (a) provide promptly to the Facility Agent a true and complete copy of any Charter (including all amendments) and all other documents related thereto for a term which exceeds, or which by virtue of any optional extensions may exceed 12 months; and
- (b) in respect of any Charter for a term which (excluding any optional extensions and any redelivery allowance) exceeds, or which by virtue of any optional extensions may exceed 12 months, execute and deliver to the Facility Agent a Charter Assignment together with each of the documents required to be delivered pursuant to such Charter Assignment (each in the agreed form).

23.19 Notification of compliance

Each Borrower shall promptly provide the Facility Agent from time to time with evidence (in such form as the Facility Agent requires) (acting on the instructions of the Majority Lenders) that it is complying with this Clause 23 (*Ship Undertakings*).

24 SECURITY COVER

24.1 Minimum required security cover

Clause 24.2 (*Provision of additional security; prepayment*) applies if, at any time throughout the Security Period, the Facility Agent (acting on the instructions of the Majority Lenders) notifies the Borrowers that:

- (a) the aggregate Market Value of all Mortgaged Ships; plus
 - (b) the net realisable value of additional Security previously provided under this Clause 24 (*Security Cover*),
- is below 125 per cent, of the Senior Loan.

24.2 Provision of additional security; prepayment

- (a) If the Facility Agent (acting on the instructions of the Majority Lenders) serves a notice on the Borrowers under Clause 24.1 (*Minimum required security cover*), the Borrowers shall, on or before the date falling one Month after the date (the **“Prepayment Date”**) on which the Facility Agent’s notice is served, prepay such part of the Loan as shall eliminate the shortfall.
- (b) A Borrower may, instead of making a prepayment as described in paragraph (a) above, provide, or ensure that a third party has provided, additional security which, in the opinion of the Facility Agent acting on the instructions of the Majority Lenders:
 - (i) has a net realisable value at least equal to the shortfall; and
 - (ii) is documented in such terms as the Facility Agent (acting on the instructions of the Majority Lenders) may approve or require, before the Prepayment Date; and conditional upon such security being provided in such manner, it shall satisfy such prepayment obligation.

24.3 Value of additional vessel security

The net realisable value of any additional security which is provided under Clause 24.2 (*Provision of additional security; prepayment*) and which consists of Security over a vessel shall be the Market Value of the vessel concerned.

24.4 Valuations binding

Any valuation under this Clause 24 (*Security Cover*) shall be binding and conclusive as regards each Borrower.

24.5 Provision of information

- (a) Each Borrower shall promptly provide the Facility Agent and any Approved Valuer acting under this Clause 24 (*Security Cover*) with any information which the Facility Agent (acting on the instructions of the Majority Lenders) or the Approved Valuer may request for the purposes of the valuation.
- (b) If a Borrower fails to provide the information referred to in paragraph (a) above by the date specified in the request, the valuation may be made on any basis and assumptions which the Approved Valuer or the Facility Agent considers (acting on the instructions of the Majority Lenders) prudent.

24.6 Prepayment mechanism

Any prepayment pursuant to Clause 24.2 (*Provision of additional security; prepayment*) shall be made in accordance with the relevant provisions of Clause 7 (*Prepayment and Cancellation*) and shall be treated as a voluntary prepayment pursuant to Clause 7.3 (*Voluntary prepayment of Loan*).

24.7 Provision of valuations

The Facility Agent shall be entitled to test, at the cost of the Borrowers, the security cover requirements under Clause 24.1 (*Minimum required security cover*):

- (a) semi-annually and on dates to be selected by the Facility Agent;
- (b) at the same time as each Compliance Certificate is provided pursuant to Clause 19.3 (*Compliance Certificate*);
- (c) at the same time a Borrower serves the notices to the Facility Agent in respect of the renewal of the obligatory insurances pursuant to Clause 22.5 (*Renewal of obligatory insurances*);
- (d) in the case of sale or Total Loss of a Ship, pursuant to Clause 7.4 (*Mandatory prepayment on sale or Total Loss*); and
- (e) at any time selected by the Facility Agent while an Event of Default has occurred which is continuing.

25 ACCOUNTS AND APPLICATION OF EARNINGS

25.1 Accounts

No Borrower may, without the prior consent of the Facility Agent (acting on the instructions of the Lenders), maintain any bank account other than its Earnings Account.

25.2 Payment of Earnings

Each Borrower shall ensure that, subject only to the provisions of the General Assignment to which it is a party, all the Earnings in respect of the Ship owned by it are paid in to its Earnings Account.

25.3 Application of Earnings

Each Borrower shall transfer from its Earnings Account to the Facility Agent:

- (a) on the Termination Date, the amount of the Loan; and
- (b) on the last day of each Interest Period, the amount of interest then due on that date; and
- (c) on any day on which an amount is otherwise due from the Borrowers under a Finance Document, an amount necessary to meet that due amount,

and each Borrower irrevocably authorizes the Facility Agent to apply the transferred amounts in payment of the Loan, interest amount or other amount due.

Any balance on the Earnings Accounts after the application of the transferred amounts shall be available to the Borrowers, unless there is an Event of Default which is continuing or unless an Event of Default would result from the withdrawal of any such balance (or any part thereof) from the relevant Earnings Account.

25.4 Shortfall in Earnings

- (a) If the credit balance on each Earnings Account is insufficient for the required amount to be transferred under Clause 25.3 (*Application of Earnings*) the Borrowers shall make up the amount of the insufficiency.
- (b) The Borrowers may not make up all or any part of the insufficiency by utilising the Minimum Liquidity Amount in the Earnings Account.

25.5 Application of funds

Until an Event of Default occurs which is continuing, the Facility Agent shall on the Termination Date and on each Interest Payment Date (provided it has received sufficient funds no later than 2:00 p.m. New York time on the Termination Date or the relevant Interest Payment Date (as the case may be)) distribute to the Finance Parties in accordance with Clause 33.2 (*Distributions by the Facility Agent*) so much of the then balance on the Earnings Account as equals:

- (a) the Loan due on the Termination Date; and
- (b) the amount of interest payable on that Interest Payment Date,
in discharge of the Borrowers' liability for the Loan or that interest.

25.6 Location of Earnings Accounts

Each Borrower shall promptly:

- (a) comply with any requirement of the Facility Agent (acting on the instructions of the Majority Lenders) as to the location or relocation of its Earnings Account; and
- (b) execute any documents which the Facility Agent (acting on the instructions of the Majority Lenders) specifies to create or maintain in favour of the Security Agent, Security over (and/or rights of set-off, consolidation or other rights in relation to) its Earnings Accounts.

26 EVENTS OF DEFAULT

26.1 General

Each of the events or circumstances set out in this Clause 26 (*Events of Default*) is an Event of Default except for Clause 26.18 (*Acceleration*) and Clause 26.19 (*Enforcement of security*).

26.2 Non-payment

A Transaction Obligor (other than an Approved Manager) does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within 3 Business Days of its due date.

26.3 Specific obligations

A breach occurs of Clause 4.4 (*Waiver of conditions precedent*), Clause 20 (*Financial Covenants*), Clause 21.11 (*Title*), Clause 21.12 (*Negative pledge*), Clause 21.21 (*Unlawfulness, invalidity and ranking; Security imperilled*), Clause 22.2 (*Maintenance of obligatory insurances*), Clause 22.3 (*Terms of obligatory insurances*), Clause 22.5 (*Renewal of obligatory insurances*), Clause 23.11 (*Sanctions and Ship trading*) or Clause 24 (*Security Cover*).

26.4 Other obligations

- (a) A Transaction Obligor does not comply with any provision of the Finance Documents to which it is a party (other than those referred to in Clause 26.2 (*Non-payment*) and Clause 26.3 (*Specific obligations*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days of the Facility Agent (acting on the instructions of the Majority Lenders) giving notice to the Borrowers or (if earlier) any relevant Transaction Obligor becoming aware of the failure to comply.

26.5 Misrepresentation

Any representation or statement made or deemed to be made by a Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made and is not remedied within five Business Days of the Facility Agent (acting on the instructions of the Majority Lenders) giving notice to the Borrowers.

26.6 Cross default

- (a) Any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described) **Provided that** in the case of any Financial Indebtedness created under (i) any guarantee and indemnity of a Guarantor, a demand is

made by the relevant creditor(s) under such guarantee and indemnity or (ii) any guarantee and indemnity of a Guarantor securing the obligations of any Subsidiary, the guaranteed Financial Indebtedness of that Subsidiary is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of that Subsidiary's payment default and always provided that the relevant creditor has exercised any of its enforcement rights (the "**Action**") in connection with that payment default and, in the reasonable opinion of the Majority Lenders, that Action may adversely affect the ability of that Guarantor to comply with its obligations under Clause 15 (*Costs and Expenses*).

- (c) Any commitment for any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is cancelled or suspended by a creditor of any Transaction Obligor (other than an Approved Manager) as a result of an event of default (however described).
- (d) Any creditor of any Transaction Obligor (other than an Approved Manager) becomes entitled to declare any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) due and payable prior to its specified maturity as a result of an event of default (however described) **Provided that** in the case of any Financial Indebtedness created under any guarantee and indemnity of a Guarantor, a demand is made by the relevant creditor(s) under such guarantee and indemnity).
- (e) No Event of Default will occur under this Clause 26.6 (*Cross default*) in respect of a Borrower if the failure to comply is capable of remedy and is remedied within five Business Days of the Facility Agent (acting on the instructions of the Majority Lenders) giving notice to that Borrower or that Borrower becoming aware of the failure to comply with this Clause 26.6 (*Cross default*). In relation to a cross-default for a Guarantor, no Event of Default will occur under this Clause 26.6 (*Cross default*) if failure to comply is capable of remedy and is remedied within two weeks of the Facility Agent giving notice (acting on the instructions of the Majority Lenders) to that Guarantor or that Guarantor becoming aware of the failure to comply with this Clause 26.6 (*Cross default*).

26.7 Insolvency

- (a) A Transaction Obligor (other than an Approved Manager):
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is declared to be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or
 - (iv) obtains or receives a deferral or suspension of payments, a rescheduling or reorganisation of debt (or certain debt) or an arrangement with all or a substantial proportion (by number or value) of creditors or of any class of them in respect of such deferral, suspension, rescheduling or re-organisation, strictly by court order or by the filing of documents with a court.
- (b) A moratorium is officially declared (and, if applicable, registered with appropriate authorities) in respect of any indebtedness of any Transaction Obligor (other than an Approved Manager),

Provided however that should a Transaction Obligor (other than an Approved Manager), by any reason, including without limitation, any actual or anticipated financial difficulties, commence negotiations with one or more of its creditors (including any Finance Party in its capacity as such) with a view to rescheduling, deferring, re-organising or suspending, any of its indebtedness, the existence of such negotiations or the entry, as a result of such negotiations, into any agreement or contract with one or more creditors (including any Finance Party in its capacity as such) setting out the terms of any such rescheduling, deferral, reorganisation or suspension of its indebtedness, shall not in itself constitute an Event of Default.

26.8 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other similar legal procedure or similar legal step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation of any Transaction Obligor (other than an Approved Manager);
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor (other than an Approved Manager);
 - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Transaction Obligor (other than an Approved Manager) or any of its assets (other than an Approved Manager); or
 - (iv) enforcement of any Security over any assets of any Transaction Obligor (other than an Approved Manager),
- or any analogous similar legal procedure or similar legal step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

26.9 Creditors' process or Ship arrest

- (a) Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor and is not discharged within 21 days (or such later period agreed by the Facility Agent acting with the authorisation of the Majority Lenders in their absolute discretion) unless (i) the Borrowers provide evidence acceptable to the Facility Agent (acting on the instructions of the Majority Lenders in their absolute discretion) that that expropriation, attachment, sequestration, distress or execution or any analogous process is being contested in good faith on substantial grounds and (ii) the Majority Lenders, in its reasonable opinion, considers that the relevant Obligor has adequate reserves or the financial ability to satisfy any such claims.
- (b) In the case of an arrest or detention of any Ship, that Ship is not redelivered to the full control of the Borrower owning that Ship, on or before the date falling 21 days (or such later period agreed by the Facility Agent acting with the authorisation of the Majority Lenders in their absolute discretion) after the date of the arrest or detention.

26.10 Unlawfulness, invalidity and ranking

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation of a Transaction Obligor under the Finance Documents is not or ceases to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or to be continuing or is or purports to be determined or any Transaction Security is alleged by a party to it (other than a Finance Party) to be ineffective.

(d) Any Transaction Security proves to have ranked after, or loses its priority to, any other Security.

26.11 Security imperilled

Any Security created or intended to be created by a Finance Document is in any way imperilled or in jeopardy.

26.12 Cessation of business

Any Transaction Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

26.13 Expropriation

The authority or ability of a Transaction Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets other than:

- (a) an arrest or detention of any Ship referred to in Clause 26.9 (*Creditors' process or Ship arrest*); or
- (b) any Requisition.

26.14 Repudiation and rescission of agreements

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Transaction Document or any Transaction Security.

26.15 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened, or any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body is made, in relation to any of the Transaction Documents or the transactions contemplated in any of the Transaction Documents or against any member of the Group or its assets which has a Material Adverse Effect.

26.16 Material adverse change

Any event or circumstance occurs which has a Material Adverse Effect.

26.17 Senior Event of Default

Any Senior Event of Default occurs which is continuing.

26.18 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrowers:

- (a) cancel the Total Commitments, whereupon they shall immediately be cancelled;

- (b) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon it shall become immediately due and payable;
- (c) declare that all or part of the Loan be payable on demand, whereupon it shall immediately become payable on demand by the Facility Agent acting on the instructions of the Majority Lenders; and/or
- (d) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents, and the Facility Agent may serve notices under paragraphs (a), (b) and (c) above simultaneously or on different dates and the Security Agent may take any action referred to in Clause 26.19 (*Enforcement of security*) if no such notice is served or simultaneously with or at any time after the service of any of such notice.

26.19 Enforcement of security

On and at any time after the occurrence of an Event of Default which is continuing the Security Agent may, and shall if so directed by the Majority Lenders, take any action which, as a result of the Event of Default or any notice served under Clause 26.18 (*Acceleration*), the Security Agent is entitled to take under any Finance Document or any applicable law or regulation.

SECTION 9

CHANGES TO PARTIES

27 CHANGES TO THE LENDERS

27.1 Assignments and transfers by the Lenders

Subject to this Clause 27 (*Changes to the Lenders*), a Lender (the “**Existing Lender**”) may without the consent of any Obligor:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

under the Finance Documents to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets or, following the occurrence of an Event of Default which is continuing, to any other person (in each case, the “**New Lender**”).

27.2 Conditions of assignment or transfer

- (a) An assignment will only be effective on:
 - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Secured Parties as it would have been under if it were an Original Lender; and
 - (ii) performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.
- (b) Each Obligor on behalf of itself and each Transaction Obligor agrees that all rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender’s title and of any rights or equities which the Borrowers or any other Transaction Obligor had against the Existing Lender.
- (c) A transfer will only be effective if the procedure set out in Clause 27.5 (*Procedure for transfer*) is complied with.
- (d) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, a Transaction Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 11 (*Tax Gross Up and Indemnities*) or under that clause as incorporated by reference or in full in any other Finance Document or Clause 12 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender

acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (d) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.

- (e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

27.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of \$3,500.

27.4 Limitation of responsibility of Existing Lenders

(a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
- (ii) the financial condition of any Transaction Obligor;
- (iii) the performance and observance by any Transaction Obligor of its obligations under the Transaction Documents or any other documents; or
- (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,

and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender and the other Finance Parties and the Secured Parties that it:

- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
- (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its related entities throughout the Security Period.

(c) Nothing in any Finance Document obliges an Existing Lender to:

- (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 27 (*Changes to the Lenders*); or
- (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Transaction Obligor of its obligations under the Transaction Documents or otherwise.

27.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate.
- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied in its sole discretion that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 27.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security, each of the Transaction Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the **“Discharged Rights and Obligations”**);
 - (ii) each of the Transaction Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Transaction Obligor and the New Lender have assumed and/or acquired the same in place of that Transaction Obligor and the Existing Lender;
 - (iii) the Facility Agent, the Security Agent, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent and the Existing Lenders shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a **“Lender”**.

27.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied in its sole discretion that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

- (c) Subject to Clause 27.9 (*Pro rata interest settlement*), on the Transfer Date:
- (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 27.6 (*Procedure for assignment*) to assign their rights under the Finance Documents (but not, without the consent of the relevant Transaction Obligor or unless in accordance with Clause 27.5 (*Procedure for transfer*), to obtain a release by that Transaction Obligor from the obligations owed to that Transaction Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*).

27.7 Copy of Transfer Certificate or Assignment Agreement to Borrowers

The Facility Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrowers a copy of that Transfer Certificate or Assignment Agreement.

27.8 Security over Lenders’ rights

In addition to the other rights provided to Lenders under this Clause 27 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities, except that no such charge, assignment or Security shall:
 - (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by a Transaction Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

27.9 Pro rata interest settlement

- (a) If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a “*pro rata* basis” to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 27.5 (*Procedure for transfer*) or any assignment pursuant to Clause 27.6 (*Procedure for assignment*)) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
- (ii) The rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 27.9 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 27.9 (*Pro rata interest settlement*) references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 27.9 (*Pro rata interest settlement*) but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

28 CHANGES TO THE TRANSACTION OBLIGORS

28.1 Assignment or transfer by Transaction Obligors

No Transaction Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents, without the prior written consent of the Facility Agent (acting on the instructions of the Lenders).

28.2 Release of security

- (a) If a disposal of any asset subject to security created by a Security Document is made in the following circumstances:
 - (i) the disposal is permitted by the terms of any Finance Document;
 - (ii) all the Lenders agree to the disposal;
 - (iii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or
 - (iv) the disposal is being effected by enforcement of a Security Document,the Security Agent may (acting on the instructions of the Facility Agent acting on the instructions of the Lenders) release the asset(s) being disposed of from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).
- (b) If the Security Agent (acting on the instructions of the Facility Agent acting on the instructions of the Lenders) is satisfied that a release is allowed under this Clause 28.2 (*Release of security*)

(at the request and expense of the Borrowers) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Transaction Obligor under the Finance Documents.

THE FINANCE PARTIES

29 THE FACILITY AGENT

29.1 Appointment of the Facility Agent

- (a) Each of the Lenders appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Lenders authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

29.2 Instructions

- (a) The Facility Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) (A) in accordance with sub-paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties) or (B) in its capacity as Facility Agent under the Transaction Documents (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct).
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Without prejudice to paragraph (a)(ii) above, paragraph (a)(i) above shall not apply in respect of any provision which protects the Facility Agent's own position in its personal capacity as opposed to its role of Facility Agent for the relevant Finance Parties.
- (e) The Facility Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in

the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

- (f) Without prejudice to the remainder of this Clause 29.2 (*Instructions*), in the absence of instructions, the Facility Agent shall not be obliged to take any action (or refrain from taking action) even if it considers acting or not acting to be in the best interests of the Finance Parties.
- (g) The Facility Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document.

29.3 Duties of the Facility Agent

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document or notice which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to Clause 27.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Notwithstanding anything set out in any Transaction Document, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Facility Agent receives notice from a Party referring to any Finance Document, describing a circumstance and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties but shall not have any duty to verify whether the circumstance described has actually occurred or whether it constitutes a Default.
- (f) If the Facility Agent is aware of the non-payment of any principal, interest or any fee payable to a Finance Party under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Facility Agent shall provide to the Borrowers within 5 Business Days of a request by the Borrowers (but no more frequently than once per calendar quarter), a list (which may be in electronic form) setting out the names of the Lenders as at that Business Day, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Facility Agent to that Lender under the Finance Documents.
- (h) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

29.4 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Facility Agent as a trustee or fiduciary of any other person.
- (b) The Facility Agent shall not be bound to account to other Finance Party for any sum or the profit element of any sum received by it for its own account.

29.5 Application of receipts

Except as expressly stated to the contrary in any Finance Document, any moneys which the Facility Agent receives or recovers in its capacity as Facility Agent shall be applied by the Facility Agent in accordance with Clause 33.5 (*Application of receipts; partial payments*).

29.6 Business with the Group

The Facility Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

29.7 Rights and discretions

- (a) The Facility Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 26.2 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iii) any notice or request made by any Borrower (other than the Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.

- (c) The Facility Agent may engage (at the Borrowers' expense) the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage (at the Borrowers' expense) the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Without prejudice to Clause 29.4 (*No fiduciary duties*), the Facility Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

29.8 Responsibility for documentation

The Facility Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or

- (c) any determination as to whether any information provided or to be provided to any Finance Party or Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

29.9 No duty to monitor

The Facility Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

29.10 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to paragraph (e) of Clause 33.11 (*Disruption to Payment Systems etc.*) or any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or any other category of liability whatsoever) arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Facility Agent may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party, on behalf of any Finance Party and each Finance Party confirms to the Facility Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent’s liability, any liability of the Facility Agent arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

29.11 Lenders’ indemnity to the Facility Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent’s gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 33.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent’s negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.

29.12 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.

- (b) Alternatively, the Facility Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent may appoint a successor Facility Agent.
- (d) The retiring Facility Agent shall, at the Borrowers' cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrowers shall indemnify the retiring Facility Agent prior to it being required to undertake any actions referred to in this sub-paragraph for the amount of all costs and expenses (including legal fees) to be properly incurred by it in making available such documents and records and providing such assistance.
- (e) All Parties shall consult, co-operate and use commercially reasonable endeavours to appoint a successor Facility Agent and the retiring Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (d) above) but shall remain entitled to the benefit of Clause 13.4 (*Indemnity to the Facility Agent*) and this Clause 29 (*The Facility Agent*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Facility Agent. Any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Lenders pro-rata to their Commitments.
- (h) The consent of any Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Facility Agent.
- (i) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
 - (i) the Facility Agent fails to respond to a request under Clause 11.7 (*FATCA Information*) and a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Facility Agent pursuant to Clause 11.7 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Facility Agent notifies the Borrowers and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

29.13 Confidentiality

- (a) In acting as Facility Agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Facility Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Facility Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Without prejudice to Clause 29.4 (*No fiduciary duties*) and notwithstanding any other provision of any Finance Document to the contrary, the Facility Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

29.14 Relationship with the other Finance Parties

- (a) Subject to Clause 27.9 (*Pro rata interest settlement*), the Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office.
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,unless it has received not less than five Business Days' prior written notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Each Finance Party shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Finance Party shall deal with the Security Agent exclusively through the Facility Agent and shall not deal directly with the Security Agent and any reference to any instructions being given by or sought from any Finance Party or group of Finance Parties to or by the Security Agent in this Agreement must be given or sought through the Facility Agent.
- (c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 36.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 36.2 (*Addresses*) and sub-paragraph (ii) of paragraph (a) of Clause 36.5 (*Electronic communication*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

29.15 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Facility Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Facility Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

29.16 Facility Agent's management time

Any amount payable to the Facility Agent under Clause 13.4 (*Indemnity to the Facility Agent*), Clause 15 (*Costs and Expenses*) and Clause 29.11 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Facility Agent under Clause 10 (*Fees*).

29.17 Deduction from amounts payable by the Facility Agent

If any Party owes an amount to the Facility Agent under the Finance Documents, the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

29.18 Reliance and engagement letters

Each Secured Party confirms that the Facility Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Facility Agent) the terms of any reliance letter or engagement letters or any reports or letters

provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

29.19 Full freedom to enter into transactions

Without prejudice to Clause 29.6 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Facility Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
 - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
 - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to any Borrower or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Facility Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

29.20 Majority Lenders' Instructions

- (a) Notwithstanding anything to the contrary contained in the Transaction Documents, the Parties acknowledge that where any provision in a Transaction Document refers to the Facility Agent being obliged to or entitled to take any specified action, exercise any discretion, make any determination, give any consent or waiver, or act in a certain way in connection with the transactions contemplated by the Transaction Documents, it shall or may (as the case may be) take such specified action, exercise such discretion, make such determination, give any consent in accordance with the instructions or directions of the Majority Lenders or all Lenders, as the case may be) and in doing so shall be deemed to have acted reasonably.
- (b) Any instructions given by the Majority Lenders or the Lenders shall be in writing and any instructions by the Majority Lenders on matters which do not require the consent or instructions of all the Lenders as specified in this Agreement shall be binding on all the Lenders.
- (c) The Facility Agent may refrain from acting in accordance with the instructions of the Majority Lenders or the Lenders (as the case may be) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

- (d) The Facility Agent is not authorised to act on behalf of a Finance Party (without first obtaining the relevant Finance Party's consent) in any legal or arbitration proceedings relating to any Transaction Document.

30 THE SECURITY AGENT

30.1 Trust

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 30 (*The Security Agent*) and the other provisions of the Finance Documents.
- (b) Each other Finance Party authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

30.2 Parallel Debt (Covenant to pay the Security Agent)

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of an Obligor:
 - (i) shall become due and payable at the same time as its Corresponding Debt;
 - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For the purposes of this Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent:
 - (i) is the independent and separate creditor of each Parallel Debt;
 - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
 - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).
- (d) The Parallel Debt of an Obligor shall be:
 - (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Corresponding Debt has increased,
and the Corresponding Debt of an Obligor shall be:
 - (A) decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged; and
 - (B) increased to the extent that its Parallel Debt has increased,

in each case provided that the Parallel Debt of an Obligor shall never exceed its Corresponding Debt.

- (e) All amounts received or recovered by the Security Agent in connection with this Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 33.5 (*Application of receipts; partial payments*).
- (f) This Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) shall apply, with any necessary modifications, to each Finance Document.

30.3 Enforcement through Security Agent only

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

30.4 Instructions

- (a) The Security Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by:
 - (A) all Lenders (or the Facility Agent on their behalf) if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders (or the Facility Agent on their behalf); and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) (A) in accordance with sub-paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties) or (B) in its capacity as Security Agent under the Transaction Documents (otherwise than by reason of the Security Agent's gross negligence or wilful misconduct).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or the Facility Agent on their behalf) (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Facility Agent (acting on the instructions of the Majority Lenders) shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Without prejudice to paragraph (a)(ii) above, paragraph (a)(i) shall not apply:
 - (i) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Secured Parties.

- (ii) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 30.28 (*Application of receipts*);
 - (B) Clause 30.29 (*Permitted Deductions*); and
 - (C) Clause 30.30 (*Prospective liabilities*).
- (e) The Security Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (f) Without prejudice to the remainder of this Clause 30.4 (*Instructions*), in the absence of instructions, the Security Agent may (but shall not be obliged to) take such action in the exercise of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.
- (g) The Security Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (g) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

30.5 Duties of the Security Agent

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a circumstance and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties but shall not have any duty to verify whether the circumstances described has actually occurred or whether it constitutes a Default.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

30.6 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor or any other person.
- (b) The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

30.7 Business with the Group

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

30.8 Rights and discretions

- (a) The Security Agent may:
- (i) rely on any representation, communication, notice or document believed by it (by performing any necessary due diligence checks) to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the other Finance Parties through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to any Finance Party.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Secured Parties) that:
- (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iii) any notice or request made by any Borrower (other than the Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (d) The Security Agent may engage (at the Borrowers' cost) the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (c) above or paragraph (f) below, the Security Agent may at any time engage (at the Borrowers' cost) the services of any lawyers

to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Facility Agent or the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.

- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Security Agent's gross negligence or wilful misconduct.
- (h) Unless a Finance Document expressly provides otherwise the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under the Finance Documents.
- (i) Without prejudice to Clause 30.6 (*No fiduciary duties*) and notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

30.9 Responsibility for documentation

None of the Security Agent, any Receiver or Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

30.10 No duty to monitor

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

30.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate), none of the Security Agent nor any Receiver or Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or any other category of liability whatsoever) arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Security Agent, that Receiver or that Delegate (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party, on behalf of any Finance Party and each Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate, any liability of the Security Agent or any Receiver or Delegate arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

30.12 Lenders’ indemnity to the Security Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the Security Agent’s, Receiver’s or Delegate’s gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Finance Documents (unless the Security Agent, Receiver or Delegate has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall within three Business Days of demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.

30.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Security Agent may resign by giving 30 days’ notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Security Agent.

- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, at the Borrowers' cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrowers shall indemnify the retiring Security Agent prior to it being required to undertake any actions referred to in this sub-paragraph for the amount of all costs and expenses (including legal fees) to be properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer, by way of a document expressed as a deed, of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged, by way of a document executed as a deed, from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 30.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of Clause 13.5 (*Indemnity to the Security Agent*) and this Clause 30 (*The Security Agent*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Security Agent. Any fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Lenders pro-rata to their Commitments.
- (h) The consent of the Borrowers (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Agent.

30.14 Confidentiality

- (a) In acting as Security Agent for the Finance Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Security Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Security Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Without prejudice to Clause 30.6 (*No fiduciary duties*) and notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

30.15 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

30.16 Security Agent's management time

- (a) Any amount payable to the Security Agent under Clause 13.5 (*Indemnity to the Security Agent*), Clause 15 (*Costs and Expenses*) and Clause 30.12 (*Lenders' indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Security Agent under Clause 10 (*Fees*).
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default;
 - (ii) the Security Agent being requested by a Transaction Obligor or the Majority Lenders to undertake duties which the Security Agent and the Borrowers agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
 - (iii) the Security Agent and the Borrowers agreeing that it is otherwise appropriate in the circumstances,the Borrowers shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Security Agent and the Borrowers fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrowers or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrowers) and the determination of any investment bank shall be final and binding upon the Parties.

30.17 Reliance and engagement letters

Each Secured Party confirms that the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Security Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

30.18 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Transaction Obligor to any of the Security Assets;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Transaction Obligor to take, any step to perfect its title to any of the Security Assets or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

30.19 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Security Assets;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.
- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind.

30.20 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

30.21 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of any such delegate or sub delegate.

30.22 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties; or
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the Borrowers and the Finance Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

30.23 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Transaction Obligor may have to any of the Security Assets and shall not be liable for or bound to require any Transaction Obligor to remedy any defect in its right or title.

30.24 Releases

Upon a disposal of any of the Security Assets pursuant to the enforcement of the Transaction Security by a Receiver, a Delegate or the Security Agent, the Security Agent is irrevocably authorised (at the cost of the Obligors and without any consent, sanction, authority or further confirmation from any other Secured Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

30.25 Winding up of trust

If the Security Agent, with the approval of the Facility Agent (acting on the instructions of the Majority Lenders) determines (acting on the instructions of the Majority Lenders) that:

- (a) all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and
 - (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Transaction Obligor pursuant to the Finance Documents,
- then
- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
 - (ii) any Security Agent which has resigned pursuant to Clause 30.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

30.26 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

30.27 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement and the other Finance Documents. Where there are any inconsistencies between (i) the Trustee Acts 1925 and 2000 and (ii) the provisions of this Agreement and any other Finance Document, the provisions of this Agreement and any other Finance Document shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement and any other Finance Document shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

30.28 Application of receipts

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document, under Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or in connection with the realisation or enforcement of all or any part of

the Security Property (for the purposes of this Clause 30 (*The Security Agent*), the “**Recoveries**”) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the remaining provisions of this Clause 30 (*The Security Agent*)), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) other than pursuant to Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or any Receiver or Delegate;
- (b) in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Secured Parties, for application towards the discharge of all sums due and payable by any Transaction Obligor under any of the Finance Documents in accordance with Clause 33.5 (*Application of receipts; partial payments*);
- (c) if none of the Transaction Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Transaction Obligor; and
- (d) the balance, if any, in payment or distribution to the relevant Transaction Obligor.

30.29 Permitted Deductions

The Security Agent may, in its discretion:

- (a) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
- (b) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

30.30 Prospective liabilities

Following enforcement of any of the Transaction Security, the Security Agent may, in its discretion, or at the request of the Facility Agent, hold any Recoveries in a suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit for later payment to the Facility Agent for application in accordance with Clause 30.28 (*Application of receipts*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent or, in the case of paragraph (b) only, the Facility Agent, reasonably considers, in each case, might become due or owing at any time in the future.

30.31 Currency conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

30.32 Good discharge

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Facility Agent on behalf of the Secured Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Facility Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

30.33 Amounts received by Obligors

If any of the Obligors receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, that Obligor will hold the amount received or recovered on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement.

30.34 Full freedom to enter into transactions

Without prejudice to Clause 30.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Security Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
 - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
 - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrowers or any person who is a party to, or referred to in, a Finance Document,

and, in particular, the Security Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

30.35 Majority Lenders' Instructions

- (a) Notwithstanding anything to the contrary contained in the Transaction Documents, the Parties acknowledge that where any provision in Transaction Document refers to the Security Agent being obliged to or entitled to take any specified action, exercise any discretion, make any determination, give any consent or waiver, or act in a certain way in connection with the transactions contemplated by the Transaction Documents, it shall or may (as the case may be) take such specified action, exercise such discretion, make such determination, give any consent in accordance with the instructions or directions of the Facility Agent (acting on the instructions of the Majority Lenders or all Lenders, as the case may be) and in doing so shall be deemed to have acted reasonably.
- (b) Any instructions given by the Majority Lenders shall be in writing and be binding on all the Lenders.
- (c) The Security Agent may refrain from acting in accordance with the instructions of the Facility Agent until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Facility Agent, the Security Agent shall not be obliged to take any action.

The Security Agent is not authorised to act on behalf of a Finance Party (without first obtaining the relevant Finance Party's consent) in any legal or arbitration proceedings relating to any Security Document. Subject to the terms of the Transaction Documents, this paragraph (d) shall not apply to any legal or arbitration proceedings relating to the perfection preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or any Security Documents.

31 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

32 SHARING AMONG THE FINANCE PARTIES

32.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from a Transaction Obligor other than in accordance with Clause 33 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due to it under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 33 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and

- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the **“Sharing Payment”**) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 33.5 (*Application of receipts; partial payments*).

32.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Transaction Obligor and distribute it among the Finance Parties (other than the Recovering Finance Party) (the **“Sharing Finance Parties”**) in accordance with Clause 33.5 (*Application of receipts; partial payments*) towards the obligations of that Transaction Obligor to the Sharing Finance Parties.

32.3 Recovering Finance Party’s rights

On a distribution by the Facility Agent under Clause 32.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from a Transaction Obligor, as between the relevant Transaction Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Transaction Obligor.

32.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the **“Redistributed Amount”**); and
- (b) as between the relevant Transaction Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Transaction Obligor.

32.5 Exceptions

- (a) This Clause 32 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Transaction Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
- (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

ADMINISTRATION

33 PAYMENT MECHANICS**33.1 Payments to the Facility Agent**

- (a) On each date on which a Transaction Obligor or a Lender is required to make a payment under a Finance Document, that Transaction Obligor or Lender shall make an amount equal to such payment available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date no later than 2:00 p.m. (New York time) and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account and with such bank as the Facility Agent, in each case, specifies.

33.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 33.3 (*Distributions to a Transaction Obligor*) and Clause 33.4 (*Clawback and pre-funding*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five Business Days' notice with a bank specified by that Party or, in the case of the Loan, to such account of such person as may be specified by the Borrowers in a Utilisation Request.

33.3 Distributions to a Transaction Obligor

The Facility Agent may (with the consent of the Transaction Obligor or in accordance with Clause 34 (*Set-Off*)) apply any amount received by it for that Transaction Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Transaction Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

33.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

33.5 Application of receipts; partial payments

- (a) If the Facility Agent or the Security Agent (as applicable) receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction Obligor under the Finance Documents, the Facility Agent or the Security Agent (as applicable) shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order (in addition to any relevant provisions in the Security Documents):

- (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of, and any other amounts owing to, the Facility Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any accrued interest and fees due but unpaid to the Lenders under this Agreement;
 - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid to the Lenders under this Agreement; and
 - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary, or instruct the Security Agent to vary (as applicable) the order set out in sub-paragraphs (ii) to (iv) of paragraph (a) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by a Transaction Obligor.

33.6 No set-off by Transaction Obligors

All payments to be made by a Transaction Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

33.7 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

33.8 Currency of account

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from a Transaction Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

33.9 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (acting on the instructions of the Majority Lenders) (after consultation with the Borrowers); and

- (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting on the instructions of the Majority Lenders).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting on the instructions of the Majority Lenders and after consultation with the Borrowers) specifies (acting on the instructions of the Majority Lenders) to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

33.10 Currency Conversion

- (a) For the purpose of, or pending any payment to be made by any Servicing Party under any Finance Document, such Servicing Party may convert any moneys received or recovered by it from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

33.11 Disruption to Payment Systems etc.

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by a Borrower that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by a Borrower, consult with the Borrower with a view to agreeing with the Borrowers such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Borrowers in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Borrowers shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties and any Transaction Obligors as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 42 (*Amendments and Waivers*);
- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 33.11 (*Disruption to Payment Systems etc.*); and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

34 SET-OFF

A Finance Party may set off any matured obligation due from a Transaction Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Transaction Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

35 BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each Party acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

36 NOTICES

36.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

36.2 Addresses

The address, email address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents are:

- (a) in the case of the Borrowers, those specified in Schedule 1 (*The Parties*);
- (b) in the case of each Lender or any other Obligor, that specified in Schedule 1 (*The Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or before the date on which it becomes a Party;
- (c) in the case of the Facility Agent, that specified in Schedule 1 (*The Parties*); and
- (d) in the case of the Security Agent, that specified in Schedule 1 (*The Parties*),

or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

36.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
- (i) if by way of fax, when received in legible form;
 - (ii) if by way of email, when such message is received; or
 - (iii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,
- and, if a particular department or officer is specified as part of its address details provided under Clause 36.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to a Servicing Party will be effective only when actually received by that Servicing Party and then only if it is expressly marked for the attention of the department or officer of that Servicing Party specified in Schedule 1 (*The Parties*) (or any substitute department or officer as that Servicing Party shall specify for this purpose).
- (c) All notices from or to a Transaction Obligor shall be sent through the Facility Agent unless otherwise specified in any Finance Document.
- (d) Any communication or document made or delivered to the Borrowers in accordance with this Clause will be deemed to have been made or delivered to each of the Transaction Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

36.4 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 36.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

36.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable

form and in the case of any electronic communication made by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the Security Agent shall specify for this purpose.

- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5.00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 36.5 (*Electronic communication*).

36.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Facility Agent (acting on the instructions of the Majority Lenders), accompanied by a certified English translation prepared by a translator approved by the Facility Agent (acting on the instructions of the Majority Lenders) and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

37 CALCULATIONS AND CERTIFICATES

37.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

37.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

37.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

38 PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

39 REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

40 SETTLEMENT OR DISCHARGE CONDITIONAL

Any settlement or discharge under any Finance Document between any Finance Party and any Transaction Obligor shall be conditional upon no security or payment to any Finance Party by any Transaction Obligor or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.

41 IRREVOCABLE PAYMENT

If the Facility Agent considers that an amount paid or discharged by, or on behalf of, a Transaction Obligor or by any other person in purported payment or discharge of an obligation of that Transaction Obligor to a Secured Party under the Finance Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Transaction Obligor or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Finance Documents.

42 AMENDMENTS AND WAIVERS

42.1 Required consents

- (a) Subject to Clause 42.2 (*All Lender matters*) and Clause 42.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and, in the case of an amendment, the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 42 (*Amendments and Waivers*).
- (c) Without prejudice to the generality of Clause 29.7 (*Rights and discretions*), the Facility Agent may at the Borrowers' cost, engage and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Paragraph (c) of Clause 27.9 (*Pro rata interest settlement*) shall apply to this Clause 42 (*Amendments and Waivers*).

42.2 All Lender matters

An amendment of or waiver or consent in relation to any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) a postponement to or extension of the date of payment of any amount under the Finance Documents;

- (c) a reduction in the rate of interest or the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
- (f) a change to any Transaction Obligor other than in accordance with Clause 28 (*Changes to the Transaction Obligors*);
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) this Clause 42 (*Amendments and Waivers*);
- (i) any change to the preamble (Background), Clause 2 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Utilisation*), Clause 7.4 (*Mandatory prepayment on sale or Total Loss*), Clause 8 (*Interest*), Clause 25 (*Accounts and Applications of Earnings*), Clause 27 (*Changes to the Lenders*), Clause 32 (*Sharing among the Finance Parties*), Clause 45 (*Governing Law*) or Clause 46 (*Enforcement*);
- (j) unless otherwise specified in the relevant Finance Document, any release of, or material variation to, any Transaction Security, guarantee, indemnity or subordination arrangement set out in a Finance Document (except in the case of a release of Transaction Security as it relates to the disposal of an asset which is the subject of the Transaction Security and where such disposal is expressly permitted by the Majority Lenders or otherwise under a Finance Document);
- (k) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (i) the guarantee and indemnity granted under Clause 16 (*Guarantee and Indemnity*);
 - (ii) the Security Assets; or
 - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed,(except in the case of sub-paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- (l) the release of the guarantee and indemnity granted under Clause 16 (*Guarantee and Indemnity*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document, shall not be made, or given, without the prior consent of all the Lenders.

42.3 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of a Servicing Party (each in their capacity as such) may not be effected without the consent of that Servicing Party, as the case may be.

- (b) The Borrowers and the Facility Agent or the Security Agent, as applicable, may amend or waive a term of a Fee Letter to which they are party.

42.4 Obligor Intent

Without prejudice to the generality of Clauses 1.2 (*Construction*) and 16.4 (*Waiver of defences*), each Obligor expressly confirms that it intends that any guarantee contained in this Agreement or any other Finance Document and any Security created by any Finance Document shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

43 CONFIDENTIAL INFORMATION

43.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 43.2 (*Disclosure of Confidential Information*) and Clause 43.3 (*Disclosure to numbering service providers*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

43.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to receive communications, notices, information or

documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 29.14 (*Relationship with the other Finance Parties*));

- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraph (i) or (ii) of paragraph (b) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 27.8 (*Security over Lenders' rights*);
- (viii) who is a Party, a member of the Group or any related entity of a Transaction Obligor;
- (ix) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
- (x) with the consent of the Borrowers;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to sub-paragraphs (i), (ii) and (iii) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to sub-paragraph (iv) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (C) in relation to sub-paragraphs (v), (vi) and (vii) of paragraph (b) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information

as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered in to a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrowers and the relevant Finance Party; and

- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Transaction Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

43.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Transaction Obligors the following information:
- (i) names of Transaction Obligors;
 - (ii) country of domicile of Transaction Obligors;
 - (iii) place of incorporation or formation of Transaction Obligors;
 - (iv) date of this Agreement;
 - (v) Clause 45 (*Governing Law*);
 - (vi) the name of the Facility Agent;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amount of Total Commitments;
 - (ix) currency of the Facility;
 - (x) type of Facility;
 - (xi) ranking of Facility;
 - (xii) Termination Date for Facility;
 - (xiii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xii) above; and
 - (xiv) such other information agreed between such Finance Party and the Obligors,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Transaction Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

- (c) Each Obligor represents, on behalf of itself and the other Transaction Obligors, that none of the information set out in sub-paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.

43.4 Entire agreement

This Clause 43 (*Confidential Information*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

43.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

43.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrowers:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (v) of paragraph (b) of Clause 43.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 43 (*Confidential Information*).

43.7 Continuing obligations

The obligations in this Clause 43 (*Confidential Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

44 COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

GOVERNING LAW AND ENFORCEMENT

45 GOVERNING LAW

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

46 ENFORCEMENT

46.1 Jurisdiction

- (a) Unless specifically provided in another Finance Document in relation to that Finance Document, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute regarding the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a “Dispute”).
- (b) The Obligors accept that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Obligor will argue to the contrary.
- (c) This Clause 46.1 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

46.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated or formed in England and Wales):
 - (i) irrevocably appoints Saville & Co. at its registered office for the time being, presently at One Carey Lane, London EC2V 8AE, England, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrowers (on behalf of all the Obligors) must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Facility Agent (acting on the instructions of the Majority Lenders). Failing this, the Facility Agent may appoint another agent for this purpose.

47 PATRIOT ACT NOTICE

47.1 PATRIOT Act Notice

Each of the Facility Agent and the Lenders hereby notifies the Borrowers that pursuant to the requirements of the PATRIOT Act and the policies and practices of the Facility Agent and each Lender, the Facility Agent and each of the Lenders is required to obtain, verify and record certain information and documentation that identifies each Transaction Obligor, which information includes the name and address of each Transaction Obligor and such other information that will allow the Facility Agent and each of the Lenders to identify each Transaction Obligor in accordance with the PATRIOT Act.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1**THE PARTIES****PART A****THE OBLIGORS**

Name of Borrower	Place of Formation	Registration number (or equivalent, if any)	Address for Communication
Philippos Marine LLC	Marshall Islands	961953	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
Aristoteles Marine LLC	Marshall Islands	962290	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
Menelaos Marine LLC	Marshall Islands	962291	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
Name of Guarantor	Place of Formation	Registration number (or equivalent, if any)	Address for Communication
Triton Containers Holdings LLC	Marshall Islands	962285	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
Poseidon Containers Holdings LLC	Marshall Islands	961853	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224

PART B

THE ORIGINAL LENDERS

Name of Original Lender	Commitment	Address for Communication
Blue Ocean Income Fund LP	\$12,416,949	Blue Ocean Income Fund LP c/o EnTrustPermal Partners Offshore LP 375 Park Avenue New York, NY 10152 Facsimile: +1 212 888 0751 Email: sengh@entrustpermal.com /odonnerstein@entrustpermal.com/ bkahne@entrustpermal.com Attention: Svein Engh / Omer Donnerstein / Bruce Kahne
Blue Ocean Onshore Fund LP	\$5,139,051	Blue Ocean Onshore Fund LP c/o EnTrust Partners LLC 375 Park Avenue New York, NY 10152 Facsimile: +1 212 888 0751 Email: sengh@entrustpermal.com /odonnerstein@entrustpermal.com/ bkahne@entrustpermal.com Attention: Svein Engh / Omer Donnerstein / Bruce Kahne
Blue Ocean Investments SPC One	\$2,464,000	Blue Ocean Investments SPC One c/o EnTrust Partners LLC 375 Park Avenue New York, NY 10152 Facsimile:+1212 888 0751 Email: sengh@entrustpermal.com /odonnerstein@entrustpermal.com/ bkahne@entrustpermal.com Attention: Svein Engh / Omer Donnerstein / Bruce Kahne
Blue Ocean Investments SPC Three	\$18,480,000	Blue Ocean Investments SPC Three c/o EnTrust Partners LLC 375 Park Avenue New York, NY 10152 Facsimile: +1 212 888 0751 Email: sengh@entrustpermal.com /odonnerstein@entrustpermal.com/ bkahne@entrustpermal.com Attention: Svein Engh / Omer Donnerstein / Bruce Kahne

PART C

THE SERVICING PARTIES

Name of Facility Agent

Wilmington Trust, National Association

Address for Communication

1100 North Market Street,
Wilmington, DE 19890

Attn: Jennifer Anderson

Fax: 302-636-4145

Name of Security Agent

Wilmington Trust, National Association

Address for Communication

1100 North Market Street,
Wilmington, DE 19890

Attn: Jennifer Anderson

Fax: 302-636-4145

SCHEDULE 2

CONDITIONS PRECEDENT

PART A

CONDITIONS PRECEDENT TO UTILISATION REQUEST

1 Obligors

- 1.1 A copy of the constitutional documents of each Transaction Obligor.
- 1.2 A copy of a resolution of the members, managers or directors, as applicable of each Transaction Obligor:
 - (a) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (b) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, the Utilisation Request) to be signed and/or despatched by it under, or in connection with, the Finance Documents to which it is a party.
- 1.3 An original of the power of attorney of any Transaction Obligor authorising a specified person or persons to execute the Finance Documents to which it is a party.
- 1.4 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above.
- 1.5 A copy of a resolution signed by the relevant Shareholder as the holder of the limited liability company interests in the relevant Borrower, approving the terms of, and the transactions contemplated by, the Finance Documents to which each Borrower is a party.
- 1.6 A certificate of each Transaction Obligor that is incorporated outside the UK (signed by a director or officer, as applicable) certifying either that (i) it has not delivered particulars of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or (ii) it has a UK Establishment and specifying the name and registered number under which it is registered with the Registrar of Companies.
- 1.7 A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document relating to it specified in this Part A of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2 Finance Documents

- 2.1 A duly executed original of the Subordination Agreement (if applicable) and copies of each Subordinated Finance Document (if applicable).
- 2.2 A duly executed original of any Finance Document not otherwise referred to in this Schedule 2 (*Conditions Precedent*).
- 2.3 A duly executed original of any other document required to be delivered by each Finance Document if not otherwise referred to this Schedule 2 (*Conditions Precedent*).
- 2.4 A duly executed original of the Letter of Ownership.

3 Security

- 3.1 A duly executed original of each Accounts Security and of each Shares Security (and of each document to be delivered under each of them).

4 Legal opinions

- 4.1 A legal opinion of Watson Farley & Williams, legal advisers to the Facility Agent and the Security Agent in England, substantially in the form distributed to the Original Lenders before signing this Agreement.
- 4.2 If a Transaction Obligor is incorporated or formed in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Facility Agent and the Security Agent in the relevant jurisdiction, substantially in the form distributed to the Original Lenders before signing this Agreement.

5 Other documents and evidence

- 5.1 Evidence that any process agent referred to in Clause 46.2 (*Service of process*), if not an Obligor, has accepted its appointment.
- 5.2 A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent considers (acting on the instructions of the Majority Lenders) to be necessary or desirable (if it has notified the Borrowers accordingly) in connection with the entry into and performance of the transactions contemplated by any Transaction Document or for the validity and enforceability of any Transaction Document.
- 5.3 The Original Financial Statements of the Borrowers and the Guarantors.
- 5.4 The original of any mandates or other documents required in connection with the opening or operation of the Earnings Accounts.
- 5.5 Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 10 (*Fees*) and Clause 15 (*Costs and Expenses*) have been paid or will be paid on or before the Utilisation Date.
- 5.6 Such evidence as may be required for the Finance Parties to be able to satisfy each of their “know your customer” or similar identification procedures in relation to the transactions contemplated by the Finance Documents.
- 5.7 A duly executed copy of the Senior Facility Agreement.

CONDITIONS PRECEDENT TO UTILISATION

1 Borrowers

A certificate of an authorised signatory of the Borrowers certifying that each copy document which it is required to provide under this Part B Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at the Utilisation Date.

2 Release of Existing Security

Documentary evidence that the Existing Indebtedness has been duly paid or will be paid in full at the time of disbursement of the Loan and an executed original of the Deed of Release (and of each document to be delivered under or pursuant to it), in respect of the Existing Security together with evidence satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) of its due execution by the parties to it.

3 Ship and other security

- 3.1 A duly executed original of each Mortgage, each General Assignment and any Charter Assignment and of each document to be delivered under or pursuant to each of them together with documentary evidence that each Mortgage has been duly registered or recorded (as applicable) as a valid second preferred or priority (as applicable) ship mortgage in accordance with the laws of the jurisdiction of the Approved Flag.
- 3.2 Documentary evidence that each Ship:
- (a) is definitively and permanently registered in the name of the relevant Borrower under the Approved Flag.
 - (b) is in the absolute and unencumbered ownership of the relevant Borrower save as contemplated by the Finance Documents and the Senior Finance Documents;
 - (c) maintains the Approved Classification with the Approved Classification Society free of all overdue recommendations and conditions of the Approved Classification Society; and
 - (d) is insured in accordance with the provisions of this Agreement and all requirements in this Agreement in respect of insurances have been complied with.
- 3.3 Documents establishing that each Ship will, as from the Utilisation Date, be managed commercially by the Approved Commercial Manager and managed technically by the Approved Technical Manager on terms acceptable to the Facility Agent acting with the authorisation of all of the Lenders, together with:
- (a) a Manager's Undertaking for each of the Approved Technical Manager and the Approved Commercial Manager; and
 - (b) copies of the Approved Technical Manager's Document of Compliance and of each Ship's Safety Management Certificate (together with any other details of the applicable Safety Management System which the Facility Agent requires (acting on the instructions of the Majority Lenders)) and of any other documents required under the ISM Code and the ISPS Code in relation to that Ship including without limitation an ISSC.
- 3.4 An opinion from an independent insurance consultant acceptable to the Facility Agent on (acting on the instructions of the Majority Lenders) on such matters relating to the Insurances as the Facility Agent may require (acting on the instructions of the Majority Lenders).

4 Legal opinions

Legal opinions of the legal advisers to the Facility Agent and the Security Agent in the jurisdiction of the Approved Flag of the Ships, Marshall Islands and such other relevant jurisdictions as the Facility Agent may require (acting on the instructions of the Majority Lenders).

5 Other documents and evidence

- 5.1 Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 10 (*Fees*) and Clause 15 (*Costs and Expenses*) have been paid or will be paid by the Utilisation Date.
- 5.2 Evidence that a minimum credit balance of \$350,000 is standing to the credit of each Earnings Account.

SCHEDULE 3

REQUESTS

PART A

UTILISATION REQUEST

From: Philippos Marine LLC, Aristoteles Marine LLC and Menelaos Marine LLC

To: Wilmington Trust, National Association

Dated: [●] 2018

Dear Sirs

Philippos Marine LLC, Aristoteles Marine LLC and Menelaos Marine LLC - \$38,500,000 Facility Agreement dated [●] September 2018 (the "Agreement")

- 1 We refer to the Agreement. This is the Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2 We wish to borrow the Loan on the following terms:

Proposed Utilisation Date:	[●] (or, if that is not a Business Day, the next Business Day)
Amount:	[●] or, if less, the Available Facility
Interest Period for the Loan:	[●]
- 1 [You are authorised and requested to deduct from the Loan prior to funds being remitted the following amounts set out against the following items:

Fees payable on the Utilisation date pursuant to Clause 10 (Fees)	\$[●]
Net proceeds of Loan	\$[[●]]
- 3 [We request that funds are prepositioned with [include details of relevant bank] in accordance with Clause 5.8 (*Prepositioning of funds*).]
- 4 We hereby agree and acknowledge that the Facility Agent shall make payments strictly on the basis of the information set forth in this Utilisation Request hereto even if such information is incorrect. In the event that any of such information is incorrect, we agree that the Facility Agent shall not have any liability with respect thereto.
- 5 We confirm that each condition specified in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*) of the Agreement as they relate to the Loan is satisfied on the date of this Utilisation Request.
- 6 The net proceeds of the Loan should be credited to [●].
- 7 This Utilisation Request is irrevocable.

Yours faithfully

[•]
authorised signatory for
PHILIPPOS MARINE LLC
ARISTOTELES MARINE LLC
MENELAOS MARINE LLC

SCHEDULE 4

FORM OF TRANSFER CERTIFICATE

To: **WILMINGTON TRUST, NATIONAL ASSOCIATION** as Facility Agent

From: [The Existing Lender] (the “Existing Lender”) and [The New Lender] (the “New Lender”)

Dated:[●]

Dear Sirs

Philippos Marine LLC, Aristoteles Marine LLC and Menelaos Marine LLC - \$38,500,000 Facility Agreement dated [●] September 2018 (the “Agreement”)

- 1 We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to Clause 27.5 (*Procedure for transfer*) of the Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all of the Existing Lender’s rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender’s Commitment and participation in the Loan under the Agreement as specified in the Schedule in accordance with Clause 27.5 (*Procedure for transfer*) of the Agreement.
 - (b) The proposed Transfer Date is [●].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) of the Agreement are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 27.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
- 4 This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 5 This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 6 This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender’s interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender’s Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details

for notices and account details for payments.]

[Existing Lender]

By: [●]

[New Lender]

By: [●]

This Transfer Certificate is accepted by the Facility Agent and the Transfer Date is confirmed as [●].

[Facility Agent]

By: [●]

SCHEDULE 5

FORM OF ASSIGNMENT AGREEMENT

To: Wilmington Trust, National Association as Facility Agent and Philippos Marine LLC, Aristoteles Marine LLC and Menelaos Marine LLC as joint and several Borrowers, for and on behalf of each Transaction Obligor

From: [the Existing Lender] (the “Existing Lender”) and [the New Lender] (the “New Lender”)

Dated:[●]

Dear Sirs

Philippos Marine LLC, Aristoteles Marine LLC and Menelaos Marine LLC - \$38,500,000 Facility Agreement dated [●] September 2018 (the “Agreement”)

- 1 We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
- 2 We refer to Clause 27.6 (*Procedure for assignment*):
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender’s Commitment and participations in the Loan under the Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitments and participations in the Loan under the Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
 - (d) All rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender’s title and of any rights or equities which the Borrowers or any other Transaction Obligor had against the Existing Lender.
- 3 The proposed Transfer Date is [●].
- 4 On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
- 5 The Facility Office and address, fax, number and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) are set out in the Schedule.
- 6 The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 27.4 (*Limitation of responsibility of Existing Lenders*).
- 7 This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 27.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrowers*), to the Borrowers (on behalf of each Transaction Obligor) of the assignment referred to in this Assignment Agreement.

- 8 This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
- 9 This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 10 This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment rights and obligations to be transferred by assignment, release and accession

[insert relevant details]

[Facility office address, fax number and attention details for notices
and account details for payments]

[Existing Lender]

[New Lender]

By: [●]

By: [●]

This Assignment Agreement is accepted by the Facility Agent and the Transfer Date is confirmed as [●].

Signature of this Assignment Agreement by the Facility Agent constitutes confirmation by the Facility Agent of receipt of notice of the assignment referred to herein, which notice the Facility Agent receives on behalf of each Finance Party.

[Facility Agent]

By:

SCHEDULE 6

FORM OF COMPLIANCE CERTIFICATE

To: Wilmington Trust as Facility Agent

From: Poseidon Containers Holdings LLC

Dated:[●]

Dear Sirs

Philippos Marine LLC, Aristoteles Marine LLC and Menelaos Marine LLC - \$38,500,000 Facility Agreement dated [●] September 2018 (the "Agreement")

- 1 We refer to the Agreement. This is a Compliance Certificate. 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:
- (a) an amount of \$[●] remains credited to the Earnings Account;
 - (b) the Market Value of each Ship plus any net realisable value of additional security previously provided under Clause 24.1 (*Minimum required security cover*) is equal to [●] per cent, of the Loan.
 - (c) as at the [6-month period][financial year] ending on [30 June][31 December] 20[«] to which the financial statements referred to below were prepared, the Guarantor B is in compliance with the following covenants under Clause 20.2 (*Guarantor B's financial covenants*):
 - (i) [the Value Adjusted Leverage Ratio is [●] per cent.;
 - (ii) [the minimum Net Worth is \$[●];]
 - (iii) the Book Leverage Ratio is [●]; and
 - (iv) the Consolidated Liquidity is \$[●].

To evidence such compliance, we attach a copy of the latest [annual][semi-annual] consolidated financial statements of the Group together with calculations and evidence setting out in reasonable detail the data and calculations made above (including valuations in a form acceptable to the Facility Agent evidencing the Market Value of each Fleet Vessel which were used to calculate the Value Adjusted Total Assets of the Group as at [●]).

- 3 We confirm that no Default is continuing.

Signed:

Chief Financial Officer of
POSEIDON CONTAINERS HOLDINGS LLC

SCHEDULE 7

TIMETABLES

Delivery of a duly completed Utilisation Request
(Clause 5.1 (*Delivery of Utilisation Request*))

2 Business Days before the intended Utilisation
Date (Clause 5.1 (*Delivery of Utilisation Request*))

Facility Agent notifies the Lenders of the Loan in
accordance with Clause 5.4 (*Lenders’
participation*)

2 Business Days before the intended Utilisation
Date.

SCHEDULE 8

FINAL REPAYMENT FEE SCHEDULE


Quarter Post Utilisation	Final Repayment Fee (as % of the amount of the Loan prepaid)
0-4	6,36883
5	7,81039
6	9,30649
7	10,87792
8	12,51169
9	11,76883
10	13,15584
11	14,62597
12	16,15065
13	13,92468
14	15,14286
15	16,43117
16	17,76104
17	13,84416
18	14,81039
19	15,83117
20	16,88312

BORROWERS

SIGNED by
duly authorised attorney-in-fact
for and on behalf of
PHILIPPOS MARINE LLC
in the presence of:

)
)
)
)
) /s/ AIKATERINI C. EMMANOUIL

AIKATERINI C. EMMANOUIL


Panagiota Strolia
Defteras Merarkias
13, Piraeus


Witness' signature:
Witness' name:
Witness' address:

)
)
)

SIGNED by
duly authorised attorney-in-fact
for and on behalf of
ARISTOTELES MARINE LLC
in the presence of:

)
)
)
)
) /s/ AIKATERINI C. EMMANOUIL

AIKATERINI C. EMMANOUIL


Panagiota Strolia
Defteras Merarkias
13, Piraeus


Witness' signature:
Witness' name:
Witness' address:

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)

SIGNED by
duly authorised attorney-in-fact
for and on behalf of
MENELAOS MARINE LLC
in the presence of:

)
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)
) /s/ AIKATERINI C. EMMANOUIL

AIKATERINI C. EMMANOUIL


Panagiota Strolia
Defteras Merarkias
13, Piraeus

Witness' signature:
Witness' name:
Witness' address:

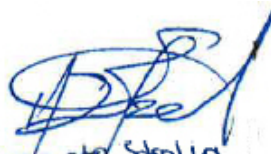
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)
)

GUARANTORS

SIGNED by
duly authorised attorney-in-fact
for and on behalf of
TRITON CONTAINERS HOLDINGS LLC
in the presence of:

)
)
)
)
) /s/ AIKATERINI C. EMMANOUIL

AIKATERINI C. EMMANOUIL



Panagiotis Skolias
Defteras Hierarkias
13, Piraeus

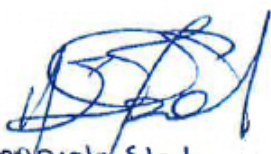
Witness' signature:
Witness' name:
Witness' address:

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)

SIGNED by
duly authorised attorney-in-fact
for and on behalf of
POSEIDON CONTAINERS HOLDINGS LLC
in the presence of:

)
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)
)
) /s/ AIKATERINI C. EMMANOUIL

AIKATERINI C. EMMANOUIL



Panagiotis Skolias
Defteras Hierarkias 13
Piraeus

Witness' signature:
Witness' name:
Witness' address:

)
)
)

ORIGINAL LENDERS

SIGNED by

duly authorised
for and on behalf of
BLUE OCEAN INCOME FUND LP
By: Blue Ocean GP LLC,
as its General Partner
in the presence of:

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)
)
)
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)
)
)

Witness' signature:
Witness' name:
Witness' address:

)
)
)

GUARANTORS

SIGNED by)
duly authorised attorney-in-fact)
for and on behalf of)
TRITON CONTAINERS HOLDINGS LLC)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

SIGNED by)
duly authorised attorney-in-fact)
for and on behalf of)
POSEIDON CONTAINERS HOLDINGS LLC)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)

ORIGINAL LENDERS

SIGNED by)
duly authorised)
for and on behalf of)
BLUE OCEAN INCOME FUND LP)
By: Blue Ocean GP LLC,)
as its General Partner)
in the presence of:)

Matthew A. Lux
Managing Director, Deputy General Counsel

Witness' signature:) /s/ Arjun Thampan
Witness' name:) ARJUN THAMPAN
Witness' address:) 375 PARK AVE
NEW YORK, NY 10152

SIGNED by

duly authorised
for and on behalf of
BLUE OCEAN ONSHORE FUND LP
By: Blue Ocean GP LLC,
as its General Partner
in the presence of:

)
)
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)
)
)
)

Matthew A. Lux
Managing Director, Deputy General Counsel

Witness' signature:
Witness' name:
Witness' address:

) /s/ Arjun Thampan
) ARJUN THAMPAN
) 375 PARK AVE
) NEW YORK, NY 10152

SIGNED by

duly authorised
for and on behalf of
BLUE OCEAN INVESTMENTS SPC
for and on behalf of Segregated Portfolio One
By: EnTrustPermal Partners Offshore LP
as Investment Advisor
in the presence of:

)
)
)
)
)
)
)

Matthew A. Lux
Managing Director, Deputy General Counsel

Witness' signature:
Witness' name:
Witness' address:

) /s/ Arjun Thampan
) ARJUN THAMPAN
) 375 PARK AVE
) NEW YORK, NY 10152

SIGNED by

duly authorised
for and on behalf of
BLUE OCEAN INVESTMENTS SPC
for and on behalf of Segregated Portfolio Three
By: EnTrustPermal Partners Offshore LP
as Investment Advisor
in the presence of:

)
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)
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)
)
)

Matthew A. Lux
Managing Director, Deputy General Counsel

Witness' signature:
Witness' name:
Witness' address:

) /s/ Arjun Thampan
) ARJUN THAMPAN
) 375 PARK AVE
) NEW YORK, NY 10152

FACILITY AGENT

SIGNED by)
)
duly authorised)
for and on behalf of) /s/ Jennifer Anderson
WILMINGTON TRUST,) Jennifer Anderson
NATIONAL ASSOCIATION) Vice President
In the presence of:)

Witness' signature:) /s/ Alisha M. Clendaniel
Witness' name:) Alisha M. Clendaniel
Witness' address:) 1100 North Market Street, Wilmington, DE 19890

SECURITY AGENT

SIGNED by)
)
duly authorised)
for and on behalf of) /s/ Jennifer Anderson
WILMINGTON TRUST,) Jennifer Anderson
NATIONAL ASSOCIATION) Vice President
in the presence of:)

Witness' signature:) /s/ Alisha M. Clendaniel
Witness' name:) Alisha M. Clendaniel
Witness' address:) 1100 North Market Street, Wilmington, DE 19890

Dated 9 November 2018

US\$180,500,000

TERM LOAN FACILITY

**LAERTIS MARINE LLC
TELEMACHUS MARINE LLC
PENELOPE MARINE LLC**
as joint and several Borrowers
and Hedge Guarantors

and

**POSEIDON CONTAINERS HOLDINGS LLC
ODYSSIA CONTAINERS HOLDINGS LLC
K&T MARINE LLC**
as Guarantors

and

DEUTSCHE BANK AG, LONDON BRANCH
as Arranger

and

WILMINGTON TRUST (LONDON) LIMITED
as Facility Agent

and

WILMINGTON TRUST (LONDON) LIMITED
as Security Agent

FACILITY AGREEMENT

relating to
the refinancing of certain existing indebtedness
secured on m.v. "UASC AL KHOR", "ANTHEA Y" and "MAIRA XL"

**WATSON FARLEY
&
WILLIAMS**

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PARTIES

- (1) **LAERTIS MARINE LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands as a borrower (“**Borrower A**”)
- (2) **TELEMACHUS MARINE LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands as a borrower (“**Borrower B**”)
- (3) **PENELOPE MARINE LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands as a borrower (“**Borrower C**”)
- (4) **POSEIDON CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro, Marshall Islands, MH96960 each a guarantor (the “**Guarantor A**”)
- (5) **ODYSSIA CONTAINERS HOLDINGS LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro, Marshall Islands, MH96960 (the “**Guarantor B**”)
- (6) **K&T MARINE LLC**, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro, Marshall Islands, MH96960 (the “**Guarantor C**” and, together with Guarantor A and Guarantor B, the “**Guarantors**” and each a “**Guarantor**”)
- (7) **THE COMPANIES** listed in Part A of Schedule 1 (*The Parties*) as hedge guarantors (the “**Hedge Guarantors**”)
- (8) **DEUTSCHE BANK AG, LONDON BRANCH** as arranger (the “**Arranger**”)
- (9) **THE FINANCIAL INSTITUTIONS** listed in Part B of Schedule 1 (*The Parties*) as lenders (the “**Original Lenders**”)
- (10) **THE FINANCIAL INSTITUTIONS** listed in Part B of Schedule 1 (*The Parties*) as hedge counterparties (the “**Hedge Counterparties**”)
- (11) **WILMINGTON TRUST (LONDON) LIMITED** as agent of the other Finance Parties (the “**Facility Agent**”)
- (12) **WILMINGTON TRUST (LONDON) LIMITED** as security agent for the Secured Parties (the “**Security Agent**”)

BACKGROUND

- (A) The Lenders have agreed to make available to the Borrowers a secured term loan facility in an amount of up to the lesser of (a) \$180,500,000 and (b) 75 per cent. of the aggregate Initial Market Value of the Ships, in three Tranches, to be drawn simultaneously, for the purpose of refinancing part of the Existing Indebtedness secured on the Ships.

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- (B) The Hedge Counterparties may enter into interest rate swap transactions with the Borrowers from time to time to hedge the Borrowers' exposure under this Agreement to interest rate fluctuations in accordance with the terms of this Agreement.

OPERATIVE PROVISIONS

SECTION 1

INTERPRETATION

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**2002 ISDA Master Agreement**” means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc.

“**Account Bank**” means Deutsche Bank AG Filiale Deutschlandgeschäft acting through its office at Adolphsplatz 7, 20457 Hamburg, Germany or any replacement bank or other financial institution as may be approved by the Facility Agent acting with the authorisation of the Lenders.

“**Account Security**” means a document creating Security over any Account in agreed form.

“**Accounts**” means the Earnings Accounts, the Dry-Docking Accounts, the Retention Account and the Liquidity Accounts.

“**Additional Guarantee**” means a guarantee to be executed by the New Parent in favour of the Security Agent on such terms and in such form as may be agreed between the Facility Agent (acting on the instructions of the Lenders) and the New Parent.

“**Additional Hedge Counterparty**” means a bank or financial institution which becomes a Hedge Counterparty in accordance with Clause 29.8 (*Additional Hedge Counterparties*)

“**Advance**” means a borrowing of all or part of a Tranche under this Agreement.

“**Affiliate**” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“**AIF**” has the meaning given to the term under AIFMD Law.

“**AIFM**” has the meaning given to the term under AIFMD Law.

“**AIFMD**” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as the same may be amended, supplemented, superseded or re-adopted from time to time (whether with or without qualifications).

“**AIFMD Law**” means (a) the AIFMD, and (b) any applicable law of a member state of the European Union implementing the AIFMD.

“**Anti-Bribery and Corruption Laws**” means: (i) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997, (ii) the Foreign Corrupt Practices Act of 1977 of the United States of America, as amended by the Foreign Corrupt Practices Act Amendments of 1988 and 1998; and as may be further amended and supplemented from time to time, (iii) UKBA 2010 or (iv) any similar applicable law or regulation.

“Anti-Money Laundering Laws” means any applicable financial record keeping and reporting requirements and any law, guideline, official requirement or other regulatory measure or procedure implemented to combat money laundering (as defined in Article 1 of the Directive 2015/849/EC of the European Parliament and of the Council of the European Communities).

“Approved Brokers” means any firm or firms of insurance brokers approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders.

“Approved Classification” means, in relation to a Ship, as at the date of this Agreement, the classification in relation to that Ship specified in Schedule 7 (*Details of the Ships*) with the classification in relation to that Ship specified in Schedule 7 (*Details of the Ships*) or the equivalent classification available for vessels of the same age, type and specifications as the Ships with another Approved Classification Society which is a member of the International Association of Classification Societies.

“Approved Classification Society” means, in relation to a Ship, as at the date of this Agreement, the classification society in relation to that Ship specified in Schedule 7 (*Details of the Ships*) or any other classification society approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders (such approval not to be unreasonably withheld).

“Approved Commercial Manager” means, in relation to a Ship, as at the date of this Agreement, the manager specified as the approved commercial manager in relation to that Ship in Schedule 7 (*Details of the Ships*) or any other person approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders as the commercial manager of that Ship.

“Approved Flag” means, in relation to a Ship, as at the date of this Agreement, the flag in relation to that Ship specified in Schedule 7 (*Details of the Ships*) or Bahamas, Liberia, Cyprus, Germany, United Kingdom, Hong Kong, Isle of Man, Malta, the Netherlands, Norway, Singapore or such other flag approved in writing by the Facility Agent acting with the authorisation of the Lenders.

“Approved Manager” means, in relation to a Ship, the Approved Commercial Manager or the Approved Technical Manager of that Ship.

“Approved Technical Manager” means, in relation to a Ship, as at the date of this Agreement, the manager specified as the approved technical manager in relation to that Ship in Schedule 7 (*Details of the Ships*) or any other person approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders as the technical manager of that Ship.

“Approved Valuer” means Barry Rogliano Salles, Howe Robinson, Maersk Brokers, Maritime Strategies International (or any Affiliate of such person through which valuations are commonly issued) and any other firm or firms of independent sale and purchase shipbrokers to be mutually agreed between the Borrowers and the Facility Agent, acting with the authorisation of the Majority Lenders.

“Assignable Charter” means, in relation to a Ship, a Charter (other than the Initial Charter relative thereto) in respect of that Ship, the duration of which exceeds (or which is capable of exceeding, by virtue of any optional extensions or renewal) 12 months and which is entered into with a charterer acceptable to the Facility Agent.

“Assignment Agreement” means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor, the assignee and the Facility Agent (acting with the authorisation of the Majority Lenders).

“Authorisation” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, legalisation or registration.

“Availability Period” means the period commencing from and including the date of this Agreement to and including the earlier of (i) the date falling one month from the date of this Agreement and (ii) 30 November 2018.

“Available Commitment” means a Lender’s Commitment minus:

- (a) the amount of its participation in the outstanding Loan; and
- (b) in relation to any proposed Utilisation, the amount of its participation in the Loan that is due to be made on or before the proposed Utilisation Date.

“Available Facility” means the aggregate for the time being of each Lender’s Available Commitment.

“Bail-In Action” means the exercise of any Write-down and Conversion Powers.

“Bail-In Legislation” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“Balloon Instalment” has the meaning given to it in Clause 6.1 (*Repayment of Loan*).

“Borrower” means Borrower A, Borrower B or Borrower C and, in the plural, means all of them.

“Break Costs” means the amount (if any) by which:

- (a) the interest which a Lender should have received for the period from the date of receipt of all or any part of its participation in the Loan or an **Unpaid Sum** to the last day of the current Interest Period in relation to the Loan, the relevant part of the Loan or that Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, New York, Athens, Frankfurt-Main, Rotterdam, Paris, Hamburg and Luxembourg.

“**Cash Flow**” has the meaning given to it in Clause 6.2 (*Cash Sweep Repayment*),

“**Cash Flow to Equity**” means any freely available cash that appears in the cash flow statements in relation to the Borrowers.

“**Charter**” means, in relation to a Ship, any charter relating to that Ship, or other contract for its employment, whether or not already in existence.

“**Charter Guarantee**” means any guarantee, bond, letter of credit or other instrument (whether or not already issued) supporting a Charter.

“**Charterparty Assignment**” means, in respect of each Initial Charter and any other Assignable Charter, an assignment of the relevant Borrower’s rights, title and interests under that Initial Charter and/or Assignable Charter (and any Charter Guarantee thereto) in favour of the Security Agent in agreed form.

“**Code**” means the US Internal Revenue Code of 1986.

“**Commercial Management Agreement**” means, in relation to a Ship, the agreement entered or to be entered into between Guarantor A or, as the case may be, Guarantor B and the Approved Commercial Manager regarding the commercial management of that Ship.

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “Commitment” in Part B of Schedule 1 (*The Parties*) and the amount of any other Commitment transferred to it under this Agreement; and

- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

“**Compliance Certificate**” means a certificate in the form set out in Schedule 6 (*Form of Compliance Certificate*) or in any other form agreed between Guarantor A and the Facility Agent (acting on the instructions of the Majority Lenders).

“**Confidential Information**” means all information relating to any Transaction Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility directly or indirectly from either:

- (a) any member of the Group or any of its advisers; or

- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (i) information that:
- (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 45 (*Confidential Information*); or
 - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate or Reference Bank Quotation.

“**Confidentiality Undertaking**” means a confidentiality undertaking in substantially the appropriate form recommended by the LMA from time to time or in any other form agreed between the Borrowers and the Facility Agent (acting on the instructions of the Majority Lenders).

“**Corresponding Debt**” means any amount, other than any Parallel Debt, which an Obligor owes to a Secured Party under or in connection with the Finance Documents.

“**Deed of Release**” means, in relation to an Existing Facility Agreement, a deed releasing any Existing Security under that Existing Facility Agreement in a form acceptable to the Facility Agent (acting on the instructions of the Majority Lenders).

“**Default**” means an Event of Default or a Potential Event of Default.

“**Delegate**” means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

“**Debt Service**” means, at any given time, the aggregate payment obligations of the Borrowers pursuant to Clause 6.1 (*Repayment of Loan*) together with interest.

“**Disruption Event**” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties or, if applicable, any Transaction Obligor; or

- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party or, if applicable, any Transaction Obligor preventing that, or any other, Party or, if applicable, any Transaction Obligor:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties or, if applicable, any Transaction Obligor in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party or, if applicable, any Transaction Obligor whose operations are disrupted.

“Dry-Docking Reserve Account” means, in relation to a Borrower:

- (a) an account in the name of that Borrower with the Account Bank designated “Dry-Docking Reserve Account”;
- (b) any other account in the name of that Borrower with the Account Bank which may, with the prior written consent of the Facility Agent, be opened in the place of the account referred to in paragraph (a) above, irrespective of the number or designation of such replacement account; or
- (c) any sub-account of any account referred to in paragraphs (a) or (b) above.

“Dry-Docking Reserve Accrual” has the meaning given to it in 23.27 (*Dry-Docking Reserves*).

“Document of Compliance” has the meaning given to it in the ISM Code.

“dollars” and **“\$”** mean the lawful currency, for the time being, of the United States of America.

“DSCR” has the meaning given to in Clause 6.2 (*Cash Sweep Repayment*).

“Earnings” means, in relation to a Ship, all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower owing that Ship or the Security Agent and which arise out of or in connection with or relate to the use or operation of that Ship, including (but not limited to):

- (a) the following, save to the extent that any of them is, with the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders), pooled or shared with any other person:
 - (i) all freight, hire and passage moneys including, without limitation, all moneys payable under, arising out of or in connection with a Charter or a Charter Guarantee;
 - (ii) the proceeds of the exercise of any lien on sub-freights;
 - (iii) compensation payable to a Borrower or the Security Agent in the event of requisition of that Ship for hire or use;

- (iv) remuneration for salvage and towage services;
 - (v) demurrage and detention moneys;
 - (vi) without prejudice to the generality of sub-paragraph (i) above, damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of that Ship;
 - (vii) all moneys which are at any time payable under any Insurances in relation to loss of hire;
 - (viii) all monies which are at any time payable to the Borrower owing that Ship in relation to general average contribution; and
- (b) if and whenever that Ship is employed on terms whereby any moneys falling within sub-paragraphs (i) to (viii) of paragraph (a) 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 that Ship.

“Earnings Account” means, in relation to a Borrower:

- (a) an account in the name of that Borrower with the Account Bank designated “*Earnings Account*”;
- (b) any other account in the name of that Borrower with the Account Bank which may, with the prior written consent of the Facility Agent, be opened in the place of the account referred to in paragraph (a) above, irrespective of the number or designation of such replacement account; or
- (c) any sub-account of any account referred to in paragraphs (a) or (b) above.

“EEA Member Country” means any member state of the European Union, Iceland, Liechtenstein and Norway.

“Environmental Approval” means any present or future permit, ruling, variance or other Authorisation required under Environmental Laws.

“Environmental Claim” means any claim by any governmental, judicial or regulatory authority or any other person which arises out of an Environmental Incident or which relates to any Environmental Law and, for this purpose, “**claim**” includes a claim for damages, compensation, contribution, injury, fines, losses and penalties or any other payment of any kind, including in relation to clean-up and removal, 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:

- (a) any release, emission, spill or discharge of Environmentally Sensitive Material whether within a Ship or from a Ship into any other vessel or into or upon the air, water, land or soils (including the seabed) or surface water; or

- (b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water from a vessel other than any Ship and which involves a collision between any Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which a Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or a Ship and/or any Transaction Obligor and/or any operator or manager of a 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, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water otherwise than from a Ship and in connection with which a Ship is actually or potentially liable to be arrested and/or where any Transaction Obligor and/or any operator or manager of a Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action.

“**Environmental Law**” means any present or future law relating to pollution or protection of human health or the environment, to conditions in the workplace, to the carriage, generation, handling, storage, use, release or spillage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material.

“**Environmentally Sensitive Material**” means and includes all contaminants, oil, oil products, toxic substances 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.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and any successor thereto.

“**ERISA Affiliate**” means each person (and defined in Section 3(9) of ERISA) which together with a Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**EU Bail-In Legislation Schedule**” means the document described as such and published by the LMA from time to time.

“**Event of Default**” means any event or circumstance specified as such in Clause 28 (*Events of Default*).

“**Existing Facility Agent**” means the “Agent” as such term is defined in the relevant Existing Facility Agreement.

“**Existing Facility Agreement**” means the Existing Facility A or Existing Facility B.

“**Existing Facility Agreement A**” means a facility agreement dated 22 November 2013 (as amended, supplemented and/or restated from time to time) and made between (i) the Borrowers as joint and several borrowers, (ii) the banks and financial institutions listed in Schedule 1 therein as lenders, (iii) DVB Bank SE as agent, swap bank, K-Sure agent, and security trustee in connection with a loan facility of up to US\$167,685,000.

“**Existing Facility Agreement B**” means a facility agreement dated 22 November 2013 (as amended, supplemented and/or restated from time to time) and made between, inter alios, (i) Argos Marine LLC as borrower, (ii) DVB Bank SE as lender in connection with a loan facility of up to US\$133,500,000.

“Existing Indebtedness” means, in relation to an Existing Facility Agreement, at any date, the outstanding Financial Indebtedness of the Borrowers on that date under that Existing Facility Agreement.

“Existing Security” means any Security created to secure the Existing Indebtedness.

“Facility” means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

“Facility Office” means, in respect of a Lender, the office or offices notified by that Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than 5 Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.

“FATCA” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

“FATCA Application Date” means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

“FATCA Deduction” means a deduction or withholding from a payment under a Finance Document required by FATCA.

“FATCA Exempt Party” means a Party that is entitled to receive payments free from any FATCA Deduction.

“Fee Letter” means any letter or letters dated on or about the date of this Agreement between any of the Arranger, the Facility Agent and the Security Agent and any Obligor setting out any of the fees referred to in Clause 11 (*Fees*).

“Finance Document” means:

- (a) this Agreement;
- (b) any Additional Guarantee;
- (c) any Fee Letter;
- (d) the Utilisation Request;
- (e) any Security Document;
- (f) any Hedging Agreement;
- (g) any Subordination Agreement;
- (h) the Mandate Letter;
- (i) any other document which is executed for the purpose of establishing any priority or subordination arrangement in relation to the Secured Liabilities;
- (j) any Relevant Retrenching Document or any other document, instrument or memorandum entered into for the purposes of any Relevant Retrenching, including, but not limited to, any amendment or supplement to any other Finance Document; or
- (k) any other document designated as such by the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrowers.

“Finance Party” means the Facility Agent, the Security Agent, the Arranger, a Lender or a Hedge Counterparty and, following a Relevant Retrenching, any Retrenching Lender.

“Financial Indebtedness” means any indebtedness for or in relation to:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);

- (h) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“**Financial Statements**” has the meaning given to it in Clause 22.4 (*Definitions*).

“**Fleet Vessel**” has the meaning given to it in Clause 22.4 (*Definitions*).

“**Funding Rate**” means any individual rate notified in writing by a Lender to the Facility Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause 10.4 (*Cost of funds*).

“**GAAP**” means generally accepted accounting principles in the United States of America, including IFRS.

“**General Assignment**” means, in relation to a Ship, the general assignment creating Security over:

- (a) that Ship’s Earnings, its Insurances and any Requisition Compensation in relation to that Ship; and
- (b) any Charter (other than an Assignable Charter) and any Charter Guarantee in relation to that Ship,

in agreed form.

“**Group**” means Guarantor A and its Subsidiaries at any given time (including, without limitation, Guarantor B and the Borrowers).

“**Hedge Counterparty**” means any Original Hedge Counterparty or any Additional Hedge Counterparty.

“**Hedge Counterparty Accession Letter**” means a document substantially in the form set out in Schedule 8 (*Form of Hedge Counterparty Accession Letter*)

“**Hedging Close-Out Liabilities**” means as at any relevant date the amount certified by the Hedge Counterparty as the net aggregate amount in dollars which would be payable by a Borrower under a Hedging Agreement at the relevant determination date as a result of termination or closing out under a Hedging Agreement.

“**Hedge Counterparty Guarantee**” means any guarantee in agreed form entered into or to be entered into in favour of a Borrower for the purpose of guaranteeing the obligations owed by a Hedge Counterparty to that Borrower under a Hedging Agreement.

“**Hedge Counterparty Guarantor**” means any person who provides a Hedge Counterparty Guarantee.

“Hedge Receipts” means all moneys whatsoever which are now, or later become, payable (actually or contingently) to a Borrower or the Security Agent by a Hedge Counterparty or a Hedge Counterparty Guarantor under a Hedging Agreement or a Hedge Counterparty Guarantee.

“Hedging Agreement” means any master agreement, confirmation, transaction, schedule or other agreement in agreed form entered into or to be entered into by a Borrower for the purpose of hedging interest payable under this Agreement and/or any other Finance Document.

“Hedging Agreement Security” means, in relation to a Borrower, a hedging agreement security creating Security over that Borrower’s rights and interests in any Hedging Agreement and any Hedge Counterparty Guarantee, in agreed form.

“Hedging Prepayment Proceeds” means any Hedge Receipts arising as a result of termination or closing out under a Hedging Agreement.

“Holding Company” means, in relation to a person, any other person in relation to which it is a Subsidiary.

“IFRS” means International Financial Reporting Standards promulgated by the International Accounting Standards Board, as amended from time to time, together with its pronouncements thereon from time to time.

“IHM” means, in respect of a Ship, an inventory of hazardous materials (“IHM”) classification in respect of that Ship from the applicable Approved Classification Society.

“Indemnified Person” means:

- (a) for the purpose of Clause 14.2 (*Other Indemnities*) each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate;
- (b) for the purpose of Clause 14.4 (*Indemnity to the Facility Agent*), the Facility Agent, each Affiliate of the Facility Agent and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor of the Facility Agent or its Affiliate; and
- (c) for the purpose of Clause 14.5 (*Indemnity to the Security Agent*), the Security Agent and every Receiver and Delegate, each Affiliate of the Security Agent, Receiver and Delegate and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor of the Security Agent, Receiver and Delegate or any of their Affiliate.

“Initial Market Value” means, in relation to a Ship, the Market Value of that Ship determined pursuant to paragraph 2.5 of Part B of Schedule 2 (*Conditions Precedent*).

“Initial Charter” means in relation to:

- (a) Ship A, the time charter dated 15 December 2014 (as amended and supplemented from time to time) and currently between Borrower A and Hapag Lloyd A.G., Hamburg in relation to the employment of Ship A for a charter rate of \$40,000 per day until at least 15 March 2019;

- (b) Ship B, the time charter dated 27 February 2015 (as amended and supplemented from time to time) and made between Borrower B and Cosco Container Lines South East Asia (Singapore) Pte Ltd in relation to the employment of Ship B for a charter rate of \$39,200 per day until at least 24 April 2020; and
- (c) Ship C, the time charter dated 27 February 2015 (as amended and supplemented from time to time) and made between Borrower C and Cosco Container Lines South East Asia (Singapore) Pte Ltd in relation to the employment of Ship C for a charter rate of \$39,200 per day until at least 9 May 2020.

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

- (a) all policies and contracts of insurance, including entries of that Ship in any protection and indemnity or war risks association, effected in relation to that Ship, that Ship’s Earnings or otherwise in relation to that Ship whether before, on or after the date of this Agreement; and
- (b) all rights and other assets relating to, or derived from, any of such policies, contracts or entries, including any rights to a return of premium and any rights in relation to any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement.

“**Interest Payment Date**” has the meaning given to it in paragraph (a) of Clause 8.2 (*Payment of interest*).

“**Interest Period**” means, in relation to the Loan or any part of the Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

“**Interpolated Screen Rate**” means, in relation to the Loan or any part of the Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of the Loan or that part of the Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of the Loan or that part of the Loan,

each as of the Specified Time for dollars.

“**ISDA Master Agreement**” means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc.

“**ISM Code**” means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time.

“**ISPS Code**” means the International Ship and Port Facility Security (ISPS) Code as adopted by the International Maritime Organization’s (IMO) Diplomatic Conference of December 2002, as the same may be amended or supplemented from time to time.

“**ISSC**” means an International Ship Security Certificate issued under the ISPS Code.

“**Legal Reservations**” means any matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered pursuant to Clause 5 of Part A of Schedule 2.

“**Lender**” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 29 (*Changes to the Lenders*),

which in each case has not ceased to be a Party as such in accordance with this Agreement.

“**LLC Shares**”, means in respect of a Borrower, shall have the meaning ascribed thereto in that Borrower’s limited liability company agreement.

“**LIBOR**” means, in relation to the Loan or any part of the Loan:

- (a) the applicable Screen Rate as of the Specified Time for dollars and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

“**Limitation Acts**” means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

“**Liquidity Account**” means, in relation to a Borrower:

- (a) an account in the name of that Borrower with the Account Bank designated “*Liquidity Account*”;
- (b) any other account in the name of that Borrower with the Account Bank which may, with the prior written consent of the Facility Agent, be opened in the place of the account referred to in paragraph (a) above, irrespective of the number or designation of such replacement account; or
- (c) any sub-account of any account referred to in paragraphs (a) or (b) above.

“**LMA**” means the Loan Market Association or any successor organisation.

“**Loan**” means the aggregate amount of Advances to be made available under the Facility or the aggregate principal amount outstanding for the time being of the borrowings under the Facility and a “**part of the Loan**” means an Advance, a Tranche, a part of a Tranche or any other part of the Loan as the context may require.

“**Major Casualty**” means, in relation to a Ship, any casualty to that Ship in relation to which the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds 5 per cent. of the Market Value of that Ship (or the equivalent in any other currency).

“**Majority Lenders**” means:

- (a) if the Loan has not yet been made, a Lender or Lenders whose Commitments aggregate more than 66 $\frac{2}{3}$ per cent. of the Total Commitments; or
- (b) at any other time, a Lender or Lenders whose participations in the Loan aggregate more than 66 $\frac{2}{3}$ per cent. of the amount of the Loan then outstanding or, if the Loan has been repaid or prepaid in full, a Lender or Lenders whose participations in the Loan immediately before repayment or prepayment in full aggregate more than 66 $\frac{2}{3}$ per cent. of the Loan immediately before such repayment.

“**Management Agreement**” means a Technical Management Agreement or a Commercial Management Agreement.

“**Manager’s Undertaking**” means, in relation to a Ship, the letter of undertaking from its Approved Technical Manager and the letter of undertaking from its Approved Commercial Manager subordinating the rights of such Approved Technical Manager and such Approved Commercial Manager respectively against that Ship and the relevant Borrower to the rights of the Finance Parties in agreed form.

“**Mandate Letter**” means any mandate letter entered or to be entered between any of the Parties on or before the date of this Agreement.

“**Mandatory Cost**” has the meaning given to it in Clause 14.3 (*Mandatory Cost*).

“**Margin**” means 4.50 per cent. per annum.

“**Market Value**” means:

- (a) in relation to a Ship or any other vessel (and subject to paragraph (b) below, including a Fleet Vessel), at any date, an amount equal to:
 - (i) the market value of that Ship or vessel shown by the arithmetic average of two valuations, addressed to the Facility Agent and prepared:
 - (A) as at a date not more than 20 days previously;
 - (B) by two Approved Valuers, one selected and appointed by the Facility Agent (acting on the instructions of the Majority Lenders) and one selected and appointed by the Borrowers **Provided that** if (1) the Borrowers fail to select an Approved Valuer within 10 days’ notice of the Facility Agent, the Facility Agent will select and appoint the second one and (2) any of such valuations sets the market value as ranging between a lower and a higher figure, the value to be used for such valuation will be the average of the higher and the lower figures;
 - (C) with or without physical inspection of that Ship or vessel (as the Facility Agent may require (acting on the instructions of the Majority Lenders)); and
 - (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, free of any Charter.

provided that if (1) one such valuation in respect of a Ship obtained pursuant to sub-paragraph (ii) above differs by at least 10 per cent. from the lower valuation, then a third valuation for that Ship shall be obtained from an Approved Valuer, selected and appointed by the Facility Agent (acting on the instructions of the Majority Lenders) and such valuation shall be addressed to the Facility Agent and the Market Value of that Ship shall be the arithmetic average of all three such valuations and (2) any of such valuations sets the market value as ranging between a lower and a higher figure, the value to be used for such valuation will be the average of the higher and the lower figures.

- (b) in relation to any other Fleet Vessel (excluding, for the avoidance of doubt the Ships and any other vessel whose market value is determined under paragraph (a) above), the market value of that Fleet Vessel as determined by the valuation(s) provided under the relevant facility agreement financing that Fleet Vessel only if the market value under that credit facility agreement is determined (amongst others) free of any charter. In all other cases and if a Fleet Vessel is not subject to a facility agreement, the market value of that Fleet Vessel as determined under paragraph (a).

“Material Adverse Effect” means, in the opinion of the Lenders, a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) of any Obligor or the Group as a whole; or
- (b) the ability of any Obligor to perform its obligations under any Finance Document; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or intended to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents; or
- (d) if the Merger is completed, the business, operations, property, condition (financial or otherwise) or prospects of the New Parent.

“Merger” means a reverse triangular merger involving Guarantor A and the New Parent, as a result of which (a) Guarantor A would be the surviving entity and an indirect, wholly-owned Subsidiary of the New Parent and (b) the Poseidon Shareholders would receive shares of the New Parent.

“Minimum Liquidity Amount” has the meaning given to it in Clause 22.1 (*Borrowers’ Minimum Liquidity Amount*).

“Minimum Required Hedged Amount” means at any time during which 3 month LIBOR is:

- (a) less than 3.25%, zero;
- (b) greater than 3.25% but less than 3.50%, an amount equal to 50 per cent. of the principal amounts of the Loan outstanding (or projected to be outstanding) under this Agreement; or
- (c) greater than 3.50%, an amount equal to 100 per cent. of the principal amounts of the Loan outstanding (or projected to be outstanding) under this Agreement.

“Month” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

“Mortgage” means, in relation to a Ship, a first preferred or, as the case may be, priority ship mortgage on that Ship in agreed form and, if required pursuant to the laws of the relevant Approved Flag, a deed of covenant collateral thereto in agreed form.

“New Parent” means a company which will be the ultimate parent company of Guarantor A following the completion of the Merger during the Security Period.

“New Parent’s Cash” means, at any relevant time cash held with banks or financial institutions of the New Parent or any of its Subsidiaries in Dollars or another currency freely convertible in Dollars, which is free of any Security (other than (i) Security created by the Finance Documents; (ii) Security created in respect of any Permitted Financial Indebtedness; and (iii) any right of pledge and/or set off under and pursuant to the general banking conditions of the Account Bank), determined in accordance with GAAP.

“Obligor” means a Borrower, a Guarantor or a Hedge Guarantor.

“Odysia NB” means Odysia NB LLC, a limited liability company formed in the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands.

“OFAC” means the Office of Foreign Assets Control of the US Department of Treasury.

“Original Financial Statements” means in relation to:

- (a) Guarantor A and Guarantor B, its audited financial statements for the financial year ended 31 December 2017 and, depending on whether they are actually available, the latest interim figures for the period ending on June 2018 or September 2018 (as applicable); and
- (b) a Borrower its unaudited financial statements for the financial year ended 31 December 2017 and, depending on whether they are actually available, the latest interim figures for the period ending on June 2018 or September 2018 (as applicable).

“Original Jurisdiction” means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated or formed as at the date of this Agreement.

“Overseas Regulations” means the Overseas Companies Regulations 2009 (SI 2009/1801).

“Parallel Debt” means any amount which an Obligor owes to the Security Agent under Clause 32.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or under that clause as incorporated by reference or in full in any other Finance Document.

“Participating Member State” means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“Party” means a party to this Agreement.

“Perfection Requirements” means the making or procuring of filings, stampings, registrations, notarisations, endorsements, translations and/or notifications of any Finance Document (and/or any Security created under it) necessary for the validity, enforceability (as against the relevant Obligor or any relevant third party) and/or perfection of that Finance Document.

“Permitted Charter” means, in relation to a Ship:

- (a) the Initial Charter in respect of that Ship;
- (b) which is a time, voyage or consecutive voyage charter;
- (c) the duration of which does not exceed and is not capable of exceeding, by virtue of any optional extensions, 12 months;
- (d) which is entered into on *bona fide* arm’s length terms at the time at which that Ship is fixed; and
- (e) in relation to which not more than two months’ hire is payable in advance,

and any other Charter which is approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

“Permitted Financial Indebtedness” means:

- (a) until (and including) the Utilisation Date, the Existing Indebtedness;
- (b) any Financial Indebtedness incurred under the Finance Documents; and
- (c) any Financial Indebtedness that is subordinated to all Financial Indebtedness incurred under the Finance Documents pursuant to a Subordination Agreement or otherwise and which is, in the case of any such Financial Indebtedness of a Borrower, the subject of Subordinated Debt Security.

“Permitted Security” means:

- (a) until the Utilisation Date, any Existing Security;
- (b) Security created by the Finance Documents;
- (c) liens for unpaid master’s and crew’s wages in accordance with first class ship ownership and management practice and not being enforced through arrest;
- (d) liens for salvage;

- (e) liens for master's disbursements incurred in the ordinary course of trading in accordance with first class ship ownership and management practice and not being enforced through arrest; and
- (f) any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of any Ship in accordance with usual reputable maritime practice:
 - (i) not as a result of any default or omission by any Borrower;
 - (ii) not being enforced through arrest; and
 - (iii) subject, in the case of liens for repair or maintenance, to Clause 25.16 (*Restrictions on use, chartering, appointment of managers etc.*),

and provided such lien does not secure amounts more than 30 days overdue (unless the overdue amount is being contested in good faith by appropriate steps and for the payment of which adequate reserves are held and provided further that such proceedings do not give rise to a material risk of the relevant Ship or any interest in it being seized, sold, forfeited or lost).

"Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA that is subject to Title IV of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed to by any Obligor or any of their respective ERISA Affiliates.

"Poseidon Shareholder" means each of:

- (a) KEP VI (Newco Marine), Ltd, a company incorporated in the Cayman Islands;
- (b) KIA VIII (Newco Marine), Ltd, a company incorporated in the Cayman Islands;
- (c) MAAS Capital Investments B.V., a company incorporated in the Netherlands; and
- (d) Management Investor Co, a corporation incorporated in the Marshall Islands.

"Potential Event of Default" means any event or circumstance specified in Clause 28 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Prohibited Person" means any person (whether designated by name or by reason of being included in a class of persons) against whom Sanctions are directed.

"Protected Party" has the meaning given to it in Clause 12.1 (*Definitions*).

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market in which case the Quotation Day will be determined by the Facility Agent (acting on the instructions of the Majority Lenders which will act in accordance with market practice in the Relevant Interbank Market) (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

“Receiver” means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

“Reference Bank Quotation” means any quotation supplied to the Facility Agent (acting on the instructions of the Majority Lenders) by a Reference Bank.

“Reference Bank Rate” means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent (acting on the instructions of the Majority Lenders) at its request by the Reference Banks:

- (a) if:
 - (i) the Reference Bank is a contributor to the Screen Rate; and
 - (ii) it consists of a single figure,
as the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the Screen Rate are asked to submit to the relevant administrator; or
- (b) in any other case, as the rate at which the relevant Reference Bank could fund itself in dollars for the relevant period with reference to the unsecured wholesale funding market.

“Reference Banks” means the principal London offices of Barclays Bank, Lloyds Bank, HSBC Bank plc or of such entities as may be appointed by the Facility Agent in consultation with the Borrowers.

“Related Fund” in relation to a fund (the “first fund”), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

“Relevant Interbank Market” means the London interbank market.

“Relevant Jurisdiction” means, in relation to a Transaction Obligor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to, or intended to be subject to, any of the Transaction Security created, or intended to be created, by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

“Relevant Retrancking” means any transfer, refinancing or other restructuring of the Loan, including any change of pricing, terms and tranching of the Loan into senior and junior loans implemented in connection with any syndication of the Loan pursuant to the terms of the Mandate Letter and documented pursuant to the terms of the Relevant Retrancking Documents.

“Relevant Retrenching Documents” means, in respect of a Relevant Retrenching:

- (a) any loan agreement (whether senior or junior in priority) entered into by, *inter alios*, the Borrower with Retrenching Lenders;
- (b) any intercreditor agreement establishing priorities between this Agreement and any other agreement entered into in connection with a Relevant Retrenching;
- (c) any Security Documents as set out in limb (j) of the definition thereof; and
- (d) any other document which may be entered into in connection with a Relevant Retrenching.

“Relevant Nominating Body” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

“Replacement Benchmark” means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
 - (ii) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement under paragraph (ii) above;

- (b) in the opinion of the Lenders, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or
- (c) in the opinion of the Lenders, an appropriate successor to a Screen Rate.

“Repayment Date” means each date on which a Repayment Instalment is required to be paid under Clause 6.1 (*Repayment of Loan*).

“Repayment Instalment” has the meaning given to it in Clause 6.1 (*Repayment of Loan*).

“Repeating Representation” means each of the representations set out in Clause 20 (*Representations*) except Clause 20.10 (*Insolvency*), Clause 20.11 (*No filing or stamp taxes*) and Clause 20.12 (*Deduction of Tax*) and any representation of any Transaction Obligor made in any other Finance Document that is expressed to be a “Repeating Representation” or is otherwise expressed to be repeated.

“Representative” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

“Requisition” means in relation to a Ship:

- (a) any expropriation, confiscation, requisition (excluding a requisition for hire or use which does not involve a requisition for title) 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 (whether *de jure* or *de facto*) by any government or official authority or by any person or persons claiming to be or to represent a government or official authority, unless it is within 30 days (or such other longer period as the Facility Agent may agree) redelivered to the full control of the relevant Borrower; and
- (b) any capture or seizure of that Ship (including any hijacking or theft) by any person whatsoever unless it is within 60 days (or such other longer period as the Facility Agent may agree) redelivered to the full control of the relevant Borrower.

“Requisition Compensation” includes all compensation or other moneys payable to a Borrower by reason of any Requisition or any arrest or detention of a Ship in the exercise or purported exercise of any lien or claim.

“Resolution Authority” means any body which has authority to exercise any Write-down and Conversion Powers.

“Retention Account” means:

- (a) an account in the name of the Borrowers with the Account Bank designated “*Laertis Marine LLC, Penelope Marine LLC and Telemachus Marine LLC—Retention Account*”;
- (b) any other account in the name of the Borrowers with the Account Bank which may, with the prior written consent of the Facility Agent, be opened in the place of the account referred to in paragraph (a) above, irrespective of the number or designation of such replacement account; or

any sub-account of any account referred to in paragraphs (a) or (b) above.

“Retranching Lenders” means, at any time, any party which is a lender or other creditor under a Relevant Retranching Document.

“Safety Management Certificate” has the meaning given to it in the ISM Code.

“Safety Management System” has the meaning given to it in the ISM Code.

“Sanctions” means any sanctions, embargoes, freezing provisions, prohibitions or other restrictions relating to trading, doing business, investment, exporting, financing or making assets available (or other activities similar to or connected with any of the foregoing):

- (a) imposed by law or regulation of OFAC, the US Department of State, the US Department of Commerce, the United Nations Security Council, the European Union, or Her Majesty’s Treasury, regardless of whether the same is or is not binding on any Transaction Obligor; or
- (b) otherwise imposed by any law or regulation binding on a Transaction Obligor or to which a Transaction Obligor is subject (which shall include without limitation, any extra-territorial sanctions imposed by law or regulation of the United States of America).

“**Sanctioned Country**” means a country which is the subject or the target of Sanctions (currently, Cuba, Iran, North Korea, Sudan, the Crimea region and Syria).

“**Screen Rate**” means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for dollars for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Facility Agent may (acting on the instructions of the Majority Lenders) specify another page or service displaying the relevant rate after consultation with the Borrowers.

“**Screen Rate Replacement Event**” means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders materially changed;
- (b)
 - (i)
 - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
 - (B) information is published in any order, decree, notice, petition or filing, however described, or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;
 - (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
 - (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
 - (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
- (c) in the opinion of the Majority Lenders, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

“Scheduled Dry-Docking” means, in relation to a Ship, the dry-docking which will take place on the Scheduled Dry-Docking Date relevant to that Ship.

“Scheduled Dry-Docking Dates” means, in relation to:

- (a) Ship A, a day falling during June 2020;
- (b) Ship B, a day falling during September 2020; and
- (c) Ship C, a day falling during September 2020.

“Secured Liabilities” means all present and future obligations and liabilities, (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under or in connection with each Finance Document (including, for the avoidance of doubt, any Relevant Retrenching Document or other document referenced in paragraph (j) of the definition of “Finance Documents” in connection with a Relevant Retrenching).

“Secured Party” means each Finance Party from time to time party to this Agreement (including, for the avoidance of doubt, any Retrenching Lender following a Relevant Retrenching), a Receiver or any Delegate.

“Security” means a mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

“Security Assets” means all of the assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

“Security Document” means:

- (a) any Shares Security;
- (b) any Mortgage;
- (c) any General Assignment;
- (d) any Account Security;
- (e) any Manager’s Undertaking;
- (f) any Charterparty Assignment;
- (g) any Hedging Agreement Security;
- (h) any Subordinated Debt Security;
- (i) any other document (whether or not it creates Security) which is executed as security for the Secured Liabilities; or
- (j) any Security, or a supplement or amendment to any Security, made for the purposes of a Relevant Retrenching; or
- (k) any other document designated as such by the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrowers.

“Security Period” means the period starting on the date of this Agreement and ending on the date on which the Facility Agent (acting on the instructions of the Lenders) is satisfied that there is no outstanding Commitment in force and that the Secured Liabilities (including, for the avoidance of doubt, any Secured Liabilities under any Relevant Retrenching Document) have been irrevocably and unconditionally paid and discharged in full.

“Security Property” means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in relation to the Secured Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Security Agent as trustee for the Secured Parties;
- (c) the Security Agent’s interest in any turnover trust created under the Finance Documents;
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties,

except:

- (i) rights intended for the sole benefit of the Security Agent; and
- (ii) any moneys or other assets which the Security Agent has transferred to the Facility Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement or any other Finance Document.

“Selection Notice” means a notice substantially in the form set out in Part B of Schedule 3 (*Requests*) given in accordance with Clause 9 (*Interest Periods*).

“Servicing Party” means the Facility Agent or the Security Agent.

“Shares Security” means, in relation to a Borrower, a document creating Security over the LLC Shares in that Borrower in agreed form.

“Ship” means Ship A, Ship B or Ship C.

“Ship A” means m.v. “UASC AL KHOR” and registered in the ownership of Borrower A, details of which are set out opposite its name in Schedule 7 (*Details of the Ships*).

“Ship B” means m.v. “ANTHEA Y” and registered in the ownership of Borrower B, details of which are set out opposite its name in Schedule 7 (*Details of the Ships*).

“Ship C” means m.v. “MAIRA XL” and registered in the ownership of Borrower C, details of which are set out opposite its name in Schedule 7 (*Details of the Ships*).

“Specified Time” means a day or time determined in accordance with Schedule 9 (*Timetables*).

“Subordinated Creditor” means:

- (a) a Transaction Obligor; or
- (b) any other person who becomes a Subordinated Creditor in accordance with this Agreement.

“Subordinated Debt Security” means a Security over Subordinated Liabilities entered into or to be entered into by a Subordinated Creditor in favour of the Security Agent in an agreed form.

“Subordinated Finance Document” means:

- (a) a Subordinated Loan Agreement; and
- (b) any other document relating to or evidencing Subordinated Liabilities.

“Subordinated Liabilities” means all indebtedness owed or expressed to be owed by the Borrowers to a Subordinated Creditor whether under the Subordinated Finance Documents or otherwise.

“Subordinated Loan Agreement” means any loan agreement made between (i) a Borrower and (ii) a Subordinated Creditor.

“Subordination Agreement” means a subordination agreement entered into or to be entered into by a Subordinated Creditor and the Security Agent in agreed form.

“Subsidiary” means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

“Substitute Initial Charter” has the meaning given to it in Clause 22.1 (*Borrowers’ minimum liquidity*).

“Tax” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“Tax Credit” has the meaning given to it in Clause 12.1 (*Definitions*).

“Tax Deduction” has the meaning given to it in Clause 12.1 (*Definitions*).

“Tax Payment” has the meaning given to it in Clause 12.1 (*Definitions*).

“Technical Management Agreement” means the agreement entered or to be entered into between a Borrower and the Approved Technical Manager regarding the technical management of a Ship.

“Termination Date” means 30 June 2022.

“Third Parties Act” has the meaning given to it in Clause 1.5 (*Third party rights*).

“Total Commitments” means the aggregate of the Commitments, being \$180,500,000 at the date of this Agreement.

“Total Hedged Amount” means, at any time, the aggregate principal amount of the Loans hedged by the Borrowers pursuant to all outstanding transactions under the Hedging Agreements at that time.

“**Total Hedged Amount**” means, at any time, the aggregate principal amount of the Loans hedged by the Borrowers pursuant to all outstanding transactions under the Hedging Agreements at that time.

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

- (a) actual, constructive, compromised, agreed or arranged total loss of that Ship; or
- (b) any Requisition of that Ship.

“**Total Loss Date**” means, in relation to the Total Loss of a 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 earlier of:
 - (i) the date on which a notice of abandonment is given (or deemed or agreed to be given) to the insurers; and
 - (ii) the date of any compromise, arrangement or agreement made by or on behalf of the relevant Borrower 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, the date (or the most likely date) on which it appears to the Facility Agent (acting on the instructions of the Majority Lenders) that the event constituting the total loss occurred.

“**Tranche**” means Tranche A, Tranche B or Tranche C.

“**Tranche A**” means an amount of \$60,166,666.66 or, as the context may require, the aggregate principal amount outstanding thereof at that time.

“**Tranche B**” means an amount of \$60,166,666.67 or, as the context may require, the aggregate principal amount outstanding thereof at that time.

“**Tranche C**” means an amount of \$60,166,666.67 or, as the context may require, the aggregate principal amount outstanding thereof at that time.

“**Transaction Document**” means:

- (a) a Finance Document;
- (b) a Subordinated Finance Document;
- (c) any Charter (including, without limitation, any Assignable Charter);
- (d) any Hedge Counterparty Guarantee; or

(e) any other document designated as such by the Facility Agent (acting on the instructions of the Majority Lenders) and a Borrower.

“**Transaction Obligor**” means an Obligor, Odyssea NB, any Approved Manager or any other member of the Group who executes a Finance Document.

“**Transaction Security**” means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

“**Transfer Certificate**” means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrowers.

“**Transfer Date**” means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

“**UK Establishment**” means a UK establishment as defined in the Overseas Regulations.

“**Unpaid Sum**” means any sum due and payable but unpaid by an Obligor under the Finance Documents.

“**US**” means the United States of America.

“**US Tax Obligor**” means:

- (a) a person which is resident for tax purposes in the US; or
- (b) a person some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

“**Utilisation**” means a utilisation of the Facility.

“**Utilisation Date**” means the date of the Utilisation, being the date on which the Loan is to be advanced.

“**Utilisation Request**” means a notice substantially in the form set out in Part A of Schedule 3 (*Requests*).

“**VAT**” means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

“Write-down and Conversion Powers” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (ii) the **“Account Bank”**, the **“Arranger”**, the **“Facility Agent”**, any **“Finance Party”**, any **“Hedge Counterparty”**, any **“Lender”**, any **“Obligor”**, any **“Party”**, any **“Secured Party”**, the **“Security Agent”**, any **“Transaction Obligor”** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
 - (iii) **“assets”** includes present and future properties, revenues and rights of every description;
 - (iv) a liability which is **“contingent”** means a liability which is not certain to arise and/or the amount of which remains unascertained;
 - (v) **“document”** includes a deed and also a letter, fax, email or telex;
 - (vi) **“expense”** means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Tax including VAT;
 - (vii) a **“Finance Document”**, a **“Security Document”**, **“Transaction Document”** or Relevant Retrenching Document or any other agreement or instrument is a reference to that Finance Document, Security Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (viii) a **“group of Lenders”** includes all the Lenders;
 - (ix) **“indebtedness”** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (x) **“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;

- (xi) “**proceedings**” means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;
 - (xii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (xiii) a “**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;
 - (xiv) a provision of law is a reference to that provision as amended or re-enacted;
 - (xv) a time of day is a reference to London time;
 - (xvi) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
 - (xvii) words denoting the singular number shall include the plural and vice versa; and
 - (xviii) “**including**” and “**in particular**” (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.
- (b) The determination of the extent to which a rate is “**for a period equal in length**” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
 - (c) Section, Clause and Schedule headings are for ease of reference only and are not to be used for the purposes of construction or interpretation of the Finance Documents.
 - (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under, or in connection with, any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (e) A Potential Event of Default is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived.

1.3 Construction of insurance terms

In this Agreement:

“**approved**” means, for the purposes of Clause 24 (*Insurance Undertakings*), approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders).

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

“**obligatory insurances**” means all insurances effected, or which any Borrower is obliged to effect, under Clause 24 (*Insurance Undertakings*) or any other provision of this Agreement or of another Finance Document.

“**policy**” 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) (1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/10/83) (1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision.

“**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 23 of the Institute Time Clauses (Hulls) (1/10/83) or any equivalent provision.

1.4 Agreed forms of Finance Documents

References in Clause 1.1 (*Definitions*) to any Finance Document being in “agreed form” are to that Finance Document:

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by each Borrower and the Facility Agent); or
- (b) in any other form agreed in writing between each Borrower and the Facility Agent acting with the authorisation of the Majority Lenders or, where Clause 44.2 (*All Lender matters*) applies, all the Lenders.

1.5 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Subject to Clause 44.3 (*Other exceptions*) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Affiliate, Receiver, Delegate or for the purposes of Clause 14.2 (*Other indemnities*), Clause 14.4 (*Indemnity to the Facility Agent*), Clause 14.5 (*Indemnity to the Security Agent*), any Indemnified Person, or any other person described in paragraph (b) of Clause 31.11 (*Exclusion of liability*), Clause 31.21 (*Role of Reference Banks*), Clause 31.22 (*Third Party Reference Banks*) or paragraph (b) of Clause 32.11 (*Exclusion of liability*) may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

SECTION 2

THE FACILITY

2 THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrowers a dollar term loan facility in three Tranches in an aggregate amount not exceeding the Total Commitments.

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from a Transaction Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of the Loan or any other amount owed by a Transaction Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by that Transaction Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.3 Borrowers' Agent

- (a) Each Borrower by its execution of this Agreement irrevocably appoints Guarantor A to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) Guarantor A on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including the Utilisation Request), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Borrower notwithstanding that they may affect the Borrowers, without further reference to or the consent of that Borrower; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Borrower pursuant to the Finance Documents to Guarantor A,

and in each case the Borrowers shall be bound as though that Borrower itself had given the notices and instructions (including, without limitation, the Utilisation Request) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by Guarantor A or given to Guarantor A under any Finance Document on behalf of a Borrower or in connection with any Finance Document (whether or not known to any Borrower) shall be binding for all purposes on that Borrower as if that Borrower had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of Guarantor A and any Borrower, those of Guarantor A shall prevail.

3 PURPOSE

3.1 Purpose

Each Borrower shall apply all amounts borrowed by it under the Facility only for the purpose of refinancing the Existing Indebtedness.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4 CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Borrowers may not deliver the Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Part A of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent (acting on the instructions of the Lenders).

4.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if:

- (a) on the date of the Utilisation Request and on the proposed Utilisation Date and before the Loan is made available:
- (i) no Default is continuing or would result from the proposed Loan;
 - (ii) the Repeating Representations to be made by each Obligor are true;
 - (iii) no event described in paragraph (a) of Clause 7.2 (*Change of control*) has occurred; and
 - (iv) no Ship has either been sold nor become a Total Loss; and
 - (v) the provisions of paragraph (b) of Clause 10.3 (*Market disruption*) do not apply.
- (b) the Facility Agent has received on or before the Utilisation Date, the Lenders are satisfied that the Facility Agent will receive when the Loan is made available, all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent (acting on the instructions of the Lenders).

4.3 Notification of satisfaction of conditions precedent

- (a) The Facility Agent shall promptly send to the Lenders all of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*) which it has received.
- (b) Each Lender shall promptly confirm to the Facility Agent in writing that it is satisfied as to the satisfaction of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*).
- (c) The Facility Agent shall notify the Borrowers and the Lenders promptly upon receipt of those confirmations referred to in sub-paragraph (b) above from all of the Lenders.
- (d) Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.4 Waiver of conditions precedent

If the Lenders, at their discretion, permit the Loan to be borrowed before any of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*) or Clause 4.2 (*Further conditions precedent*) has been satisfied, the Borrowers shall ensure that that condition is satisfied within five Business Days after the Utilisation Date or such later date as the Facility Agent, acting with the authorisation of the Majority Lenders, may agree in writing with the Borrowers.

SECTION 3

UTILISATION

5 UTILISATION

5.1 Delivery of Utilisation Request

- (a) The Borrowers may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.
- (b) The Borrowers may only deliver one Utilisation Request for all three Tranches.

5.2 Completion of Utilisation Request

The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- (i) the proposed Utilisation Date is a Business Day within the Availability Period; and
- (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*).

5.3 Currency and amount

- (a) The currency specified in the Utilisation Request must be dollars.
- (b) The amount of the proposed Advance must be an amount which is not more than:
 - (i) in respect of the Advance under Tranche A, the lower of (i) \$60,166,666.66 and (ii) 75 per cent. of the Initial Market Value of Ship A;
 - (ii) in respect of the Advance under Tranche B, the lower of (i) \$60,166,666.67 and (ii) 75 per cent. of the Initial Market Value of Ship B; and
 - (iii) in respect of the Advance under Tranche C the lower of (i) \$60,166,666.67 and (ii) 75 per cent. of the Initial Market Value of Ship C.
- (c) Subject to paragraph (d) below, the amount of the proposed Advance must be an amount which, when aggregated with the other Advances to be drawn, is not more than the Available Facility.
- (d) The aggregate amount of the proposed Advances must be an amount which would not oblige the Borrowers to provide additional security or prepay part of the Advance if the ratio set out in Clause 26 (*Security Cover*) were applied and notice was given by the Facility Agent under Clause 26.1 (*Minimum required security cover*) immediately after the Advances were made.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Advance available by the Utilisation Date through its Facility Office.

- (b) The amount of each Lender's participation in each Advance will be equal to the proportion borne by its Available Commitment to the Available Facility immediately before making that Advance.
- (c) Subject to receiving the Utilisation Request, the Facility Agent shall notify each Lender of the amount of each Advance and the amount of its participation in that Advance by the Specified Time.

5.5 Cancellation of Commitments

The Commitments which are unutilised at the end of the Availability Period shall then be cancelled.

5.6 Retentions and payment to third parties

The Borrowers irrevocably authorise the Facility Agent on the Utilisation Date, to pay to, or for the account of, the Borrower which is to utilise the relevant Advance the amounts which the Facility Agent receives from the Lenders in respect of the relevant Advance. That payment shall be made in like funds as the Facility Agent received from the Lenders in respect of the relevant Advance to the account which the Borrowers specify in the Utilisation Request.

5.7 Disbursement of Advance to third party

Payment by the Facility Agent under Clause 5.6 (*Retentions and payment to third parties*) to a person other than a Borrower shall constitute the making of the relevant Advance and the Borrowers shall at that time become indebted, as principal and direct obligors, to each Lender in an amount equal to that Lender's participation in that Advance.

5.8 Prepositioning of funds

If, in respect of any proposed Advance under any Tranche, the Lenders, at the request of the Borrowers and on terms acceptable to all the Lenders and in their absolute discretion, preposition funds with any bank, each Borrower and Guarantor A:

- (a) agree to pay interest on the amount of the funds so prepositioned at the rate described in Clause 8.1 (*Calculation of interest*) on the basis of successive interest periods of one day and so that interest shall be paid together with the first payment of interest on such Advance after the Utilisation Date or, if such Utilisation Date does not occur, within three Business Days of demand by the Facility Agent (acting on the instructions of the Majority Lenders); and
- (b) shall, without duplication, indemnify each Finance Party against any costs, loss or liability it may incur in connection with such arrangement.

REPAYMENT, PREPAYMENT AND CANCELLATION

6 REPAYMENT

6.1 Repayment of Loan

The Borrowers shall, subject to Clause 6.2 (*Cash Sweep Repayment*) repay each Tranche by 15 consecutive quarterly instalments (each a “**Repayment Instalment**” and together, the “**Repayment Instalments**”), the first of which shall be repaid on the date falling three months after the Utilisation Date and the last on the Termination Date, each Repayment Instalment in the following amounts:

- (a) in respect of Tranche A, the first 14 (1st – 14th) each such instalments in an amount of \$1,104,669.68 with the 15th and final such instalment in the amount of up to \$44,701,291.14, comprising of an instalment in the amount of \$363,179.07 and a balloon amount of up to \$44,338,112.07 (the “**Balloon Instalment A**”);
- (b) in respect of Tranche B, the first 14 (1st – 14th) each such instalments in an amount of \$1,098,041.67 with the 15th and final such instalment in the amount of up to \$44,794,083.29, comprising of an instalment in the amount of \$361,000 and a balloon amount of up to \$44,433,083.29 (the “**Balloon Instalment B**”); and
- (c) in respect of Tranche C, the first 14 (1st – 14th) each such instalments in an amount of \$1,091,275.76 with the 15th and final such instalment in the amount of up to \$44,888,806.03, comprising of an instalment in the amount of \$358,775.59 and a balloon amount of up to \$44,530,030.44 (the “**Balloon Instalment C**” and together with the Balloon Instalment A and the Balloon Instalment B, the “**Balloon Instalments**”).

6.2 Cash Sweep Repayment

- (a) In addition to the repayments under Clause 6.1 (*Repayment of Loan*) above, if the DSCR at the end of a Cash Sweep Period is higher than 1.10:1, the Borrowers shall transfer to the Retention Account on the Determination Date an amount equal to the Cash Sweep Amount, to be applied against the Loan in the manner set out in paragraph (b) below, on the Repayment Date falling due after the Cash Flow Certificate has been provided. The DSCR and the Cash Sweep Amount (if any) shall be evidenced by a Cash Flow Certificate which the Borrowers shall provide to the Facility Agent 45 days after the end of relevant Cash Sweep Period. For the avoidance of doubt, if the Facility Agent does not receive the Cash Flow Certificate at least 3 Business Days prior to the relevant Repayment Date it shall not be obliged to make the relevant application under Clause 27.6 (*Application of retentions*).
- (b) Any repayment made under paragraph (a) above shall be applied between the Tranches on a *pro rata* basis and as against each individual Tranche against the then outstanding Repayment Instalments in inverse order of maturity (commencing, for the avoidance of doubt, with the Balloon Instalment applicable to that Tranche).
- (c) For the purposes of this Clause 6.2:

“**Cash Flow**” means, in relation to a Cash Sweep Period, the amount (if any) by which the Revenues exceed the aggregate of (i) OpEx, (ii) Dry-Docking Reserve Accrual and (iii) any other amount as may be required to be transferred to the Liquidity Account in order to ensure compliance with the liquidity requirements set out in Clause 22.1 (*Borrowers’ minimum liquidity*).

“**Cash Flow Certificate**” means, in relation to a Cash Sweep Period, a certificate signed by the chief financial officer of Guarantor A and addressed to the Facility Agent, setting out (in reasonable detail) the computations of the DSCR and the Cash Sweep Amount (if any) as at the last day of that Cash Sweep Period.

“**Cash Flow Debt Service**” means in relation to:

- (a) the First Cash Sweep Period, an amount equal to the sum of:
 - (i) the product of (A) the number of days between the Utilisation Date and 31 December 2018 and (B) the first Repayment Instalment, divided by 90; and
 - (ii) the accrued interest from the Utilisation Date until 31 December 2018; and
- (b) a Subsequent Cash Sweep Period, means the Debt Service payable during that Subsequent Cash Sweep Period.

“**Cash Sweep Amount**” means an amount which when applied in repayment of the Loan pursuant to paragraph (b) of this Clause 6.2 would result in the DSCR being equal to 1.10:1.

“**Cash Sweep Period**” means the First Cash Sweep Period or a Subsequent Cash Sweep Period.

“**Determination Date**” means the date on which the Facility Agent determines (acting on the instructions of the Majority Lenders), on the basis of the Cash Flow Certificate and any information provided to the Facility Agent pursuant to Clause 21.5 (*Information: miscellaneous*), the Cash Sweep Amount.

“**DSCR**” means, in relation to a Cash Sweep Period, the ratio of:

- (a) the Cash Flow; to
- (b) the Cash Flow Debt Service,

as at the last day of that Cash Sweep Period.

“**First Cash Sweep Period**” means the period commencing on the Utilisation Date and ending on 31 December 2018.

“**Revenues**” means, in relation to a Cash Sweep Period, the aggregate Earnings of the Ships minus any commissions in relation to the chartering of the Ships for that Cash Sweep Period.

“**OpEx**” means, in relation to a Cash Sweep Period, the aggregate costs and expenses appropriately and properly incurred in operating the Ships (and proven if so requested by the Facility Agent), including expenses for crewing, victualling, insuring, maintenance, spares, management, operation, voyage (if payable by the Borrowers (or any of them)) and general administrative expenses of the Ships for that Cash Sweep Period.

“**Subsequent Cash Sweep Period**” means each 3-month period ending on 31 March, 30 June, 30 September and 31 December.

6.3 Effect of cancellation and prepayment on scheduled repayments

- (a) If the Borrowers cancel the whole or any part of any Available Commitment in accordance with Clause 7.7 (*Right of repayment and cancellation in relation to a single Lender*) or if the Available Commitment of any Lender is cancelled under Clause 7.1 (*Illegality*) then the Repayment Instalments and the Balloon Instalment in relation to the relevant Tranche falling after that cancellation will be reduced in inverse order of maturity by the amount of the Available Commitments so cancelled.
- (b) If the Borrowers cancel the whole or any part of any Available Commitment in accordance with Clause 7.2 (*Voluntary and automatic cancellation*) or if the whole or part of any Commitment is cancelled pursuant to Clause 5.5 (*Cancellation of Commitments*), the Repayment Instalments and the Balloon Instalment in relation to the relevant Tranche falling after that cancellation will be reduced in inverse order of maturity by the amount of the Commitments so cancelled.
- (c) If any part of the Loan is repaid or prepaid in accordance with Clause 7.7 (*Right of repayment and cancellation in relation to a single Lender*) or Clause 7.1 (*Illegality*), such partial prepayment shall be applied between the Tranches on a *pro rata* basis and as against each individual Tranche against the then outstanding Repayment Instalments in inverse chronological order of maturity (commencing, for the avoidance of doubt, with the Balloon Instalment applicable to that Tranche).
- (d) If any part of the Loan is prepaid in accordance with Clause 7.5 (*Mandatory prepayment on sale or Total Loss*) or Clause 7.6 (*Mandatory prepayment of Hedging Prepayment Proceeds*), such partial prepayment shall be applied between the Tranches on a *pro rata* basis and as against each individual Tranche against the then outstanding Repayment Instalments in inverse chronological order of maturity (commencing, for the avoidance of doubt, with the Balloon Instalment applicable to that Tranche).
- (e) If any part of the Loan is prepaid in accordance with Clause 7.4 (*Voluntary prepayment of Loan*), such partial prepayment shall be applied against the Tranche being prepaid and within that Tranche it shall reduce the Repayment Instalments falling due after that date in inverse chronological order of maturity (commencing, for the avoidance of doubt, with the Balloon Instalment relevant to that Tranche).

6.4 Termination Date

On the Termination Date, the Borrowers shall additionally pay to the Facility Agent for the account of the Finance Parties all other sums then accrued and owing under the Finance Documents.

6.5 Reborrowing

No Borrower may reborrow any part of the Facility which is repaid.

7 PREPAYMENT AND CANCELLATION

7.1 Illegality

If it is or becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in an Advance or the Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the Borrowers, the Available Commitment of that Lender will be immediately cancelled; and
- (c) the Borrowers shall prepay that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Facility Agent has notified the Borrowers or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participation prepaid.

7.2 Change of control

If a Change of Control occurs the Borrowers and the Guarantors shall promptly notify the Facility Agent upon becoming aware of that event and if the Lenders so require, the Facility Agent shall (acting on the instructions of the Lenders), by not less than 30 days' notice to the Borrowers, cancel the Facility and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility will be cancelled and the Loan and interest and other amounts will become immediately due and payable.

For the purpose of this Clause, a "Change of Control" occurs if:

- (i) during the Security Period (and should no Merger be completed):
 - (A) a change occurs in the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (1) cast, or control the casting of, all of the votes that might be cast at a general meeting of any Guarantor; or
 - (2) appoint or remove all, or the majority, of the directors or other equivalent officers of any Guarantor; or
 - (3) give directions with respect to the operating and financial policies of any Guarantor with which the directors or other equivalent officers of that Guarantor are obliged to comply; and/or
 - (B) a change occurs in the beneficial holding of any part of the issued share capital or equity interests of any Guarantor (excluding any part of that issued share capital or equity interests that carries no right to participate beyond a specified amount in a distribution of either profits or capital) and/or, from that disclosed to the Facility Agent prior to the execution of this Agreement; and
 - (C) any change in the direct or indirect legal or beneficial ownership or control of any of the Borrowers.
- (ii) if the Merger is completed (and at any time after its completion):
 - (A) at any time during the six-month period commencing from the date on which the Merger is completed, the non-floating shareholders that hold voting rights in the New Parent (as disclosed to the Facility Agent on the date of such Merger) immediately following such Merger cease to own (either directly or through one or more of their affiliates) collectively an amount that is more than 100 per cent. of the voting rights in the New Parent (or its successor) owned by them as on the date on which the Merger is completed; or

- (B) Mr George Giouroukos ceases to be the Executive Chairman (or to maintain an equivalent executive officer position) of the New Parent other than by reason of death or other incapacity in managing his affairs; or
- (C) any change in the direct legal ownership of any of the Borrowers; or
- (D) Mr George Giouroukos ceases to own at least 50 per cent. of the number of shares of the New Parent (either directly or through one or more affiliates) held by him on the date of the completion of the Merger (excluding any share split or reverse split) other than by reason of death or other incapacity in managing his affairs; or
- (E) any person(s) owns more than 35 per cent. of the shares in the New Parent, unless such person(s) owned such shares on the date of the completion of the Merger.

7.3 Voluntary and automatic cancellation

- (a) The Borrowers may, if they give the Facility Agent not less than ten Business Days' (or such shorter period as the Majority Lenders and the Facility Agent may agree) prior written notice, cancel the whole or any part (being a minimum amount of \$1,000,000 or a multiple of that amount (or such other amount as the Majority Lenders may agree in their sole discretion)) of the Available Facility. Any cancellation under this Clause 7.2 (*Voluntary and automatic cancellation*) shall reduce the Commitments of the Lenders rateably and the amount of the relevant Tranche(s).
- (b) The unutilised Commitment (if any) of each Lender shall be automatically cancelled at close of business on the date on which the Advance under a Tranche is made available.

7.4 Voluntary prepayment of Loan

The Borrowers may, if they give the Facility Agent not less than ten Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount equal to \$1,000,000 or a multiple of that amount (or such other amount as the Majority Lenders may agree in their sole discretion)).

7.5 Mandatory prepayment on sale or Total Loss

- (a) If a Ship is sold (without prejudice to paragraph (a) of Clause 23.13 (*Disposals*)) or becomes a Total Loss, the Borrowers shall on the Relevant Date prepay the Relevant Amount.
- (b) In this Clause 7.5 (*Mandatory prepayment on sale or Total Loss*):
 - “**Relevant Amount**” means an amount equal to:
 - (i) the outstanding amount of the Tranche relevant to the Ship which is sold or has become a Total Loss; and
 - (ii) an amount (if any) which, after the application of the prepayment to be made pursuant to this Clause 7.5 (*Mandatory prepayment on sale or Total Loss*) results in the minimum required security cover set out in Clause 26.1 (*Minimum required security cover*) being complied with.

“**Relevant Date**” means:

- (A) in the case of a sale of a Ship, on the earlier of:
 - (A) the date on which the sale is completed by delivery of that Ship to the buyer of that Ship; and
 - (B) the date of receipt by the Security Agent of the proceeds of the sale;
- (B) in the case of a Total Loss of a Ship, on the earlier of:
 - (A) the date falling 120 days after the Total Loss Date; and
 - (B) the date of receipt by the Security Agent of the proceeds of insurance relating to such Total Loss.

7.6 Mandatory prepayment of Hedging Prepayment Proceeds

Any Hedging Prepayment Proceeds arising as a result of any cancellation or prepayment under this Agreement shall, following payment into the Retention Account in accordance with Clause 27.2 (*Payment of Earnings*), be applied rateably on the last day of each Interest Period which ends after such payment in prepayment of the Loan.

7.7 Right of repayment and cancellation in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by a Transaction Obligor is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*) or under that clause as incorporated by reference or in full in any other Finance Document; or
 - (ii) any Lender claims indemnification from a Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13.1 (*Increased costs*),the Borrowers may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Facility Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender’s participation in the Loan.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrowers have given notice of cancellation under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrowers in that notice), the Borrowers shall repay that Lender’s participation in the Loan.

7.8 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 (*Prepayment and Cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made, the amount of that cancellation or prepayment and, if relevant, the part of the Loan to be prepaid or cancelled.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and amounts (if any) payable under the Hedging Agreements in connection with that prepayment and, subject to the fee provided for in Clause 11.2 (*Prepayment fee*) and any Break Costs, without premium or penalty.
- (c) No Borrower may reborrow any part of the Facility which is prepaid.
- (d) No Borrower shall repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrowers or the affected Lenders and/or Hedge Counterparties, as appropriate.
- (g) If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

7.9 Application of prepayments

Any prepayment of any part of the Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality*), Clause 7.4 (*Voluntary prepayment of Loan*) or Clause 7.7 (*Right of repayment and cancellation in relation to a single Lender*)) shall be applied pro rata to each Lender's participation in that part of the Loan.

SECTION 5

COSTS OF UTILISATION

8 INTEREST

8.1 Calculation of interest

The rate of interest on the Loan or any part of the Loan for each Interest Period is the percentage rate per annum which is the aggregate of:

- (a) the Margin; and
- (b) LIBOR.

8.2 Payment of interest

- (a) The Borrowers shall pay accrued interest on the Loan or any part of the Loan on the last day of each Interest Period (each an “**Interest Payment Date**”).
- (b) If an Interest Period is longer than three Months, the Borrowers shall also pay interest then accrued on the Loan or the relevant part of the Loan on the dates falling at three Monthly intervals after the first day of the Interest Period.

8.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document other than a Hedging Agreement on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 2 per cent. per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted part of the Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Facility Agent (acting on the instructions of the Majority Lenders). Any interest accruing under this Clause 8.3 (*Default interest*) shall be immediately payable by the Obligor on demand by the Facility Agent (acting on the instructions of the Majority Lenders).
- (b) If an Unpaid Sum consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period relating to the Loan or that part of the Loan:
 - (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan or that part of the Loan; and
 - (ii) the rate of interest applying to that Unpaid Sum during that first Interest Period shall be 2 per cent. per annum higher than the rate which would have applied if that Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

8.4 Notification of rates of interest

- (a) The Facility Agent shall promptly notify the Lenders and the Borrowers of the determination of a rate of interest under this Agreement.
- (b) The Facility Agent shall promptly notify the Borrowers of each Funding Rate relating to the Loan, any part of the Loan or any Unpaid Sum.

8.5 Hedging

- (a) The Borrowers may from time to time enter into Hedging Agreements for the purposes of hedging interest payable under this Agreement and in accordance with the other provisions of this Agreement, provided always that the Borrowers shall (i) not enter into or maintain any Hedging Agreements which are speculative in nature and (ii) ensure that at all times it shall enter into and maintain Hedging Agreements in relation to which the Total Hedged Amount is not less than the Minimum Required Hedged Amount.
- (b) Each Hedging Agreement shall:
 - (i) be with a Hedge Counterparty;
 - (ii) be for a term ending on the Termination Date or such other date or dates as the Majority Lenders may agree;
 - (iii) have settlement dates coinciding with the Interest Payment Dates;
 - (iv) be based on an ISDA Master Agreement and otherwise in form and substance satisfactory to the Facility Agent; and
 - (v) provide that the Termination Currency (as defined in the relevant Hedging Agreement) shall be dollars.
- (c) The rights of each Borrower under the Hedging Agreements and any Hedge Counterparty Guarantee shall be charged or assigned by way of security under a Hedging Agreement Security.
- (d) The parties to each Hedging Agreement must comply with the terms of that Hedging Agreement.
- (e) Neither a Hedge Counterparty nor a Borrower may amend, supplement, extend or waive the terms of any Hedging Agreement or Hedge Counterparty Guarantee without the consent of the Security Agent.
- (f) Paragraph (e) above shall not apply to an amendment, supplement or waiver that is administrative and mechanical in nature and does not give rise to a conflict with any provision of this Agreement or the Hedging Agreement Security.
- (g) If, at any time, the aggregate notional amount of the transactions in respect of the Hedging Agreements exceeds or, as a result of any repayment or prepayment under this Agreement, will exceed the Loan at that time, the Borrowers must promptly notify the Facility Agent and must, at the request of the Facility Agent, reduce the aggregate notional amount of those transactions by an amount and in a manner satisfactory to the Facility Agent so that it no longer exceeds or will not exceed the Loan then or that will be outstanding.

- (h) Any reductions in the aggregate notional amount of the transactions in respect of the Hedging Agreements in accordance with paragraph (g) above will be apportioned as between those transactions *pro rata*.
- (i) Paragraph (g) above shall not apply to any transactions in respect of any Hedging Agreement under which no Borrower has any actual or contingent indebtedness.
- (j) The Facility Agent must make a request under paragraph (g) above if so required by a Hedge Counterparty.
- (k) Neither a Hedge Counterparty nor a Borrower may terminate or close out any transactions in respect of any Hedging Agreement (in whole or in part) except:
 - (i) in accordance with paragraphs (g)-(j) above;
 - (ii) on the occurrence of an Illegality, (as such expression is defined in the relevant Hedging Agreement);
 - (iii) in the case of termination or closing out by a Hedge Counterparty, if the Facility Agent serves notice under paragraph (ii) of Clause 28.19 (*Acceleration*) or, having served notice under paragraph (iii) of Clause 28.19 (*Acceleration*), makes a demand;
 - (iv) in the case of any other termination or closing out by a Hedge Counterparty or a Borrower, with the consent of the Facility Agent; or
 - (v) if the Secured Liabilities (other than in respect of the Hedging Agreements) have been irrevocably and unconditionally paid and discharged in full;
- (l) If a Hedge Counterparty or a Borrower terminates or closes out a transaction in respect of a Hedging Agreement (in whole or in part) in accordance with sub-paragraphs (ii) or (in the case of a Hedge Counterparty only) (iv) of paragraph (k) above, it shall promptly notify the Facility Agent of that termination or close out.
- (m) If a Hedge Counterparty is entitled to terminate or close out any transaction in respect of any Hedging Agreement under sub-paragraph (iii) of paragraph (k) above, such Hedge Counterparty shall promptly terminate or close out such transaction following a request to do so by the Security Agent.
- (n) A Hedge Counterparty may only suspend making payments under a transaction in respect of a Hedging Agreement if a Borrower is in breach of its payment obligations under any transaction in respect of that Hedging Agreement.
- (o) Each Hedge Counterparty consents to, and acknowledges notices of, the charging or assigning by way of security by each Borrower pursuant to the relevant Hedging Agreement Security of its rights under the Hedging Agreements to which it is party in favour of the Security Agent.
- (p) Any such charging or assigning by way of security is without prejudice to, and after giving effect to, the operation of any payment or close-out netting in respect of any amounts owing under any Hedging Agreement.
- (q) The Security Agent shall not be liable for the performance of any of a Borrower's obligations under a Hedging Agreement.

- (r) No Borrower or Hedge Counterparty shall assign any of its rights or transfer any of its rights or obligations under a Hedging Agreement or permit a change of Hedge Counterparty Guarantor without the consent of the Security Agent.

9 INTEREST PERIODS

9.1 Selection of Interest Periods

- (a) The Borrowers may select the Interest Period for the Loan in the Utilisation Request. Subject to paragraphs (f) and (h) below and Clause 9.2 (*Changes to Interest Periods*), the Borrowers may select each subsequent Interest Period in respect of the Loan in a Selection Notice.
- (b) Each Selection Notice is irrevocable and must be delivered to the Facility Agent by the Borrowers not later than the Specified Time.
- (c) If the Borrowers fail to select an Interest Period in the first Utilisation Request or fail to deliver a Selection Notice to the Facility Agent in accordance with paragraphs (a) and (b) above, the relevant Interest Period will, subject to paragraphs (f) and (h) below and Clause 9.2 (*Changes to Interest Periods*), be three Months.
- (d) Subject to this Clause 9 (*Interest Periods*), the Borrowers may select an Interest Period of three Months or any other period agreed between the Borrowers and the Facility Agent (acting on the instructions of all the Lenders).
- (e) An Interest Period in respect of the Loan or any part of the Loan shall not extend beyond the Termination Date.
- (f) In respect of a Repayment Instalment, the Borrowers may request in the relevant Selection Notice that an Interest Period for a part of the Loan equal to such Repayment Instalment shall end on the Repayment Date relating to it and, subject to paragraph (d) above, select a longer Interest Period for the remaining part of the Loan.
- (g) The first Interest Period for the Loan shall start on the Utilisation Date and, subject to paragraph (h) below, each subsequent Interest Period shall start on the last day of its preceding Interest Period.
- (h) Except for the purposes of paragraph (f) above and Clause 9.2 (*Changes to Interest Periods*), the Loan shall have one Interest Period only at any time.

9.2 Changes to Interest Periods

- (a) In respect of a Repayment Instalment, prior to determining the interest rate for the Loan, the Facility Agent may establish an Interest Period for a part of the Loan equal to such Repayment Instalment to end on the Repayment Date relating to it and the remaining part of the Loan shall have the Interest Period selected in the relevant Selection Notice, subject to paragraph (d) of Clause 9.1 (*Selection of Interest Periods*).
- (b) If the Facility Agent makes any change to an Interest Period referred to in this Clause 9.2 (*Changes to Interest Periods*), it shall promptly notify the Borrowers and the Lenders.

9.3 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10 CHANGES TO THE CALCULATION OF INTEREST

10.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of the Loan or any part of the Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:
 - (i) dollars; or
 - (ii) the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Screen Rate,
 - (iii) the applicable LIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for dollars or the relevant Interest Period there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 10.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

10.2 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if LIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about noon on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

10.3 Market disruption

- (a) If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 66 per cent. of the Loan or the relevant part of the Loan as appropriate) that the cost to it of funding its participation in the Loan or that part of the Loan from whatever source it may reasonably select for dollars would be in excess of LIBOR then Clause 10.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.
- (b) If, at least one Business Day before the Utilisation Date, the Facility Agent receives notification from a Lender (the “**Affected Lender**”) that for any reason it is unable to obtain dollars in the Relevant Interbank Market in order to fund its participation in an Advance, the Affected Lender’s obligation to participate in that Advance shall be suspended while that situation continues, provided however that the Affected Lender and/or the Facility Agent shall use reasonable endeavours to find an alternative method to fund the Loan.

10.4 Cost of funds

- (a) If this Clause 10.4 (*Cost of funds*) applies, the rate of interest on each Lender's share of the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin;
 - (ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in the Loan or that part of the Loan from whatever source it may reasonably select; and
 - (iii) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan or that part of the Loan.
- (b) If this Clause 10.4 (*Cost of funds*) applies and the Facility Agent (acting on the instructions of the Lenders) or the Borrowers so require, the Facility Agent and the Borrowers shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 4.4 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders, the Facility Agent and the Borrowers, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
- (e) If this Clause 10.4 (*Cost of funds*) applies pursuant to Clause 10.3 (*Market disruption*) and:
- (i) a Lender's Funding Rate is less than LIBOR; or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,
- the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

10.5 Break Costs

- (a) The Borrowers shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by a Borrower on a day other than the last day of an Interest Period for the Loan, the relevant part of the Loan or that Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent (acting on the instructions of the Lenders), provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11 FEES

11.1 Commitment fee

- (a) The Borrowers shall pay to the Facility Agent (for the account of each Lender) a non-refundable commitment fee computed at 40 per cent. of the Margin on that Lender's Available Commitment from time to time commencing on the date of this Agreement and ending on the earlier of (i) last day of the Availability Period, (ii) the Utilisation Date and (iii) the date on which the Available Commitments are cancelled in full or no longer available for drawing for any other reason whatsoever.
- (b) The accrued commitment fee is payable on the earlier of (i) the Utilisation Date and (ii) the last day of the Availability Period (and on the last day of such period), or, in relation to any Available Commitment which is cancelled, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

11.2 Prepayment fee

- (a) Subject to paragraph (c) below, the Borrowers must pay to the Facility Agent for each Lender a prepayment fee on the date of prepayment of all or any part of the Loan.
- (b) The amount of the prepayment fee is:
 - (i) if the prepayment occurs on or before the date falling on the first anniversary of the Utilisation Date, 3 per cent. of the amount prepaid;
 - (ii) if the prepayment occurs after the date falling on the first but on or before the date falling on the second anniversary of the Utilisation Date, 2 per cent. of the amount prepaid;
 - (iii) if the prepayment occurs after the date falling on the second but on or before the date falling on the third anniversary of the Utilisation Date, 1 per cent. of the amount prepaid; and
 - (iv) if the prepayment occurs after the date falling on the third anniversary of the Utilisation Date, no prepayment fee shall be payable.
- (c) No prepayment fee shall be payable under this Clause if the prepayment is made under Clause 7.1 (*Illegality*), Clause 7.7 (*Right of replacement or repayment and cancellation in relation to a single Lender*) or, only in the event of a Total Loss of a Ship, Clause 7.5 (*Mandatory prepayment on sale or Total loss*).

11.3 Other Fees

Certain other non-refundable fee(s) to the Secured Parties referred to, and in the amount and at the times agreed in the Fee Letter and/or the Mandate Letter.

ADDITIONAL PAYMENT OBLIGATIONS

12 TAX GROSS UP AND INDEMNITIES

12.1 Definitions

(a) In this Agreement:

“**Protected Party**” means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

“**Tax Payment**” means either the increase in a payment made by an Obligor to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 12 (*Tax Gross Up and Indemnities*) reference to “determines” or “determined” means a determination made in the absolute discretion of the person making the determination.

(c) This Clause 12 (*Tax Gross Up and Indemnities*) shall not apply to any Hedging Agreement.

12.2 Tax gross-up

(a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrowers shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrowers and that Obligor.

(c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 Tax indemnity

- (a) The Obligors shall (within three Business Days of demand by the Facility Agent (acting on the instructions of a Protected Party or claiming on its own behalf)) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or
 - (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Obligors.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3 (*Tax indemnity*), notify the Facility Agent.

12.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was received; and
 - (b) that Finance Party has obtained and utilised that Tax Credit,
- the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

12.5 Stamp taxes

The Obligors shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability which that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

12.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this sub-paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
- (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.6 (VAT) to any Party shall, at any time when that Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union)) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or representative or head) of that group or unity at the relevant time (as the case may be).

- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

12.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party; and
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to sub-paragraph (i) of paragraph (a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything and sub-paragraph (iii) of paragraph (a) above shall not oblige any other Party to do anything which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with sub-paragraphs (i) or (ii) of paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If a Borrower is a US Tax Obligor, or the Facility Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:

- (iii) where a Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
- (iv) where a Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
- (v) where a Borrower is not a US Tax Obligor, the date of a request from the Facility Agent, supply to the Facility Agent:
 - (i) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (ii) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (d) above to the Borrowers.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (d) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrowers.
- (h) The Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (d) or (f) above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with paragraphs (d), (f) or (f) above.

12.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify each Obligor and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

13 INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*), the Borrowers shall, within three Business Days of a demand by the Facility Agent (acting on the instructions of a Lender or claiming on its own behalf), pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:

- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
 - (ii) compliance with any law or regulation made,
- in each case after the date of this Agreement; or
- (iii) the implementation, application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.
- (b) In this Agreement:
- (i) **“Basel III”** means:
 - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
 - (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement—Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
 - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.
 - (ii) **“CRD IV”** means:
 - (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012;
 - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and
 - (C) any other law or regulation which implements Basel III.
 - (iii) **“Increased Costs”** means:
 - (A) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
 - (B) an additional or increased cost; or
 - (C) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

13.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim together with the amount of such claim, following which the Facility Agent shall promptly notify the Borrowers.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent (acting on the instructions of the Majority Lenders), provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);
- (d) compensated for by any payment made pursuant to Clause 14.3 (*Mandatory Cost*);
- (e) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
- (f) incurred by a Hedge Counterparty in its capacity as such.

14 OTHER INDEMNITIES

14.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
 - (i) making or filing a claim or proof against that Obligor; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall, as an independent obligation, on demand, indemnify each Secured Party to which that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.
- (c) This Clause 14.1 (*Currency indemnity*) does not apply to any sum due to a Hedge Counterparty in its capacity as such.

14.2 Other indemnities

- (a) Each Obligor shall, on demand, indemnify each Secured Party against any cost, loss or liability incurred by it (acting reasonably) as a result of:
 - (i) the occurrence of any Event of Default;
 - (ii) a failure by a Transaction Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 34 (*Sharing among the Finance Parties*);
 - (iii) funding, or making arrangements to fund, its participation in an Advance requested by the Borrowers in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or
 - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrowers.
- (b) Each Obligor shall, on demand, indemnify each Finance Party, each Indemnified Person, against any cost, loss or liability incurred by that Indemnified Person pursuant to or in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry, in connection with or arising out of the entry into and the transactions contemplated by the Finance Documents, having the benefit of any Security constituted by the Finance Documents or which relates to the condition or operation of, or any incident occurring in relation to, any Ship unless such cost, loss or liability is caused by the gross negligence or wilful misconduct of that Indemnified Person.
- (c) Without limiting, but subject to any limitations set out in paragraph (b) above, the indemnity in paragraph (b) above shall cover any cost, loss or liability incurred by each Indemnified Person in any jurisdiction:
 - (i) arising or asserted under or in connection with any law relating to safety at sea, the ISM Code, any Environmental Law or any Sanctions; or
 - (ii) in connection with any Environmental Claim.
- (d) Any Affiliate or any officer or employee of a Finance Party or of any of its Affiliates may rely on this Clause 14.2 (*Other indemnities*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

14.3 Mandatory Cost

Each Borrower shall, on demand by the Facility Agent (acting on the instructions of the Majority Lenders), pay to the Facility Agent for the account of the relevant Lender, such amount which any Lender certifies in a notice to the Facility Agent to be its good faith determination of the amount necessary to compensate it for complying with:

- (a) in the case of a Lender lending from a Facility Office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank or any other authority or agency which replaces all or any of its functions in respect of loans made from that Facility Office; and
 - (b) in the case of any Lender lending from a Facility Office in the United Kingdom, any reserve asset, special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England (or any other governmental authority or agency) and/or paying any fees to the Financial Conduct Authority and/or the Prudential Regulation Authority (or any other governmental authority or agency which replaces all or any of their functions),
- which, in each case, is referable to that Lender's participation in the Loan.

14.4 Indemnity to the Facility Agent

Each Obligor shall, on demand, indemnify each Indemnified Person against:

- (a) any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of:
 - (i) investigating (acting on the instructions of the Majority Lenders) any event which the Majority Lenders reasonably believe is a Default; or
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents or as may be required by the Majority Lenders; and
- (b) any cost, loss or liability incurred by the Indemnified Person (otherwise than by reason of the Indemnified Person's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 35.11 (*Disruption to Payment Systems etc.*) notwithstanding the Indemnified Person's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Finance Documents.

14.5 Indemnity to the Security Agent

- (a) Each Obligor shall, on demand, indemnify each Indemnified Person against any cost, loss or liability incurred by any of them:
 - (i) in relation to or as a result of:
 - (A) any failure by a Borrower to comply with its obligations under Clause 16 (*Costs and Expenses*);
 - (B) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

- (C) the taking, holding, protection or enforcement of the Finance Documents and the Transaction Security;
 - (D) the exercise of any of the rights, powers, discretions, authorities and remedies vested in that Indemnified Person by the Finance Documents or by law;
 - (E) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
 - (F) any action by any Transaction Obligor which vitiates, reduces the value of, or is otherwise prejudicial to, the Transaction Security; and
 - (G) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents.
- (ii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property or the performance of the terms of this Agreement or the other Finance Documents (otherwise, in each case, than by reason of the relevant Indemnified Person's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.5 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

15 MITIGATION BY THE FINANCE PARTIES

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrowers, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax Gross Up and Indemnities*), Clause 13 (*Increased Costs*) or paragraph (a) of Clause 14.3 (*Mandatory Cost*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Transaction Obligor under the Finance Documents.

15.2 Limitation of liability

- (a) Each Obligor shall, on demand, indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if either:
- (i) a Default has occurred and is continuing; or
 - (ii) in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16 COSTS AND EXPENSES

16.1 Transaction expenses

The Obligors shall, promptly on demand, pay the Facility Agent, the Security Agent and the Arranger the amount of all costs and expenses (including legal fees) reasonably incurred and documented by any Secured Party in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) any other Finance Documents executed after the date of this Agreement, including any Relevant Retrenching Document.

16.2 Amendment costs

If:

- (a) a Transaction Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required either pursuant to Clause 35.9 (*Change of currency*) or as contemplated in Clause 44.4 (*Replacement of Screen Rate*);
- (c) an amendment is required in connection with a Relevant Retrenching; or
- (d) a Transaction Obligor requests, and the Security Agent (acting on the instructions of the Majority Lenders) agrees to, the release of all or any part of the Security Assets from the Transaction Security,

the Obligors shall, on demand, reimburse each of the Facility Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred and documented by each Secured Party in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 Enforcement and preservation costs

The Obligors shall, on demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document and/or the Transaction Security and with any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

GUARANTEES AND JOINT AND SEVERAL LIABILITY OF BORROWERS

17 GUARANTEE AND INDEMNITY**17.1 Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each other Transaction Obligor of all such other Transaction Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Transaction Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of another Transaction Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 17 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

17.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Transaction Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

17.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Transaction Obligor or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of a Guarantor under this Clause 17 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

17.4 Waiver of defences

The obligations of the Guarantors under this Clause 17 (*Guarantee and Indemnity*) and in respect of any Transaction Security will not be affected or discharged by an act, omission, matter or thing which, but for this Clause 17.4 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Clause 17 (*Guarantee and Indemnity*) or in respect of any Transaction Security (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;

- (b) the release of any other Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect or delay in perfecting, or refusal or neglect to take up or enforce, or delay in taking or enforcing any rights against, or security over assets of, any Transaction Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Transaction Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

17.5 Immediate recourse

- (a) Each of the Guarantors waives any right they may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person (including without limitation to commence any proceedings under any Finance Document or to enforce any Transaction Security) before claiming or commencing proceedings under this Clause 17 (*Guarantee and Indemnity*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.
- (b) Each of the Guarantors acknowledges the right of the Security Agent pursuant to Clause 28.19 (*Acceleration*) to enforce or exercise any or all of its rights, remedies powers or discretions under any guarantee or indemnity contained in this Agreement.

17.6 Appropriations

Until all amounts which may be or become payable by the Transaction Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantors shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Guarantors or on account of any Guarantor's liability under this Clause 17 (*Guarantee and Indemnity*).

17.7 Deferral of Guarantors' rights

All rights which the Guarantors at any time have (whether in respect of this guarantee, a mortgage or any other transaction) against any Borrower, any other Transaction Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents and until the end of the Security Period and unless the Facility Agent (acting on the instructions of the Lenders) otherwise directs, the Guarantors will not exercise any rights which they may have (whether in respect of any Finance Document to which they are a Party or any other transaction) by reason of performance by the Guarantors of their obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 17 (*Guarantee and Indemnity*):

- (a) to be indemnified by a Transaction Obligor;
- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Transaction Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which the Guarantors have given a guarantee, undertaking or indemnity under Clause 17.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Transaction Obligor; and/or
- (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Secured Party.

If the Guarantors receive any benefit, payment or distribution in relation to such rights they shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Transaction Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent (acting on the instructions of the Lenders) may direct for application in accordance with Clause 35 (*Payment Mechanics*).

17.8 Additional security

This guarantee and any other Security given by the Guarantors is in addition to and is not in any way prejudiced by, and shall not prejudice, any other guarantee or Security or any other right of recourse now or subsequently held by any Secured Party or any right of set-off or netting or right to combine accounts in connection with the Finance Documents.

17.9 Applicability of provisions of Guarantee to other Security

Clauses 17.2 (*Continuing guarantee*), 17.3 (*Reinstatement*), 17.4 (*Waiver of defences*), 17.5 (*Immediate recourse*), 17.6 (*Appropriations*), 17.7 (*Deferral of Guarantors' rights*) and 17.8 (*Additional security*) shall apply, with any necessary modifications, to any Security which a Guarantor creates (whether at the time at which it signs this Agreement or at any later time) to secure the Secured Liabilities or any part of them.

18 JOINT AND SEVERAL LIABILITY OF THE BORROWERS

18.1 Joint and several liability

All liabilities and obligations of the Borrowers under this Agreement shall, whether expressed to be so or not, be joint and several.

18.2 Waiver of defences

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 any other Borrower;
- (b) any Lender or the Security Agent entering into any rescheduling, refinancing or other arrangement of any kind with any other Borrower;
- (c) any Lender or the Security Agent releasing any other Borrower or any Security created by a Finance Document; or
- (d) any time, waiver or consent granted to, or composition with any other Borrower or other person;
- (e) the release of any other Borrower or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (f) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any other Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (g) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other Borrower or any other person;
- (h) any amendment, novation, supplement, extension, restatement (however fundamental, and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (i) any unenforceability, illegality or invalidity of any obligation or any person under any Finance Document or any other document or security; or
- (j) any insolvency or similar proceedings.

18.3 Principal Debtor

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 no Borrower shall, in any circumstances, be construed to be a surety for the obligations of any other Borrower under this Agreement.

18.4 Borrower restrictions

- (a) Subject to paragraph (b) below, during the Security Period no Borrower shall:
- (i) claim any amount which may be due to it from any other Borrower whether in respect of a payment made under, or matter arising out of, this Agreement or any Finance Document, or any matter unconnected with this Agreement or any Finance Document; or
 - (ii) take or enforce any form of security from any other Borrower for such an amount, or in any way seek to have recourse in respect of such an amount against any asset of any other Borrower; or
 - (iii) set off such an amount against any sum due from it to any other Borrower; or
 - (iv) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving any other Borrower; or
 - (v) exercise or assert any combination of the foregoing.
- (b) If during the Security Period, the Facility Agent, by notice to a Borrower, requires it to take any action referred to in paragraph (a) above in relation to any other Borrower, that Borrower shall take that action as soon as practicable after receiving the Facility Agent's notice.

18.5 Deferral of Borrowers' rights

Until all amounts which may be or become payable by the Borrowers under or in connection with the Finance Documents have been irrevocably paid in full and unless the Facility Agent otherwise directs, no Borrower will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

- (a) to be indemnified by any other Borrower; or
- (b) to claim any contribution from any other Borrower in relation to any payment made by it under the Finance Documents.

19 GUARANTEE AND INDEMNITY – HEDGE GUARANTORS

19.1 Guarantee and indemnity

Each Hedge Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Hedge Counterparty punctual performance by each Borrower of all that Borrower's obligations under the Hedging Agreements;
- (b) undertakes with each Hedge Counterparty that whenever a Borrower does not pay any amount when due under or in connection with any Hedging Agreement, that Hedge Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees with each Hedge Counterparty that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Hedge Counterparty immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount which would, but for such unenforceability,

invalidity or illegality, have been payable by it under any Hedging Agreement on the date when it would have been due. The amount payable by a Hedge Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 19 (*Guarantee and Indemnity – Hedge Guarantors*) if the amount claimed had been recoverable on the basis of a guarantee.

19.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Borrower under the Hedging Agreements, regardless of any intermediate payment or discharge in whole or in part.

19.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Borrower or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Hedge Guarantor under this Clause 19 (*Guarantee and Indemnity – Hedge Guarantors*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

19.4 Waiver of defences

The obligations of each Hedge Guarantor under this Clause 19 (*Guarantee and Indemnity – Hedge Guarantors*) and in respect of any Transaction Security will not be affected or discharged by an act, omission, matter or thing which, but for this Clause 19.4 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Clause 19 (*Guarantee and Indemnity – Hedge Guarantors*) or in respect of any Transaction Security (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;
- (b) the release of any other Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect or delay in perfecting, or refusal or neglect to take up or enforce, or delay in taking or enforcing any rights against, or security over assets of, any Transaction Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Transaction Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

19.5 Immediate recourse

Each Hedge Guarantor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person (including without limitation to commence any proceedings under any Finance Document or to enforce any Transaction Security) before claiming or commencing proceedings under this Clause 19 (*Guarantee and Indemnity – Hedge Guarantors*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

19.6 Appropriations

Until all amounts which may be or become payable by the Borrowers under or in connection with the Hedging Agreements have been irrevocably paid in full, each Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Hedge Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Hedge Guarantor or on account of any Hedge Guarantor's liability under this Clause 19 (*Guarantee and Indemnity – Hedge Guarantors*).

19.7 Deferral of Hedge Guarantors' rights

All rights which each Hedge Guarantor at any time has (whether in respect of this guarantee, a mortgage or any other transaction) against any Borrower, any other Transaction Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents and until the end of the Security Period and unless the Facility Agent otherwise directs, no Hedge Guarantor will exercise any rights which it may have (whether in respect of any Finance Document to which it is a Party or any other transaction) by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 19 (*Guarantee and Indemnity – Hedge Guarantors*):

- (a) to be indemnified by a Transaction Obligor;
- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Transaction Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;

- (d) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which any Hedge Guarantor has given a guarantee, undertaking or indemnity under Clause 19 (*Guarantee and Indemnity – Hedge Guarantors*);
- (e) to exercise any right of set-off against any Transaction Obligor; and/or
- (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Secured Party.

If a Hedge Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Transaction Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct for application in accordance with Clause 35 (*Payment Mechanics*).

19.8 Additional security

This guarantee and any other Security given by a Hedge Guarantor is in addition to and is not in any way prejudiced by, and shall not prejudice, any other guarantee or Security or any other right of recourse now or subsequently held by any Secured Party or any right of set-off or netting or right to combine accounts in connection with the Finance Documents.

19.9 Applicability of provisions of Guarantee to other Security

Clauses 19.2 (*Continuing guarantee*), 19.3 (*Reinstatement*), 19.4 (*Waiver of defences*), 19.5 (*Immediate recourse*), 19.6 (*Appropriations*), 19.7 (*Deferral of Hedge Guarantors' rights*) and 19.8 (*Additional security*) shall apply, with any necessary modifications, to any Security which a Hedge Guarantor creates (whether at the time at which it signs this Agreement or at any later time) to secure the Secured Liabilities or any part of them.

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

20 REPRESENTATIONS**20.1 General**

Each Obligor makes the representations and warranties set out in this Clause 20 (*Representations*) to each Finance Party on the date of this Agreement.

20.2 Status

- (a) It is a limited liability company, duly formed and validly existing in good standing under the law of its Original Jurisdiction.
- (b) It and each Transaction Obligor has the power to own its assets and carry on its business as it is being conducted.

20.3 LLC Shares and ownership

- (a) In the case of Borrower A, the aggregate number of limited liability company interests that it is authorised to issue is 500 LLC Shares, all of which (being 100 per cent. of its limited liability company interests) have been issued to Odysia NB.
- (b) In the case of Borrower B, the aggregate number of limited liability company interests that it is authorised to issue is 500 LLC Shares, all of which (being 100 per cent. of its limited liability company interests) have been issued to Odysia NB.
- (c) In the case of Borrower C, the aggregate number of limited liability company interests that it is authorised to issue is 500 LLC Shares (being 100 per cent. of its issued limited liability company interests), all of which have been issued to Odysia NB.
- (d) In the case of Odysia NB, the aggregate number of limited liability company interests that it is authorised to issue is 500 LLC Shares, all of which have been issued to Guarantor B.
- (e) In the case of the Guarantor A, its limited liability company interests are unitized and there is no limitation on the number of units established within its limited liability company agreement.
- (f) In the case of the Guarantor B, the aggregate number of limited liability company interests that it is authorised to issue is 100, consisting of 75 Class A common limited liability company interests and 25 Class B preferential limited liability company interests.
- (g) In the case of the Guarantor C, its limited liability company interests are unitized and there is no limitation on the number of units established within its limited liability company agreement.
- (h) Prior to the completion of the Merger, the ultimate beneficial ownership and control of each Obligor is maintained by those person(s) advised to the Facility Agent in writing prior to the date of this Agreement.
- (i) None of the LLC Shares in any Borrower are subject to any option to purchase, pre-emption rights or similar rights.

20.4 Binding obligations

Subject to the Legal Reservations, the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations.

20.5 Validity, effectiveness and ranking of Security

- (a) Each Finance Document to which it is a party does now or, as the case may be, will upon execution and delivery create, subject to the Legal Reservations and the Perfection Requirements, the Security it purports to create over any assets to which such Security, by its terms, relates, and such Security will, when created or intended to be created, be valid and effective.
- (b) No third party has or will have any Security (except for Permitted Security) over any assets that are the subject of any Transaction Security granted by it.
- (c) Subject to the Legal Reservations and the Perfection Requirements, the Transaction Security granted by it to the Security Agent or any other Secured Party has or will when created or intended to be created have first ranking priority or such other priority it is expressed to have in the Finance Documents and is not subject to any prior ranking or *pari passu* ranking security.
- (d) No concurrence, consent or authorisation of any person is required for the creation of or otherwise in connection with any Transaction Security.

20.6 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, each Transaction Document to which it is a party do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

20.7 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise:
 - (i) its entry into, performance and delivery of, each Transaction Document to which it is or will be a party and the transactions contemplated by those Transaction Documents; and
 - (ii) in the case of a Borrower, its registration of its Ship under an Approved Flag;
- (b) No limit on its powers will be exceeded as a result of the borrowing, granting of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

20.8 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
- (b) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect.

20.9 Governing law and enforcement

- (a) Subject to the Legal Reservations, the choice of governing law of each Transaction Document to which it is a party will be recognised and enforced in its Relevant Jurisdictions.
- (b) Subject to the Legal Reservations, any judgment obtained in relation to a Transaction Document to which it is a party in the jurisdiction of the governing law of that Transaction Document will be recognised and enforced in its Relevant Jurisdictions.

20.10 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 28.8 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 28.9 (*Creditors' process*), has been taken or, to its knowledge, threatened in relation to a member of the Group or an Approved Manager; and none of the circumstances described in Clause 28.7 (*Insolvency*) applies to a member of the Group or an Approved Manager.

20.11 No filing or stamp taxes

Under the laws of its Relevant Jurisdictions it is not necessary that the Finance Documents to which it is a party be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by those Finance Documents.

20.12 Deduction of Tax

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to which it is a party.

20.13 No default

- (a) No Event of Default and, on the date of this Agreement and on the Utilisation Date, no Default is continuing or might reasonably be expected to result from the making of the Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.

- (b) No other event or circumstance is outstanding which constitutes a default or a termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject.

20.14 No misleading information

- (a) Any factual information provided by any member of the Group for the purposes of this Agreement was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) The financial projections contained in any such information have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from any such information and no information has been given or withheld that results in any such information being untrue or misleading in any material respect.

20.15 Financial Statements

- (a) Each Obligor's (excluding Guarantor C) Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) Each Obligor's (excluding Guarantor C) Original Financial Statements fairly present its financial condition as at the end of the relevant financial year and results of operations during the relevant financial year (consolidated in the case of the Guarantors).
- (c) There has been no material adverse change in its assets, business or financial condition or the assets, business or consolidated financial condition of the Group since 31 December 2017.
- (d) Each Obligor's (excluding Guarantor C) most recent financial statements delivered pursuant to Clause 21.2 (*Financial statements*):
 - (i) have been prepared in accordance with Clause 21.4 (*Requirements as to financial statements*); and
 - (ii) fairly represent its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Guarantors).
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 21.2 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition (or the business or consolidated financial condition of the Group, in the case of the Guarantors).

20.16 Pari passu ranking

Its payment obligations under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

20.17 No proceedings pending or threatened

- (a) No litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) of or before any court, arbitral body or agency, which, if adversely determined, might reasonably be expected to have a Material Adverse Effect, have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it, any other Transaction Obligor or any member of the Group.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it, any other Transaction Obligor or any member of the Group.

20.18 Valuations

- (a) All written information supplied by it or on its behalf to an Approved Valuer for the purposes of a valuation delivered to the Facility Agent in accordance with this Agreement was true and accurate as at the date it was supplied or (if appropriate) as at the date (if any) at which it is stated to be given.
- (b) It has not omitted to supply any information to an Approved Valuer which, if disclosed, would adversely affect any valuation prepared by such Approved Valuer.
- (c) There has been no change to the written factual information provided pursuant to paragraph (a) above in relation to any valuation between the date such information was provided and the date of that valuation which, in either case, renders that information untrue or misleading in any material respect.

20.19 No breach of laws

- (a) It and any other Transaction Obligor has not (and no other member of the Group has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No Transaction Obligor is in violation of and nor shall it violate any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at <http://ustreas.gov/offices/enforcement/ofac> or as otherwise published from time to time, in each case, as applicable to it.

20.20 No Charter

Except as disclosed by a Borrower to the Facility Agent in writing on or before the date of this Agreement, no Ship is subject to any Charter other than a Permitted Charter.

20.21 Compliance with Environmental Laws

All Environmental Laws relating to the ownership, operation and management of each Ship and the business of each member of the Group and any Approved Manager (as now conducted and as reasonably anticipated to be conducted in the future) and the terms of all Environmental Approvals have been complied with.

20.22 No Environmental Claim

No Environmental Claim has been made or threatened against any member of the Group or any Ship.

20.23 No Environmental Incident

No Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred.

20.24 ISM and ISPS Code compliance

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

20.25 Taxes paid

- (a) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes.

20.26 Financial Indebtedness

No Borrower has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

20.27 Overseas companies

No Transaction Obligor has delivered particulars, whether in its name stated in the Finance Documents or any other name, of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or, if it has so registered, it has provided to the Facility Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

20.28 Good title to assets

It has good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

20.29 Ownership

- (a) Each Borrower is the sole legal and beneficial owner of the Ship owned by it, its Earnings and its Insurances.
- (b) With effect on and from the date of its creation or intended creation, each Transaction Obligor will be the sole legal and beneficial owner of any asset that is the subject of any Transaction Security created or intended to be created by such Transaction Obligor.
- (c) The constitutional documents of each Transaction Obligor do not and could not restrict or inhibit any transfer of limited liability company interests of any Borrower on creation or enforcement of the security conferred by the Security Documents.

20.30 Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (recast) (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in Greece and it has no “establishment” (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

20.31 Place of business

No Transaction Obligor has a place of business in any country other than Greece or, in respect of the Guarantors, the United States of America **Provided that** if the Merger is completed the place of business of the Guarantors may cease to be the United States of America in which case the Obligors undertake to inform the Facility Agent immediately upon such change occurring.

20.32 No employee or pension arrangements

No Obligor has any employees or any liabilities under any pension scheme.

20.33 Sanctions

(a) No Transaction Obligor:

- (i) is a Prohibited Person;
- (ii) is owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Person;
- (iii) owns or controls a Prohibited Person;
- (iv) has a Prohibited Person serving as a director, officer or, to the best of its knowledge, employee;
- (v) is located, organised or resides in a Sanctioned Country;
- (vi) has or intends to have any business operations or other dealings:
 - (A) in a Sanctioned Country;
 - (B) with any Specially Designated National (“**SDN**”) on OFAC’s SDN list or with a designated person targeted by asset freeze sanctions imposed by the United Nations, European Union or Her Majesty’s Treasury
 - (C) involving commodities or services of a Sanctioned Country origin or shipped to, though, or from a Sanctioned Country, or on Sanctioned Country owned or registered vessels or aircraft, or finance or subsidize any of the foregoing exceeding 5% aggregated in comparison to any Obligor’s total assets or revenues.

(b) No proceeds of any Advance or the Loan shall be made available, directly or indirectly:

- (i) to or for the benefit of a Prohibited Person;
- (ii) applied in a manner or for a purpose prohibited by Sanctions; or
- (iii) to fund or facilitate any activity of or a business in any Sanctioned Country.

20.34 Charterer compliance with Sanctions

No Borrower has granted or agreed to grant any Charter of its Ship where that Ship will be conducting business or transactions in connection with a UHRC without including a provision in the Charter requiring the relevant charterer to comply with all applicable Sanctions with regards the operation of that Ship.

20.35 US Tax Obligor

No Transaction Obligor is a US Tax Obligor.

20.36 Margin Regulations; Investment Company Act

- (a) No Borrower is engaged, nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States; and
- (b) No Borrower is, or is it required to be, registered as an “investment company” under the United States of America Investment Company Act of 1940.

20.37 Patriot Act

To the extent applicable each Borrower is in compliance with (i) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto and (ii) the PATRIOT Act. No part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

20.38 Anti-Bribery and Corruption Laws

- (a) It and each other member of the Group has not nor, to the best of its knowledge, any director, officer, employee, associated party or person acting on behalf of any Obligor or any member of the Group has engaged in any activity which would breach the Anti-Bribery and Corruption Laws.
- (b) To the best of its knowledge and belief, no actions or investigations by any governmental or regulatory agency are ongoing or threatened against it or any member of the Group, or any of their directors, officers, employee, associated party or person acting on their behalf in relation to a breach of the Anti-Bribery and Corruption Laws.
- (c) It and any member of the Group has instituted and will maintain and enforce policies and procedures designed to ensure compliance with the Anti-Bribery and Corruption Laws.
- (d) It will not directly or indirectly use, lend or contribute the proceeds raised under the Agreement for any purpose that would breach the Anti-Bribery and Corruption Laws.

20.39 Anti-Money Laundering Laws

- (a) It has conducted its business and operations at all times in compliance Anti-Money Laundering Laws.
- (b) No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving an Obligor including any of their existing or previous officers, directors, employees, agents, affiliates, associated parties and persons acting on behalf of the Obligors with respect to Anti-Money Laundering Laws is pending and, to the best of that Obligor's knowledge, no such actions, suits or proceedings are threatened or contemplated;
- (c) No Obligor, including any of their respective existing or previous officers, directors, employees, agents, affiliates, associated parties and persons acting on behalf of the Obligors shall not directly or indirectly use the transaction proceeds for any purpose that would breach Anti-Money Laundering Laws
- (d) It is acting for its own account in relation to the Loan and in relation to the performance and the discharge of its obligations and liabilities under the Finance Documents and the transactions and other arrangements effected or contemplated by the Finance Documents to which an Obligor is a party, and the foregoing will not involve or lead to contravention of any law, official requirement or other regulatory measure or procedure implemented to combat money laundering (as defined in Article 1 of the Directive 2015/849/EC of the European Parliament and of the Council of the European Communities).

20.40 No immunity

No Obligor nor any of its assets is entitled to immunity on grounds of sovereignty or otherwise from any legal action or proceeding (including, without limitation, suit, attachment prior to judgement, execution or other enforcement).

20.41 AIF and AIFM

No Obligor is an AIF or an AIFM.

20.42 Sanctions policies and procedures

The Obligors have instituted and maintain policies and procedures designed to prevent Sanction violations by the Obligors and any other member of the Group.

20.43 Sanctions Proceedings

No Obligor knows nor has a reason to believe that any of them is or may become a Prohibited Person or the subject of Sanctions-related investigations or juridical proceedings.

20.44 Repetition

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of the Utilisation Request and the first day of each Interest Period and upon the date of occurrence of a Relevant Retranching.

21 INFORMATION UNDERTAKINGS

21.1 General

The undertakings in this Clause 21 (*Information Undertakings*) remain in force throughout the Security Period unless the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders), may otherwise permit.

21.2 Financial statements

- (a) The Guarantors shall supply to the Facility Agent in sufficient copies for all the Lenders:
- (i) subject to paragraph (b) below, as soon as they become available, but in any event within 180 days after the end of each of Guarantor A's and Guarantor B's financial years the audited consolidated financial statements for that financial year of Guarantor A and Guarantor B;
 - (ii) as soon as the same become available, but in any event within 120 days after the end of each 6-month period ending on 30 June and 31 December of each of Guarantor A's and Guarantor B's financial years the unaudited consolidated financial statements of Guarantor A and Guarantor B for that 6-month period;
 - (iii) as soon as the same become available, but in any event within 90 days after the end of each 3-month period ending on 31 March and 30 September of each of Guarantor A's and Guarantor B's financial years the unaudited consolidated financial statements of Guarantor A and Guarantor B for that 3-month period;
 - (iv) as soon as the same become available, but in any event within 90 days after the end of each 3-month period of each of the Borrowers' financial years the unaudited financial statements of each Borrower for that 3-month period;
 - (v) as soon as the same become available, but in any event within 180 days after the end of each of the Borrower's financial years, the annual unaudited financial statements of that financial year of each Borrower certified for its correctness by an officer of Guarantor A; and
 - (vi) as soon as possible, but in no event later than 30 days after the end of each financial year of Guarantor A and Guarantor B, a three year financial forecast, including assumptions and commentary of reasonable substance, acceptable to the Facility Agent (acting on the instructions of the Majority Lenders), of Guarantor A and Guarantor B;
- (b) If the Merger is completed and at all times thereafter, the Guarantors shall:
- (i) not be obliged to provide the audited consolidated financial statements referred to in paragraph (a)(i) above unless the New Parent ceases to be listed in NYSE at any time during the Security Period;
 - (ii) as soon as they become available, but in any event within 120 days after the end of each of the New Parent's financial years the publicly available annual audited consolidated financial statements for that financial year of the New Parent, prepared in accordance with NYSE rules, as such statements are published on the New Parent's website;
 - (iii) provide, on a quarterly basis, any financial information reasonably required by the Facility Agent in relation to the New Parent which is not publicly available and may not be accessed by the Facility Agent;

21.3 Compliance Certificate

- (a) Guarantor A and Guarantor B shall supply to the Facility Agent, with each set of Financial Statements a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 22 (*Financial Covenants*) as at the date as at which those Financial Statements were drawn up.
- (b) Each Compliance Certificate shall be signed by an officer of Guarantor A.

21.4 Requirements as to financial statements

- (a) Each set of financial statements delivered pursuant to Clause 21.2 (*Financial statements*) shall be certified by an officer of Guarantor A, as fairly presenting the financial condition and operations of the company to which those statements relate as at the date as at which those financial statements were drawn up.
- (b) Each Borrower shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 21.2 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in GAAP, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Facility Agent:
 - (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent (acting on the instructions of the Lenders), to enable the Lenders to determine whether Clause 22 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

21.5 Information: miscellaneous

Each Obligor shall and shall procure that each other Transaction Obligor (other than the Approved Managers) shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent (acting on the instructions of the Majority Lenders) so requests):

- (a) promptly after the Facility Agent's demand (acting on the instructions of the Majority Lenders), all documents dispatched by it to its equity holders (or any class of them) or its creditors generally at the same time as they are dispatched;

- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group and which might have a Material Adverse Effect;
- (d) promptly, its constitutional documents where these have been amended or varied;
- (e) promptly, such further information and/or documents regarding:
 - (i) each Ship, goods transported on each Ship, its Earnings (including any Charter) and its Insurances;
 - (ii) the Security Assets;
 - (iii) compliance of the Transaction Obligors with the terms of the Finance Documents;
 - (iv) the financial condition, business and operations of any member of the Group;
 - (v) the DSCR calculation,as any Finance Party (through the Facility Agent) may reasonably request; and
- (f) promptly, such further information and/or documents as any Finance Party (through the Facility Agent) may reasonably request so as to enable such Finance Party to comply with any laws applicable to it or as may be required by any regulatory authority.

21.6 Notification of Default

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor shall, notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) if the Merger is completed, each Obligor shall, and shall procure that each other Transaction Obligor shall, notify the Facility Agent of any default under any financing agreement of the New Parent (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (c) Promptly upon a request by the Facility Agent (acting on the instructions of the Majority Lenders), each Borrower shall supply to the Facility Agent a certificate signed by an officer on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).
- (d) Each Obligor shall notify the Facility Agent if it anticipates that on the next Testing Date it will be in breach of Clause 22 (*Financial Covenants*) (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

21.7 Use of websites

- (a) Each Obligor may satisfy its obligation under the Finance Documents to which it is a party to deliver any information in relation to those Lenders (the “**Website Lenders**”) which accept this method of communication by posting this information onto an electronic website designated by the Borrowers and the Facility Agent (the “**Designated Website**”) if:
- (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the relevant Obligor and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the relevant Obligor and the Facility Agent (acting on the instructions of the Majority Lenders).

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the Facility Agent shall notify the Obligors accordingly and each Obligor shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event each Obligor shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Obligors or any of them and the Facility Agent.
- (c) An Obligor shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
- (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) if that Obligor becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If an Obligor notifies the Facility Agent under sub-paragraph (i) or (v) of paragraph (c) above, all information to be provided by the Obligors under this Agreement after the date of that notice shall be supplied in paper form.

- (d) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Obligors shall comply with any such request within 10 Business Days.

21.8 “Know your customer” checks

- (a) If:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of a Transaction Obligor (or of a Holding Company of a Transaction Obligor) (including, without limitation, a change of ownership of a Transaction Obligor or of a Holding Company of a Transaction Obligor) after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,
- obliges a Finance Party (or, in the case of sub-paragraph (iii) above, any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by a Servicing Party (for itself or on behalf of any other Finance Party) or any Lender (for itself or, in the case of the event described in sub-paragraph (iii) above, on behalf of any prospective new Lender) in order for such Finance Party or, in the case of the event described in sub-paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (b) Each Lender shall promptly upon the request of a Servicing Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Servicing Party (for itself) in order for that Servicing Party to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

22 FINANCIAL COVENANTS

22.1 Borrowers’ minimum liquidity

- (a) Each Borrower shall maintain on and from the Utilisation Date and at all times throughout the Security Period an amount equal to at least \$1,730,000 (each a “**Minimum Liquidity Amount**”) in its respective Liquidity Account.
- (b) Each Borrower shall further maintain in its respective Liquidity Account the following additional amounts subject to the terms and at the times specified below:
- (i) if the duration of any of the Initial Charters is not extended pursuant to a Qualifying Extension, or substituted by a new charter, on terms similar to those set out in the relevant Initial Charter and with a charterer acceptable to the Lenders (in their sole discretion) (the “**Substitute Initial Charter**”), the Borrower owning that Ship shall further deposit on the date falling one month prior to the expiry of the initial duration of that Initial Charter (excluding any extension options) and maintain at all times thereafter throughout the Security Period in its Liquidity Account an amount (each a “**Charter-Extension Liquidity Amount**”) equal to the difference between (1) Debt Service (calculated on a trailing six-months basis) for the 6-month period ending on the date on which the Debt Service is determined and (2) the Minimum Liquidity Amount in respect of that Borrower **Provided that** if any of the Initial Charters is extended or substituted by a Substitute Initial Charter for a duration going beyond the Termination Date, the relevant Borrower shall not be required to deposit a Charter-

Extension Liquidity Amount **Provided further that** if at any time after the deposit of any Charter-Extension Liquidity Amount in a Liquidity Account pursuant to this sub-paragraph (b)(i), the relevant Borrower, enters into a Substitute Initial Charter, that Borrower shall not, for the duration of the Substitute Initial Charter, be obliged to maintain a Charter-Extension Liquidity Amount which shall be released to the order of that Borrower on or after the date on which the Facility Agent (acting on behalf of the Majority Lenders) confirms to the relevant Borrower its approval of the Substitute Initial Charter and the charterer thereunder;

In this Clause 22.1(b)(i), “**Qualifying Extension**” means, (a) in relation to an Initial Charter and (b) in relation to a Substitute Initial Charter, a charter:

- (A) for an additional period (excluding optional extensions) equal to no less than 24 months;
 - (B) on terms similar (as determined by the Facility Agent in its discretion, acting on the instructions of the Majority Lenders) to those set out in the relevant Initial Charter;
 - (C) which is effected at least one month prior to the expiry of the then applicable expiry date of that Initial Charter (excluding any extension options); and
 - (D) which is effected once during the Security Period in relation to each of Ship B and Ship C and twice during the Security Period in relation to Ship A **Provided that** if the Initial Charter in respect of Ship A is extended for a period ending on a date falling after the Termination Date, only one such extension will be required;
- (ii) if any of the Initial Charters becoming the subject of Qualifying Extension or a Substitute Initial Charter (as applicable), has a net daily rate (the “**New Charter Rate**”) which is lower than \$32,000 per day (the “**Minimum Charter Rate**”), then the Borrower owning the Ship to which that Initial Charter or Substitute Initial Charter relates (as the case may be) shall further deposit and maintain thereafter throughout the Security Period in its Liquidity Account an amount equal to the amount by which the Minimum Charter Rate exceeds the New Charter Rate multiplied by 720 days.
- (iii) if:
- (A) the Merger is completed; and
 - (B) the consolidated New Parent’s Cash falls below in aggregate (i) \$50,000,000 or (ii) the product of (1) \$1,250,000 and (2) the number of vessels directly or indirectly owned by the New Parent and any of its Subsidiaries,

then each of the Borrowers which has not previously deposited a Charter-Extension Liquidity Amount in its Liquidity Account, shall further deposit in its Liquidity Account on the relevant date and for so long as the afore-mentioned conditions under (A) and (B) above apply, an amount equal to the difference between (1) Debt Service (calculated on a trailing six-months basis) for the 6-month period ending on the date on which the Debt Service is determined and (2) the Minimum Liquidity Amount in respect of that Borrower.

- (iv) If any Ship is not subject to loss of Earnings cover, which satisfies the requirements of Clause 24.6 (*Voluntary Insurances*), then the Borrower owning such Ship, shall further deposit in its Liquidity Account an additional amount of \$100,000 on and from the date on which, and for so long as, that Ship is not covered by a loss of Earnings insurances policy, satisfying the requirements of Clause 24.6 (*Voluntary Insurances*).

22.2 Guarantor A's financial covenants

Guarantor A shall ensure that from the Utilisation Date and at all times during the Security Period:

- (a) the Value Adjusted Leverage Ratio shall not exceed 75 per cent.;
- (b) the minimum Net Worth shall not be less than \$50,000,000; and
- (c) the Book Leverage Ratio shall not exceed during the period commencing on:
 - (i) the Utilisation Date and ending on 31 December 2018 (inclusive), 85 per cent.; and
 - (ii) at all times thereafter, 75 per cent.

22.3 Compliance Check

Compliance with the undertakings contained in Clauses 22.1 (*Borrowers' minimum liquidity*) and 22.1(a) (*Guarantor A's financial covenants*) shall be determined on each Testing Date and evidenced by the Compliance Certificate.

22.4 Definitions

The expressions used in this Clause 22 (*Financial Covenants*) shall be construed in accordance with GAAP, and for purposes of this Agreement:

"Book Leverage Ratio" means the ratio of Total Consolidated Long Term Debt to Total Assets, as shown in the applicable Financial Statements for Guarantor A for any accounting period and determined in accordance with GAAP.

"Financial Statements" means:

- (a) the annual financial statements provided pursuant to sub-paragraph (i) of paragraph (a) of Clause 21.2 (*Financial statements*) or, if the Merger is completed, sub-paragraph (ii) of paragraph (b) of Clause 21.2 (*Financial statements*) (as applicable);
- (b) the semi-annual financial statements provided pursuant to sub-paragraph (ii) of paragraph (a) of Clause 21.2 (*Financial statements*) or; and
- (c) the quarterly financial statements provided pursuant to sub-paragraph (iii) of paragraph (a) of Clause 21.2 (*Financial statements*).

"Fleet Market Value" means in relation to a Fleet Vessel, the Market Value of such Fleet Vessel.

"Fleet Vessels" means any vessel (including the Ships) from time to time wholly owned by Guarantor A (directly or indirectly) (each a **"Fleet Vessel"**).

“**Net Worth**” means equity payments already advanced in respect of the Fleet Vessels less the aggregate of (a) accumulated dividends and (b) retained earnings of the Fleet Vessels, as each such term is defined in the applicable Financial Statements for Guarantor A determined in accordance with GAAP.

“**Testing Date**” means any yearly, semi-annual and quarterly period (as applicable) to the end of which the Financial Statements are prepared (commencing with the yearly financial period ending on 31 December 2018).

“**Total Assets**” means the amount of the total assets of Guarantor A at any time on a consolidated basis which would be included in the applicable Financial Statements as total assets determined in accordance with GAAP.

“**Total Consolidated Long Term Debt**” means the amount of the total liabilities of the Guarantor A (as such term is defined in the applicable Financial Statements) at any time on a consolidated basis which would be included in the applicable Financial Statements of Guarantor A as total long term debt in accordance with GAAP including the current portion of long term debt (as such term is defined in the applicable Financial Statements for Guarantor A).

“**Value Adjusted Leverage Ratio**” means the ratio of Total Consolidated Long Term Debt to Value Adjusted Total Assets.

“**Value Adjusted Total Assets**” means the Total Assets of Guarantor A adjusted in each case for the difference of the book value of the Fleet Vessels (as evidenced in the most recent Financial Statements) and the Fleet Market Value.

23 GENERAL UNDERTAKINGS

23.1 General

The undertakings in this Clause 23 (*General Undertakings*) remain in force throughout the Security Period except as the Facility Agent, acting with the authorisation of the Lenders (or, where specified, all the Lenders) may otherwise permit.

23.2 Authorisations

Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction or the state of the Approved Flag at any time of each Ship to enable it to:

- (i) perform its obligations under the Transaction Documents to which it is a party;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence in any Relevant Jurisdiction or in the state of the Approved Flag at any time of each Ship, of any Transaction Document to which it is a party; and
- (iii) own and operate each Ship (in the case of the Borrowers).

23.3 Corporate Existence

Each Obligor shall maintain its separate corporate existence, remain in goodstanding under the law of its jurisdiction of incorporation or formation and duly observe and conform to all requirements of any governmental authorities relating to the conduct of its business or to its properties or assets.

23.4 Compliance with laws

Each Obligor shall, and shall procure that each other Transaction Obligor will, comply in all respects with all laws and regulations to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect, including without limitation (i) the Trading with the Enemy Act and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order thereto) and (ii) the PATRIOT Act.

23.5 Environmental compliance

Each Obligor shall, and shall procure that each other Transaction Obligor will, and Guarantor A shall ensure that each other member of the Group will:

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

23.6 Environmental Claims

Each Obligor shall, and shall procure that each other Transaction Obligor will, (through Guarantor A) promptly upon becoming aware of the same, inform the Facility Agent in writing of:

- (a) any Environmental Claim against any member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group, where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

23.7 Taxation

- (a) Each Obligor shall, and Guarantor A shall procure that Odysia NB will, pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
 - (i) such payment is being contested in good faith;

- (ii) adequate reserves are maintained for those Taxes and the costs required to contest them and both have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 21.2 (*Financial statements*); and
 - (iii) such payment can be lawfully withheld.
- (b) No Obligor shall, and Guarantor A shall procure that Odysisia NB will not, change its residence for Tax purposes.

23.8 Overseas companies

Each Obligor shall, and Guarantor A shall procure that Odysisia NB, promptly inform the Facility Agent if it delivers to the Registrar particulars required under the Overseas Regulations of any UK Establishment and it shall comply with any directions given to it by the Facility Agent regarding the recording of any Transaction Security on the register which it is required to maintain under The Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009.

23.9 No change to centre of main interests

No Obligor shall, and Guarantor A shall procure that Odysisia NB shall not, change the location of its centre of main interest (as that term is used in Article 3(1) of the Regulation) from that stated in relation to it in Clause 20.30 (*Centre of main interests and establishments*) and it will create no “**establishment**” (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

23.10 Pari passu ranking

Each Obligor shall, and shall procure that Odysisia NB shall, ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

23.11 Title

- (a) Each Borrower shall hold the legal title to, and own the entire beneficial interest in the Ship owned by it, its Earnings and its Insurances;
- (b) With effect on and from its creation or intended creation, each Obligor shall hold the legal title to, and own the entire beneficial interest in any other assets the subject of any Transaction Security created or intended to be created by such Obligor.

23.12 Negative pledge

- (a)
 - (i) No Borrower shall create any form of Security over any of its assets or revenues other than Permitted Security; and
 - (ii) No Guarantor shall create any form of Security (other than Permitted Security), over any of its assets or revenues unless it is reasonably incurred in the normal course of its business (without limitation) of acquiring and financing vessels to be owned by that Guarantor or any of its present or future Subsidiaries.

- (b) No Obligor shall:
- (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by a Transaction Obligor or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,
- in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (i) and (b) above do not apply to any Permitted Security.

23.13 Disposals

- (a) No Borrower shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset (including without limitation any Ship, its Earnings or its Insurances) other than as may be permitted under the terms of this Agreement or any other Finance Document.
- (b) Paragraph (a) above does not apply to any Charter as all Charters are subject to Clause 25.16 (*Restrictions on use, chartering, appointment of managers etc.*).

23.14 Change of business

- (a) Each Guarantor shall procure that no substantial change is made to the general nature of its business from that carried on at the date of this Agreement.
- (b) Guarantor A shall procure that no substantial change is made to the general nature of the business of the Group from that carried on at the date of this Agreement.
- (c) No Borrower shall engage in any business other than the ownership and operation of its Ship.

23.15 Financial Indebtedness

No Obligor shall:

- (a) in the case of a Borrower, incur or permit to be outstanding any Financial Indebtedness except (i) Financial Indebtedness incurred in the normal course of its business of trading, chartering, managing, insuring, maintaining and operating its Ship (including, for the avoidance of doubt, any trade debt) **Provided that** the aggregate of such Financial Indebtedness at any time shall not exceed \$750,000 (or the equivalent in any other currency) for each Ship, including any Financial Indebtedness created under paragraph (b) of Clause 23.19 (*Other transactions*) but excluding any Financial Indebtedness created (A) for the purposes of any of the Scheduled Dry-Dockings and (B) by any unforeseen capitalised expenses that would be covered by the Insurances and only until such Insurances are paid out to the Borrowers, relating to maintenance or repairs on any Ship, which would require dry-docking repairs or maintenance and (ii) Permitted Financial Indebtedness; and

- (b) in the case of a Guarantor, incur or permit to be outstanding Financial Indebtedness except for (i) Financial Indebtedness incurred in the ordinary course of its business (including, without limitation, the issuance of guarantees securing the obligations of any of its future or present Subsidiaries and any guarantee previously granted by that Guarantor as at the date of this Agreement and disclosed to the Facility Agent) and (ii) Permitted Financial Indebtedness.

23.16 Expenditure

No Borrower shall incur any expenditure, except for expenditure reasonably incurred in the ordinary course of owning, operating, maintaining, insuring and repairing its Ship. For the avoidance of doubt, no Borrower shall incur any expenditure for retrofitting the Ships with scrubbers unless the commercial terms of such retrofitting costs have been discussed between the Borrowers and the Facility Agent (acting with the authorisation of the Majority Lenders) in good faith and the Facility Agent (acting on the instructions of the Majority Lenders) has granted its permission in writing.

23.17 Limited liability company interests

No Borrower shall:

- (a) purchase, cancel or redeem any of its LLC shares;
- (b) increase or reduce its LLC shares; and
- (c) issue any further LLC Shares except to Odyssea NB provided such new LLC Shares are made subject to the terms of the relevant Shares Security applicable to that Borrower immediately upon the issue of such new LLC Shares in a manner satisfactory to the Facility Agent (acting on the instructions of the Lenders) and the terms of the relevant Shares Security are complied with.

23.18 Dividends

Each Borrower shall be entitled to declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its equity interests (or any class of its equity interests) of up to 50 per cent. of the Cash Flow to Equity in respect of the relevant financial year, if the following conditions are met at the time of such distribution:

- (a) the aggregate Market Value of the Ships then subject to a Mortgage plus the net realisable value of any additional Security previously provided under this Clause 26 (*Security Cover*) is equal to at least 140 per cent. of the Loan;
- (b) each of the Initial Charters or a Substitute Initial Charter has been extended by a minimum period of 24 months without taking into account any extension option (once during the Security Period in relation to each of Ship B and Ship C and twice during the Security Period in relation to Ship A **Provided that** if the Initial Charter in respect of Ship A is extended for a period ending on a date falling after the Termination Date, one such extension will be required);

- (c) the Borrowers have complied with their obligations pursuant to Clause 22.1 (*Borrowers' minimum liquidity*);
- (d) no Default has occurred or is continuing; and
- (e) the making or payment of such dividend or distribution would not result in the occurrence of a Default.

23.19 Other transactions

No Borrower shall:

- (a) be the creditor in respect of any loan or any form of credit to any person other than another Obligor and where such loan or form of credit is Permitted Financial Indebtedness;
- (b) give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person other than (i) any guarantee or indemnity given under the Finance Documents or (ii) any guarantee and indemnity issued in the ordinary course of its business of trading, chartering and operating the Ship owned by it having an aggregate maximum value of \$500,000 in respect of that Borrower or such higher value as may be requested by that Borrower and approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders);
- (c) enter into any material agreement other than:
 - (i) the Transaction Documents;
 - (ii) any other agreement expressly allowed under any other term of this Agreement or in the ordinary course of that Borrower's business of trading, operating and chartering the relevant Ship; and
- (d) enter into any transaction on terms which are, in any respect, less favourable to that Transaction Obligor than those which it could obtain in a bargain made at arms' length;
- (e) 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
- (f) enter into any Charters of any Ships in a chartering capacity.

23.20 Unlawfulness, invalidity and ranking; Security imperilled

No Obligor shall, and the Obligors shall procure that no other Transaction Obligor will do (or fail to do) or cause or permit another person to do (or omit to do) anything which is likely to:

- (a) make it unlawful for a Transaction Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of a Transaction Obligor under the Transaction Documents to cease to be legal, valid, binding or enforceable;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Transaction Security to rank after, or lose its priority to, any other Security; and
- (e) imperil or jeopardise the Transaction Security.

23.21 Further assurance

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor will promptly, and in any event within the time period specified by the Security Agent (acting on the instructions of the Majority Lenders) do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Agent may specify (acting on the instructions of the Majority Lenders) (and in such form as the Security Agent may require (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) in favour of the Security Agent or its nominee(s)):
- (i) to create, perfect, vest in favour of the Security Agent or protect the priority of the Security or any right of any kind created or intended to be created under or evidenced by the Finance Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of any of the Secured Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent or confer on the Secured Parties Security over any property and assets of that Transaction Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Finance Documents;
 - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Transaction Security or to exercise any power specified in any Finance Document in respect of which the Security has become enforceable; and/or
 - (iv) to enable or assist the Security Agent to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Obligor shall, and shall procure that each other Transaction Obligor will take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to the Finance Documents.
- (c) At the same time as an Obligor delivers to the Security Agent any document executed by itself or another Transaction Obligor pursuant to this Clause 23.21 (*Further assurance*), that Obligor shall deliver, or shall procure that such other Transaction Obligor will deliver, to the Security Agent a certificate signed by one of that Obligor's or Transaction Obligor's officers which shall:
- (i) set out the text of a resolution of that Obligor's or Transaction Obligor's directors or members, as applicable, specifically authorising the execution of the document specified by the Security Agent; and
 - (ii) state that either the resolution was duly passed at a meeting of the directors or members, as applicable, validly convened and held, throughout which a quorum of directors or members, as applicable, entitled to vote on the resolution was present, or that the resolution has been signed by all the directors or members and is valid under that Obligor's or Transaction Obligor's articles of association or other constitutional documents.

23.22 No Subsidiaries

No Borrower shall form or acquire any Subsidiaries.

23.23 Employees and ERISA Compliance

No Borrower shall employ any individual nor sponsor, maintain or become obligated to contribute to any Plan. However, without prejudice to the foregoing, each Borrower shall provide prompt written notice to the Facility Agent in the event that that Borrower becomes aware that it has incurred or is reasonably likely to incur any liability with respect to any Plan, that, individually or in the aggregate with any other such liability, would be reasonably expected to have a Material Adverse Effect.

23.24 Books and records

The Borrowers will keep proper books of record and account which will be accurate in all material respects and in which full, true and correct entries in accordance with GAAP will be made of all dealings or transactions in relation to its business and activities.

23.25 Merger

Save for the Merger, no Obligor shall, without prior consultation with the Facility Agent (acting with the authorisation of the Lenders), enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction, **Provided that** such amalgamation, demerger, merger, consolidation or corporate reconstruction is permitted without restrictions so long as:

- (i) the New Parent remains the surviving entity of any such process;
- (ii) no Default has occurred at the relevant time or would be triggered as a result of such process; and
- (iii) the process of any such further amalgamation, demerger, merger, consolidation or corporate reconstruction does not have a Material Adverse Effect.

23.26 Additional Guarantee

The Guarantors shall use their best endeavours to procure that any New Parent provides an Additional Guarantee upon the request of the Facility Agent (acting on the instructions of the Lenders) **Provided that** the Guarantors shall have no such obligation if:

- (a) the Merger is not consummated; or
- (b)
 - (i) the New Parent is restricted from granting the Additional Guarantee by virtue of any law or any debt or financing agreement or other form of agreement to which it is a party as at the date of this Agreement; and
 - (ii) the New Parent existing major financing agreements have not been refinanced.

23.27 Dry-Docking Reserves

- (a) Each Borrower shall, on monthly basis (commencing on the date falling one month after the Utilisation Date), deposit and maintain thereafter in its respective Dry-Docking Reserve Account an amount equal to a fraction whose numerator is \$1,300,000 and denominator is the number of whole months falling between the Utilisation Date and the Scheduled Dry-Docking Date applicable to the Ship owned by it so as to ensure that the balance standing to the credit of its Dry-Docking Reserve Account on the Scheduled Dry-Docking Date applicable to its Ship is at least \$1,300,000 (the “**Initial Dry-Docking Reserve Accrual**”). Any balance standing to the credit of a Dry-Docking Reserve Account, following completion of the Scheduled Dry-Docking of the Ship owned by the Borrower relating to that Dry-Dock Reserve Account and payment of all amounts in connection with the Scheduled Dry-Docking shall be remitted to the Earnings Account of that Borrower and shall be treated for the purposes of Clause 6.2 (*Cash Sweep Repayment*) as Cash Flow.
- (b) Following the completion of the Scheduled Dry-Dockings in respect of its Ship (the “**Scheduled Dry-Docking Completion Date**”), each Borrower shall, on a monthly basis (commencing on the date falling one month after such Scheduled Dry-Docking Completion Date), deposit and maintain thereafter in its respective Dry-Docking Reserve Account, an amount equal to a fraction whose numerator is \$800,000 and denominator is the number of whole months from the Scheduled Dry-Docking Completion Date to the date of the next scheduled dry-docking in respect of its Ship so that the amount standing to the credit of Dry-Dock Reserve Account immediately prior to such subsequent dry-docking applicable to its Ship would be at least \$800,000 (the “**Additional Dry-Docking Reserve Accrual**” and together with the Initial Dry-Docking Reserve Accrual, the “**Dry-Docking Reserve Accrual**”), irrespective of whether such subsequent dry-docking will take place after the Termination Date. Any balance standing to the credit of the Dry-Docking Reserve Account on the Termination Date shall be released to the Borrowers.

23.28 Most favoured nations – Guarantor A

- (a) The Obligors undertake to procure that, throughout the duration of the Security Period, the Finance Parties shall receive no less favourable treatment under this Agreement in relation to any financial covenant relating to Guarantor A (including, without limitation, the covenants set out in Clauses 22 (*Financial covenants*) and/or change of control provisions (including, without limitation, the provisions set out in Clauses 7.2 (*Change of Control*)) than that provided or to be provided under any financing agreement of any member of the Group (by way of amendment or supplement to that financing agreement of that member of the Group) or any agreement refinancing or otherwise substituting any financing agreement of any member of the Group.
- (b) Notwithstanding paragraph (a) above, the Obligors shall promptly advise the Facility Agent of those arrangements and covenants in advance and shall, upon the Facility Agent’s request (acting on the instructions of the Majority Lenders), enter into such documentation which amends and supplements this Agreement and any other Finance Document, as the Lenders may require in order to achieve parity with the creditors under the relevant financing of that member of the Group.

23.29 Most favoured nations – New Parent

- (a) if the Merger is completed and the Additional Guarantee is provided pursuant to Clause 23.26 (*Additional Guarantee*), the Obligors undertake to procure that, throughout the duration of the Security Period, the Finance Parties shall receive no less favourable treatment under this Agreement and/or the Additional Guarantee in relation to any financial covenant relating to the New Parent or dividend distribution provision relating to the New Parent than that provided or to be provided under any financing agreement of the New Parent (by way of amendment or supplement to that financing agreement) or any agreement refinancing or otherwise substituting any financing agreement of the New Parent.
- (b) Notwithstanding paragraph (a) above, the Obligors shall promptly advise the Facility Agent of those arrangements and covenants in advance and shall, upon the Facility Agent's request (acting on the instructions of the Majority Lenders), enter into such documentation which amends and supplements the Additional Guarantee, this Agreement and the other Finance Documents, as the Lenders may require in order to achieve parity with the creditors under the relevant financing of the New Parent.

23.30 AIF and AIFM

No Obligor will take (or omit to take) any action to the extent that doing so will, or is reasonably likely to, result in it being an AIF or an AIFM.

23.31 Anti-Bribery and Corruption Laws

- (a) No Obligor shall (and shall procure that no member of the Group shall) directly or indirectly use the proceeds of the Loan for any purpose which would breach Anti-Bribery and Corruption Laws; and
- (b) Each Obligor shall (and shall procure that no member of the Group shall):
 - (i) conduct its business and operations at all times in compliance with Anti-Bribery and Corruption Laws; and
 - (ii) maintain policies and procedures designed to promote and achieve compliance with Anti-Bribery and Corruption Laws.

23.32 Financial year

No Obligor shall (and Guarantor A shall ensure that no other member of the Group shall) change its financial year end date.

23.33 Anti-Money Laundering Laws.

Each Obligor shall (and shall procure that no member of the Group shall):

- (a) not use the transaction proceeds for any purpose that would breach Anti-Money Laundering Laws;
- (b) conduct its business and operations at all times in compliance Anti-Money Laundering Laws; and
- (c) maintain policies and procedures designed to promote and achieve compliance with Anti-Money Laundering Laws.

24 INSURANCE UNDERTAKINGS

24.1 General

The undertakings in this Clause 24 (*Insurance Undertakings*) remain in force on and from the date of this Agreement and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Lenders (or, where specified, all the Lenders) may otherwise permit.

24.2 Maintenance of obligatory insurances

Each Borrower shall keep the Ship owned by it insured at its expense against:

- (a) fire and usual marine risks (including hull and machinery and/or increased value and excess risks);
- (b) war risks;
- (c) freight, demurrage and defence;
- (d) protection and indemnity risks (including liability for oil pollution for an amount of no less than \$1,000,000,000 and excess war risk P&I cover) on standard Club Rules, covered by a Protection and Indemnity association which is a member of the International Group of Protection and Indemnity Associations (or, if the International Group ceases to exist, any other leading protection and indemnity association or other leading provider of protection and indemnity insurance) (including, without limitation, the proportion (if any) of any collision liability not covered under the terms of the hull cover); and
- (e) any other risks against which the Facility Agent acting on the instructions of the Majority Lenders considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for that Borrower to insure and which are specified by the Facility Agent (acting on the instructions of the Majority Lenders) by notice to that Borrower.

24.3 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) 120 per cent. of the Tranche relating to the Ship owned by it; and
 - (ii) the Market Value of the Ship owned by it;
- (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 under basic protection and indemnity club entry (for the time being \$1,000,000,000 for oil pollution);
- (d) hull and machinery plus freight interest and hull interest and/or increased value and any other usual marine risks (including excess risks);

- (e) in the case of protection and indemnity risks, in respect of the full tonnage of its Ship;
- (f) on approved terms customary in major marine insurance markets;
- (g) through Approved Brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations; and
- (h) in relation to war risks insurance, extended to cover piracy and terrorism where piracy or, as the case may be, terrorism, are excluded under the fire and usual marine risks insurance.

24.4 Further protections for the Finance Parties

In addition to the terms set out in Clause 24.3 (*Terms of obligatory insurances*), each Borrower shall procure that the obligatory insurances effected by it shall:

- (a) subject always to paragraph (b), name that Borrower as the sole named insured unless the interest of every other named insured is limited:
 - (i) in respect of any obligatory insurances for hull and machinery and war risks;
 - (A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
 - (B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
 - (ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

and every other named insured has undertaken in writing to the Security Agent (in such form as it requires, acting on the instructions of the Majority Lenders) that any deductible shall be apportioned between that Borrower and every other named insured in proportion to the gross claims made or paid by each of them and that it shall do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;

- (b) whenever the Facility Agent (acting on the instructions of the Majority Lenders) requires, name (or be amended to name) the Security Agent as additional named insured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Agent, but without the Security Agent being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (c) name the Security Agent as loss payee with such directions for payment as the Facility Agent (acting on the instructions of the Majority Lenders) may specify;
- (d) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Agent shall be made without set off, counterclaim or deductions or condition whatsoever;

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

24.5 Renewal of obligatory insurances

Each Borrower shall:

- (a) at least 7 days before the expiry of any obligatory insurance effected by it:
 - (i) notify the Facility Agent of the Approved Brokers (or other insurers) and any protection and indemnity or war risks association through or with which it proposes to renew that obligatory insurance and of the proposed terms of renewal; and
 - (ii) obtain the Facility Agents' (acting on the instructions of the Majority Lenders) approval to the matters referred to in sub-paragraph (i) above;
- (b) at least 3 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Facility Agent's approval pursuant to paragraph (a) above; and
- (c) procure that the Approved Brokers and/or the approved war risks and protection and indemnity associations with which such a renewal is effected latest at the renewal date provide the Facility Agent in writing of the terms and conditions of the renewal.

24.6 Voluntary insurances

Each Borrower may, at its own option and expense, effect insurances on the Ship owned by it against risk of loss of Earnings on the following terms:

- (a) in dollars;
- (b) on approved terms customary in major marine insurance markets;
- (c) through Approved Brokers and with approved insurance companies and/or underwriters;
- (d) in an amount equal to at least 180 days of hire payable under the Initial Charter applicable to that Ship for the relevant policy year;
- (e) with an upper limit per claim of 180 days of hire (always in excess of any applicable deductible) payable under the Initial Charter applicable to that Ship; and
- (f) subject to market conditions, with a deductible of no more than 14 days of hire payable under the Initial Charter applicable to that Ship for the relevant policy year.

24.7 Copies of policies; letters of undertaking

Each Borrower shall ensure that the Approved Brokers provide the Security Agent upon its request with:

- (a) *pro forma* copies of all policies relating to the obligatory insurances which they are to effect or renew; and

- (b) a letter or letters or undertaking in standard market form/wording required by the Facility Agent (acting on the instructions of the Majority Lenders) and including undertakings by the Approved Brokers that:
- (i) 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 24.4 (*Further protections for the Finance Parties*);
 - (ii) they will hold such policies, and the benefit of such insurances, to the order of the Security Agent in accordance with such loss payable clause;
 - (iii) they will advise the Security Agent immediately of any material change to the terms of the obligatory insurances;
 - (iv) they will, if they have not received notice of renewal instructions from the relevant Borrower or its agents, notify the Security Agent not less than 14 days before the expiry of the obligatory insurances;
 - (v) if they receive instructions to renew the obligatory insurances, they will promptly notify the Facility Agent of the terms of the instructions;
 - (vi) they will not set off against any sum recoverable in respect of a claim relating to the Ship owned by that Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts; and
 - (vii) they will arrange for a separate policy to be issued in respect of the Ship owned by that Borrower forthwith upon being so requested by the Facility Agent.

24.8 Copies of certificates of entry

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provide the Security Agent with:

- (a) a certified copy of the certificate of entry for that Ship;
- (b) a letter or letters of undertaking in such form as may be required by the Facility Agent acting on the instructions of Majority Lenders; and
- (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 that Ship.

24.9 Deposit of original policies

Each Borrower shall ensure that all policies relating to obligatory insurances effected by it are deposited with the Approved Brokers through which the insurances are effected or renewed.

24.10 Payment of premiums

Each Borrower shall punctually pay all premiums or other sums payable in respect of the obligatory insurances effected by it and produce all relevant receipts when so required by the Facility Agent (acting on the instructions of the Majority Lenders) or the Security Agent (acting on the instructions of the Facility Agent (acting on the instructions of the Majority Lenders)).

24.11 Guarantees

Each Borrower shall ensure that any guarantees required by a protection and indemnity or war risks association are promptly issued and shall procure that such guarantee(s) remain(s) in full force and effect.

24.12 Compliance with terms of insurances

- (a) No Borrower shall do or 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.
- (b) Without limiting paragraph (a) above, each Borrower shall unless otherwise approved by the Security Agent (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) (such approval not to be unreasonably withheld):
 - (i) 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 sub-paragraph (iii) of paragraph (b) of Clause 24.6 (*Copies of policies; letters of undertaking*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Facility Agent has not given its prior approval (acting on the instructions of the Lenders);
 - (ii) not make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
 - (iii) make (and promptly supply copies to the Facility Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
 - (iv) not 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.

24.13 Alteration to terms of insurances

No Borrower shall make or agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance.

24.14 Settlement of claims

Each Borrower shall:

- (a) not settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty; and
- (b) do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

24.15 Provision of copies of communications

Each Borrower shall promptly, after the Security Agent's request (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders), provide the Security Agent with copies of all written communications between that Borrower and:

- (a) the Approved Brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters,
which relate directly or indirectly to:
 - (i) 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) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

24.16 Provision of information

Each Borrower shall promptly provide the Facility Agent (or any persons which it may designate) with any information which the Facility Agent (or any such Prohibited Person) (acting on the instructions of the Majority Lenders) 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 24.17 (*Mortgagee's interest, additional perils insurances*) or dealing with or considering any matters relating to any such insurances,
and the Borrowers shall, forthwith upon demand, indemnify the Security Agent in respect of all fees and other expenses reasonably incurred by or for the account of the Security Agent in connection with any such report as is referred to in paragraph (a) above.

24.17 Mortgagee's interest and additional perils insurances

- (a) The Security Agent shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance and a mortgagee's interest additional perils insurance each in an amount of not less than 110 per cent. of the Loan, on such terms, through such insurers and generally in such manner as the Security Agent acting on the instructions of the Majority Lenders may from time to time consider appropriate.

- (b) The Borrowers shall upon demand fully indemnify the Security Agent in respect of all premiums and other expenses which are reasonably incurred in connection with or with a view to effecting, maintaining or renewing any insurance referred to in paragraph (a) above or dealing with, or considering, any matter arising out of any such insurance.

25 GENERAL SHIP UNDERTAKINGS

25.1 General

The undertakings in this Clause 25 (*General Ship Undertakings*) remain in force on and from the date of this Agreement and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Lenders (or, where specified, all the Lenders) may otherwise permit.

25.2 Ships' names and registration

Each Borrower shall, in respect of the Ship owned by it:

- (a) (subject to sub-clause (c) below) keep that Ship registered in its name under the Approved Flag from time to time at its port of registration;
- (b) not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperilled;
- (c) not enter into any dual flagging arrangement in respect of that Ship; and
- (d) not change the name of that Ship,

provided that any change of flag of a Ship shall be subject to:

- (i) that Ship remaining subject to Security securing the Secured Liabilities created by a first priority or preferred ship mortgage on that Ship and, if appropriate, a first priority deed of covenant collateral to that mortgage (or equivalent first priority Security) on substantially the same terms as the Mortgage on that Ship and on such other terms and in such other form as the Facility Agent, acting with the authorisation of the Lenders, shall approve or require; and
- (ii) the execution of such other documentation amending and supplementing the Finance Documents as the Facility Agent, acting with the authorisation of the Lenders, shall approve or require.

25.3 Repair and classification

Each Borrower shall keep the Ship owned by it in a good and safe condition and state of repair:

- (a) consistent with first class ship ownership and management practice; and
- (b) so as to maintain the Approved Classification free of overdue recommendations and conditions.

25.4 Classification society undertaking

If requested by the Facility Agent (acting on the instructions of the Lenders), each Borrower shall, in respect of the Ship owned by it, instruct the relevant Approved Classification Society (and shall on a best endeavours basis procure that the Approved Classification Society undertakes with the Security Agent):

- (a) to send to the Security Agent, following receipt of a written request from the Security Agent (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders), certified true copies of all original class records held by the Approved Classification Society in relation to that Ship;
- (b) to allow the Security Agent (or its agents) (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders), at any time and from time to time, to inspect the original class and related records of that Borrower and that Ship at the offices of the Approved Classification Society and to take copies of them;
- (c) to notify the Security Agent immediately in writing if the Approved Classification Society:
 - (i) receives notification from that Borrower or any person that that Ship's Approved 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 or that Ship's membership of the Approved Classification Society;
- (d) following receipt of a written request from the Security Agent (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders):
 - (i) to confirm that that Borrower is not in default of any of its contractual obligations or liabilities to the Approved Classification Society, including confirmation that it has paid in full all fees or other charges due and payable to the Approved Classification Society; or
 - (ii) to confirm that that Borrower is in default of any of its contractual obligations or liabilities to the Approved Classification Society, to specify to the Security Agent in reasonable detail the facts and circumstances of such default, the consequences of such default, and any remedy period agreed or allowed by the Approved Classification Society.

25.5 Modifications

No Borrower shall make any modification or repairs to, or replacement of, any Ship or equipment installed on it which would or might materially adversely alter the structure, type or performance characteristics of that Ship or materially reduce its value.

25.6 Removal and installation of parts

- (a) Subject to paragraph (b) below, no Borrower shall remove any material part of any Ship, or any item of equipment installed on any Ship unless:
 - (i) 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;
 - (ii) the replacement part or item is free from any Security in favour of any person other than the Security Agent; and

- (iii) the replacement part or item becomes, on installation on that Ship, the property of that Borrower and subject to the security constituted by the Mortgage on that Ship.
- (b) 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 that Borrower.

25.7 Surveys

Each Borrower shall submit the Ship owned by it regularly to all periodic or other surveys which may be required for classification purposes and, if so required by the Facility Agent acting on the instructions of the Majority Lenders, provide the Facility Agent, with copies of all survey reports.

25.8 Inspection

- (a) Each Borrower shall permit the Security Agent (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) (acting through surveyors or other persons appointed by it for that purpose) to board the Ship owned by it at all reasonable times, after prior written notice and without interfering with the Ship's operation and trade, to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections.
- (b) The cost of all inspections under this Clause 25.8 (*Inspection*) shall be for the account of that Borrower in relation to the Ship owned by it once annually and at any time when an Event of Default has occurred and is continuing.

25.9 Prevention of and release from arrest

- (a) Each Borrower shall, in respect of the Ship owned by it, promptly discharge:
 - (i) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against that Ship, its Earnings or its Insurances;
 - (ii) all Taxes, dues and other amounts charged in respect of that Ship, its Earnings or its Insurances; and
 - (iii) all other outgoings whatsoever in respect of that Ship, its Earnings or its Insurances.
- (b) Each Borrower shall as promptly as possible 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, take all steps necessary to procure its release by providing bail or otherwise as the circumstances may require.

25.10 Compliance with laws etc.

Each Borrower shall:

- (a) comply, or procure compliance with all laws or regulations:
 - (i) relating to its business generally; and
 - (ii) relating to the Ship owned by it, its ownership, employment, operation, management and registration,

- including, but not limited to, the ISM Code, the ISPS Code, all Environmental Laws, all Sanctions and the laws of the Approved Flag;
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals; and
 - (c) without limiting paragraph (a) above, not employ the Ship owned by it nor allow its employment, operation or management in any manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and Sanctions (or which would be contrary to Sanctions if Sanctions were binding on each Transaction Obligor).
 - (d) If a Ship is intended to be scrapped during the Security Period, use its best endeavours to take into account social and environmental matters when selecting the recycling yard and to comply with the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (2009).

25.11 ISPS Code

Without limiting paragraph (a) of Clause 25.10 (*Compliance with laws etc.*), each Borrower shall:

- (a) procure that the Ship owned by it and the company responsible for that Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain an ISSC for that Ship; and
- (c) notify the Facility Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

25.12 Sanctions and Ship trading

(a) Without limiting Clause 25.10 (*Compliance with laws etc.*), each Borrower shall procure:

- (i) that the Ship owned by it shall not be used by or for the benefit of a Prohibited Person;
- (ii) that such Ship shall not be used in trading in any manner contrary to Sanctions (or which could be contrary to Sanctions, if Sanctions were binding on each Transaction Obligor);
- (iii) that such Ship shall not be traded in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances; and
- (iv) that each charterparty in respect of that Ship shall contain, for the benefit of that Borrower, language which gives effect to the provisions of paragraph (c) of Clause 25.10 (*Compliance with laws etc.*) as regards Sanctions and of this Clause 25.12 (*Sanctions and Ship trading*) and which permits refusal of employment or voyage orders if compliance would result in a breach of Sanctions (or which would result in a breach of Sanctions, if Sanctions were binding on each Transaction Obligor).

25.13 Trading in war zones

In the event of hostilities in any part of the world (whether war is declared or not), no Borrower shall cause or permit any Ship 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 that Borrower has (at its expense) effected any special, additional or modified insurance cover which War Risks insurers may require.

25.14 Provision of information

Without prejudice to Clause 21.5 (*Information: miscellaneous*) each Borrower shall, in respect of the Ship owned by it, promptly provide the Facility Agent with any information which it requests (acting on the instructions of any Lender), acting reasonably in the event there is no Event of Default, regarding:

- (a) that Ship, its employment, position and engagements;
- (b) the Earnings and payments and amounts due to its master and crew;
- (c) any expenditure incurred, or likely to be incurred, in connection with the operation, maintenance or repair of that Ship and any payments made by it in respect of that Ship;
- (d) any towages and salvages; and
- (e) its compliance, the Approved Manager's compliance and the compliance of that Ship with the ISM Code and the ISPS Code, and, upon the Facility Agent's (acting on the instructions of any Lender) request, promptly provide copies of any current Charter relating to that Ship, of any current guarantee of any such Charter, the Ship's Safety Management Certificate and any relevant Document of Compliance.

25.15 Notification of certain events

Each Borrower shall, in respect of the Ship owned by it, promptly after it becomes aware, notify the Facility Agent by e-mail or fax, confirmed forthwith by letter, of:

- (a) any casualty to that Ship which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which that Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requisition of that Ship for hire;
- (d) any overdue requirement or overdue recommendation made in relation to that Ship by any insurer or classification society or by any competent authority which is not immediately complied with;
- (e) any arrest or detention of that Ship or any exercise or purported exercise of any lien on that Ship or the Earnings;
- (f) any intended dry docking of that Ship;

- (g) any Environmental Claim made against that Borrower or in connection with that Ship, or any Environmental Incident;
- (h) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, an Approved Manager or otherwise in connection with that Ship; or
- (i) 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;
- (j) the termination of any Initial Charter and/or Substitute Initial Charter; or

and each Borrower shall keep the Facility Agent advised in writing on a regular basis and in such detail as the Facility Agent shall (acting on the instructions of any Lender) reasonably require as to that Borrower's, any such Approved Manager's or any other person's response to any of those events or matters.

25.16 Restrictions on use, chartering, appointment of managers etc.

No 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, voyage or consecutive voyage charter in respect of that Ship other than a Permitted Charter;
- (c) materially amend, supplement or terminate a Management Agreement (material amendments shall include, without limitation, any amendments to the management fees resulting in an increase to such fees in excess of 5% per annum, duration of the management agreement or terms permitting the termination of such Management Agreement), other than as required in connection with the Merger;
- (d) appoint a manager of that Ship other than the Approved Commercial Manager and the Approved Technical Manager or agree to any alteration to the terms of an Approved Manager's appointment;
- (e) de activate or lay-up that Ship;
- (f) put that Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed \$1,000,000 (or the equivalent in any other currency) unless that person has first given to the Security Agent (acting on the instructions of the Facility Agent acting on the instructions of the Majority Lenders) and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or its Earnings for the cost of such work or for any other reason; or
- (g) use that Ship for any other purpose other than as a civil merchant trading vessel.

25.17 Notice of Mortgage

Each Borrower shall keep the relevant Mortgage registered against the Ship owned by it as a valid first priority or, as the case may be, preferred mortgage, carry on board that Ship a certified copy of the relevant Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of that Ship a framed printed notice stating that that Ship is mortgaged by that Borrower to the Security Agent.

25.18 Sharing of Earnings

No Borrower shall enter into any agreement or arrangement for the sharing of any Earnings other than for the purposes of this Agreement.

25.19 Notification of compliance

Each Borrower shall promptly provide the Facility Agent upon its request with evidence (in such form as the Facility Agent requires acting on the instructions of the Majority Lenders) that it is complying with this Clause 25 (*General Ship Undertakings*).

25.20 Charterparty Assignment

If a Borrower enters into any Assignable Charter (subject to obtaining the prior consent of the Facility Agent in accordance with paragraph (b) of Clause 25.16 (*Restrictions on use, chartering, appointment of managers etc.*)), that Borrower shall, at the request of the Facility Agent, execute in favour of the Security Agent a Charterparty Assignment in respect of that Assignable Charter and shall:

- (a) serve notice of that Charterparty Assignment on the relevant charterer and use best endeavours to procure that the charterer acknowledges such notice in such form as the Facility Agent may approve or require; and
- (b) deliver to the Facility Agent such other documents in connection with that Charterparty Assignment as the Facility Agent may require (including, without limitation, documents equivalent to those referred to in Schedule 2 (*Conditions Precedent*) in relation to that Borrower and that Charter).

25.21 Dismantling of Ships

Each Borrower confirms that it will ensure the Ship owned by it is or, if sold to an intermediary with the intention of being scrapped use its best endeavours that it is, recycled at a recycling yard which conducts its recycling business in a socially and environmentally responsible manner, in accordance with the provisions of The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 or, with regards to any EU flagged vessels, the EU Ship Recycling Regulation

25.22 IHM

Each Borrower shall ensure that the Ship owned by it carries an IHM classification from the relevant Approved Classification Society from the date of completion of the first dry docking of that Ship after the date of this Agreement and at all times thereafter and shall promptly deliver to the Facility Agent upon its request a copy of the class report noting the same.

26 SECURITY COVER

26.1 Minimum required security cover

Clause 26.2 (*Provision of additional security; prepayment*) applies if the Facility Agent (acting on the instructions of the Majority Lenders) notifies the Borrowers that:

- (a) the aggregate Market Value of the Ships then subject to a Mortgage; plus

(b) the net realisable value of additional Security previously provided under this Clause 26 (*Security Cover*), is below:

- (i) until the second anniversary of the Utilisation Date, 115 per cent. of the Loan; or
- (ii) on and from the second anniversary of the Utilisation Date, 125 per cent. of the Loan.

26.2 Provision of additional security; prepayment

- (a) If the Facility Agent (acting on the instructions of the Majority Lenders) serves a notice on the Borrowers under Clause 26.1 (*Minimum required security cover*), the Borrowers shall, on or before the date falling one Month after the date (the "**Prepayment Date**") on which the Facility Agent's notice is served, prepay such part of the Loan as shall eliminate the shortfall.
- (b) A Borrower may at its discretion, instead of making a prepayment as described in paragraph (a) above, provide, or ensure that a third party has provided, additional security which, in the opinion of the Facility Agent acting on the instructions of the Majority Lenders:
 - (i) has a net realisable value at least equal to the shortfall; and
 - (ii) is documented in such terms as the Facility Agent (acting on the instructions of the Majority Lenders) may approve or require, before the Prepayment Date; and conditional upon such security being provided in such manner, it shall satisfy such prepayment obligation.

26.3 Value of additional vessel security

The net realisable value of any additional security which is provided under Clause 26.2 (*Provision of additional security; prepayment*) and which consists of Security over a vessel shall be the Market Value of the vessel concerned.

26.4 Valuations binding

Any valuation under this Clause 26 (*Security Cover*) shall be binding and conclusive as regards each Borrower.

26.5 Provision of information

- (a) Each Borrower shall as soon as reasonably practicable provide the Facility Agent and any Approved Valuer acting under this Clause 26 (*Security Cover*) with any information which the Facility Agent (acting on the instructions of the Majority Lenders) or Approved Valuer may request for the purposes of the valuation.
- (b) If a Borrower fails to provide the information referred to in paragraph (a) above by the date specified in the request, the valuation may be made on any basis and assumptions which the Approved Valuer or the Facility Agent (acting on the instructions of the Majority Lenders) considers prudent.

26.6 Prepayment mechanism

Any prepayment pursuant to Clause 26.2 (*Provision of additional security; prepayment*) shall be made in accordance with the relevant provisions of Clause 7 (*Prepayment and Cancellation*) and shall be treated as a voluntary prepayment pursuant to Clause 7.4 (*Voluntary prepayment of Loan*).

26.7 Provision of valuations

- (a) The Borrowers shall provide the Facility Agent with the necessary valuations of each Ship and any other vessel over which additional Security has been created in accordance with Clause 26.3 (*Value of additional vessel security*), to enable the Facility Agent (acting on the instructions of the Majority Lenders) to determine the Market Value of that Ship or any other vessel, as follows:
- (i) at least semi-annually, on the relevant Testing Date;
 - (ii) at the Facility Agent's (acting on the instructions of any Lender) request, quarterly, on each date falling on 30 March and 30 September of each financial year; and
 - (iii) if a mandatory prepayment event has occurred under Clause 7.5 (*Mandatory prepayment on sale or Total Loss*);
- (b) The cost of valuations obtained under sub-paragraphs (i), (ii) and (iii) above shall be borne or reimbursed by the Borrowers;
- (c) The Lenders may at such time or times instruct the Facility Agent to obtain valuations of the Ships other than pursuant to paragraph (a) for the purpose of ascertaining the Market Value of the Ships at such time or times. Any further valuations obtained or provided shall be at the cost of the Lenders unless an Event of Default has occurred and is continuing at the relevant time in which case the Borrowers acknowledge and agree that the cost of such additional valuations shall be borne or reimbursed by the Borrowers.

27 ACCOUNTS, APPLICATION OF EARNINGS AND HEDGE RECEIPTS

27.1 Accounts

No Borrower may, without the prior consent of the Facility Agent (acting on the instructions of the Lenders), maintain any bank account other than the Accounts.

27.2 Payment of Earnings

Each Borrower shall ensure that:

- (a) subject only to the provisions of the General Assignment to which it is a party, all the Earnings in respect of the Ship owned by it are paid in to its Earnings Account; and
- (b) all Hedge Receipts are paid to the Retention Account.

27.3 Monthly Retentions

The Borrowers shall ensure that, in each calendar month following the Utilisation Date, on such dates as the Facility Agent (acting on the instructions of the Majority Lenders) may from time to time specify, there is transferred to the Retention Account out of the aggregate Earnings received by the Borrowers in their respective Earnings Accounts during the preceding calendar month:

- (a) one-third of the amount of any Repayment Instalment falling due under Clause 6.1 (*Repayment of Loan*) on the next Repayment Date; and
- (b) the relevant fraction of the aggregate amount of interest on the Loan which is payable under this Agreement in respect of any Interest Period then current, reduced by the amount of any corresponding payment from a Hedge Counterparty due to any Borrower under any Hedging Agreement; and
- (c) the relevant fraction of the aggregated net amount which is payable by any Borrower to any Hedge Counterparty under any Hedging Agreement on the next due date for payment of such amount under the relevant Hedging Agreement.

The “**relevant fraction**” is a fraction of which:

- (i) the numerator is one; and
- (ii) the denominator is:
 - (A) the number of months comprised in the relevant then current Interest Period; or
 - (B) if the period is shorter, the number of months from the later of the commencement of the relevant current Interest Period or the last due date for payment of interest on the Loan or the relevant part of the Loan to the next due date for payment of interest on the Loan or the relevant part of the Loan under this Agreement.

27.4 Shortfall in Earnings

- (a) If the aggregate of the credit balance on each Earnings Account is insufficient in any calendar month for the required amount to be transferred to the Retention Account under Clause 27.3 (*Monthly retentions*), the Borrowers shall make up the amount of the insufficiency on demand (acting on the instructions of the Majority Lenders) from the Facility Agent.
- (b) Without prejudicing the Facility Agent’s right to make such demand at any time (if so instructed by the Majority Lenders), the Facility Agent may, if so authorised by the Majority Lenders, permit the Borrowers to make up all or part of the insufficiency by increasing the amount of any transfer under Clause 27.3 (*Monthly retentions*) from the Earnings received in the next or subsequent calendar months.

27.5 Release of Earnings

Subject to the terms of the General Assignment, any amount standing to the credit of an Earnings Account shall be freely available to the Borrower owning that Earnings Account for the purpose of the payment of operating expenses incurred in the ordinary course of owning, operating, crewing, victualling, maintaining, insuring, managing and repairing the Ship owned by it, for its administration and for the payment of dividends pursuant to Clause 23.18 (*Dividends*) **Provided that** the Borrowers are in compliance with Clauses 22.1 (*Borrowers’ minimum liquidity*) and 27.3 (*Monthly retentions*) and no Event of Default has occurred is continuing.

27.6 Application of retentions

- (a) Subject to paragraph (b) and (c) below, the Security Agent has sole signing rights in relation to the Retention Account.
- (b) Until an Event of Default occurs, the Borrowers shall instruct the Account Bank to release to the Facility Agent, on each Repayment Date and on each Interest Payment Date, for distribution to the Finance Parties in accordance with Clause 35.2 (*Distributions by the Facility Agent*) so much of the then balance on the Retention Account as equals:
 - (i) any Repayment Instalment due on that Repayment Date; and
 - (ii) the amount of interest payable on that Interest Payment Date,in discharge of the Borrowers' liability for that Repayment Instalment and that interest.

For the avoidance of doubt, the Borrowers rights under this Clause are limited to instructing the Account Bank to release funds to the Facility Agent and the Borrowers' right to instruct the Account Bank to effect such release does not afford the Borrowers with signing rights in relation to the Retention Account.

- (c) Until an Event of Default occurs, the Borrowers shall instruct the Account Bank to release to any Hedge Counterparty:
 - (i) the amount payable by any Borrower to any Hedge Counterparty under any Hedging Agreement on each Interest Payment Date; and
 - (ii) the amount of any Hedging Prepayment Proceeds paid into the Retention Account during the Interest Period ending on that date,in discharge of the Borrowers' liability for that amount under any Hedging Agreement or its prepayment obligation under Clause 7.6 (*Mandatory prepayment of Hedging Prepayment Proceeds*) as the case may be.

For the avoidance of doubt, the Borrowers rights under this Clause are limited to instructing the Account Bank to release funds to any Hedge Counterparty and the Borrowers' right to instruct the Account Bank to effect such release does not afford the Borrowers with signing rights in relation to the Retention Account.

27.7 Interest accrued on Retention Account

Any credit balance on the Retention Account shall bear interest at the rate from time to time offered by the Account Bank to its customers for dollar deposits of similar amounts and for periods similar to those for which such balances appear to the Account Bank likely to remain on the Retention Account.

27.8 Release of accrued interest

Interest accruing under Clause 27.7 (*Interest accrued on Retention Account*) shall be credited to the Retention Account and, to the extent not applied previously pursuant to Clause 27.5 (*Application of retentions*), shall be released to the Borrowers at the end of the Security Period.

27.9 Location of Accounts

Each Borrower shall promptly:

- (a) comply with any requirement of the Facility Agent (acting on the instructions of the Majority Lenders) as to the location or relocation of its Accounts (or either of them); and
- (b) execute any documents which the Facility Agent (acting on the instructions of the Majority Lenders) specifies to create or maintain in favour of the Security Agent Security over (and/or rights of set-off, consolidation or other rights in relation to) any of the Accounts.

28 EVENTS OF DEFAULT

28.1 General

Each of the events or circumstances set out in this Clause 28 (*Events of Default*) is an Event of Default except for Clause 28.19 (*Acceleration*) and Clause 28.20 (*Enforcement of security*).

28.2 Non-payment

A Transaction Obligor (other than an Approved Manager) does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) payment is made within 1 Business Day; or
- (b) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
 - (iii) payment is made within 3 Business Days.

28.3 Specific obligations

A breach occurs of Clause 4.4 (*Waiver of conditions precedent*), Clause 20.33 (*Sanctions*), Clause 22 (*Financial Covenants*), Clause 23.11 (*Title*), Clause 23.12 (*Negative pledge*), Clause 23.20 (*Unlawfulness, invalidity and ranking; Security imperilled*), Clause 23.30 (*AIF and AIFM*), Clause 23.31 (*Anti-Bribery and Corruption Laws*), Clause 23.33 (*Anti-Money Laundering Laws*) Clause 24.2 (*Maintenance of obligatory insurances*), Clause 24.3 (*Terms of obligatory insurances*), Clause 24.5 (*Renewal of obligatory insurances*), Clause 25.12 (*Sanctions and Ship trading*) or Clause 26 (*Security Cover*).

28.4 Other obligations

- (a) A Transaction Obligor does not comply with any provision of the Finance Documents to which it is a party (other than those referred to in Clause 28.2 (*Non-payment*) and Clause 28.3 (*Specific obligations*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days of the Facility Agent giving notice to the Borrowers or (if earlier) any Transaction Obligor becoming aware of the failure to comply.

28.5 Misrepresentation

Any representation or statement made or deemed to be made by a Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

28.6 Cross default

- (a) Any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) or any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Subject to paragraph (e) below, any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) or any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Subject to paragraph (e) below, any commitment for any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) or any member of the Group is cancelled or suspended by a creditor of any Transaction Obligor (other than an Approved Manager) or any member of the Group as a result of an event of default (however described).
- (d) Subject to paragraph (e) below, any creditor of any Transaction Obligor (other than an Approved Manager) or any member of the Group becomes entitled to declare any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) or any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) An Event of Default under paragraphs (a), (b), (c) and (d) above in respect of a person other than a Borrower will only occur if the event triggering any of the circumstances referred to in such paragraphs constitutes under the financing agreement pursuant to which such Financial Indebtedness has been incurred (i) a payment default, (ii) an event of default as a result of non-compliance with the financial covenants and (iii) an event of default as a result of breach of the security cover ratio required to be maintained under that financing agreement, in each case however described.

28.7 Insolvency

- (a) A Transaction Obligor (other than an Approved Manager) or any member of the Group:
 - (i) is unable or admits inability to pay its debts as they fall due;

- (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or
 - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (including the Finance Parties) with a view to rescheduling, any of its indebtedness **Provided that** the existence or the entering of such negotiations or as a result of such negotiations the entering into any agreement with one or more of its creditors (including the Finance Parties) shall not constitute an Event of Default under this Clause 28.7 if (A) such Transaction Obligor or member of the Group has notified the Facility Agent in writing of his intention to enter into such negotiations with one or more of its creditors and (B) an officer of each of the Borrowers and the Guarantors confirms in writing to the Facility Agent that the Borrowers will be able to cover the Debt Service for the next six-month period and in the event that such confirmation is not provided within 3 Business Days from the notice to the Facility Agent or the Facility Agent becoming aware of the existence of such negotiations, the Borrowers undertake to commence negotiations with the Lenders in good faith with a view to amending the terms of this Agreement in a manner acceptable to the Facility Agent (acting on the instructions of the Lenders).
- (b) The value of the assets of any Transaction Obligor (other than an Approved Manager) or any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Transaction Obligor (other than an Approved Manager) or any member of the Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

28.8 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Transaction Obligor (other than an Approved Manager) or any member of the Group other than a solvent liquidation or reorganisation of any member of the Group which is not a Transaction Obligor;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor (other than an Approved Manager) or any member of the Group;
 - (iii) the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group which is not a Transaction Obligor), receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Transaction Obligor (other than an Approved Manager) or any member of the Group or any of its assets; or
 - (iv) enforcement of any Security over any assets of any Transaction Obligor (other than an Approved Manager) or any member of the Group, or any analogous procedure or step is taken in any jurisdiction.

- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement (or such other longer period as the Facility Agent may agree).

28.9 Creditors' process

Any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of a Transaction Obligor (other than an Approved Manager) or a member of the Group having an aggregate value of \$800,000 (other than an arrest or detention of a Ship referred to in Clause 28.13 (*Arrest*)) and is not discharged within 14 days.

28.10 Unlawfulness, invalidity and ranking

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation of a Transaction Obligor under the Finance Documents is not or ceases to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force and effect or to be continuing or is or purports to be determined or any Transaction Security is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) Any Transaction Security proves to have ranked after, or loses its priority to, any other Security.

28.11 Security imperilled

Any Security created or intended to be created by a Finance Document is in any way imperilled or in jeopardy.

28.12 Cessation of business

Any Transaction Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

28.13 Arrest

Any arrest of a Ship or its detention in the exercise or the purported exercise of any lien or claim unless it is redelivered to the full control of the relevant Borrower within 30 days (or such other longer period as the Facility Agent may agree) of such arrest or detention.

28.14 Expropriation

The authority or ability of any Transaction Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Transaction Obligor or any of its assets other than:

- (a) an arrest or detention of a Ship referred to in Clause 28.13 (*Arrest*); or
- (b) any Requisition.

28.15 Repudiation and rescission of agreements

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document (excluding a Charter) or any of the Transaction Security or evidences an intention to rescind or repudiate a Transaction Document or any Transaction Security.

28.16 Litigation

Any litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency are started or threatened, or any judgment or order of a court, arbitral body or agency is made, in relation to any of the Transaction Documents or the transactions contemplated in any of the Transaction Documents or its assets which has or is reasonably likely to have a Material Adverse Effect.

28.17 Material adverse change

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

28.18 Termination of Initial Charters or Assignable Charters

- (a) If any of the Initial Charters or any Assignable Charter is frustrated, terminated (except by mere effluxion of time or in the case of Total Loss of a Ship), cancelled or rescinded or purported to be cancelled or rescinded or the Ship subject to that Initial Charter or Assignable Charter is withdrawn from service under that Initial Charter or Assignable Charter before the last day of the Security Period the Borrower.
- (b) No Event of Default under paragraph (a) above will be triggered if, as soon as possible after (and in any event within 60 days after) such cancellation, rescission, termination or withdrawal the Borrower owning that Ship has entered into an approved charter commitment (a "**Replacement Charter**") in respect of that Ship on terms (including, without limitation, as to the tenor, charter hire and credit standing of the charterer) acceptable to the Facility Agent in its absolute discretion and, forthwith after the entry into such Replacement Charter, the Borrower owning that Ship has granted in favour of the Security Agent a Charterparty Assignment in respect of such Replacement Charter.

28.19 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and shall if so directed by the Lenders:

- (a) by notice to the Borrowers:
 - (i) cancel the Total Commitments, whereupon they shall immediately be cancelled;
 - (ii) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon it shall become immediately due and payable; and/or
 - (iii) declare that all or part of the Loan be payable on demand, whereupon it shall immediately become payable on demand by the Facility Agent acting on the instructions of the Majority Lenders; and/or

- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents, and the Facility Agent may serve notices under sub-paragraphs (i), (ii) or (iii) of paragraph (a) above simultaneously or on different dates and any Servicing Party may take any action referred to in paragraph (b) above or Clause 28.20 (*Enforcement of security*) if no such notice is served or simultaneously with or at any time after the service of any of such notice.

28.20 Enforcement of security

On and at any time after the occurrence of an Event of Default the Security Agent may, and shall if so directed by the Majority Lenders, take any action which, as a result of the Event of Default or any notice served under Clause 28.19 (*Acceleration*), the Security Agent is entitled to take under any Finance Document or any applicable law or regulation.

SECTION 9

CHANGES TO PARTIES

29 CHANGES TO THE LENDERS AND HEDGE COUNTERPARTIES

29.1 Assignments and transfers by the Lenders

Subject to this Clause 29 (*Changes to the Lenders*), a Lender (the “**Existing Lender**”) may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,
under the Finance Documents to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “**New Lender**”).

29.2 Conditions of assignment or transfer

- (a) The Borrowers consent is not required for an assignment or transfer by an Existing Lender.
- (b) An assignment will only be effective on:
 - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Secured Parties as it would have been under if it had been an Original Lender; and
 - (ii) performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.
- (c) Each Obligor on behalf of itself and each Transaction Obligor agrees that all rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender’s title and of any rights or equities which the Borrower or any other Transaction Obligor had against the Existing Lender.
- (d) A transfer will only be effective if the procedure set out in Clause 29.5 (*Procedure for transfer*) is complied with.
- (e) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, a Transaction Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross Up and Indemnities*) or under that clause as incorporated by reference or in full in any other Finance Document or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (e) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility or in connection with a Relevant Retrenching.

- (f) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

29.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of \$5,000.

29.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Transaction Obligor;
 - (iii) the performance and observance by any Transaction Obligor of its obligations under the Transaction Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document, and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties and the Secured Parties that it:
- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its related entities throughout the Security Period.

- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 29 (*Changes to the Lenders*); or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Transaction Obligor of its obligations under the Transaction Documents or otherwise.

29.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 29.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate.
- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied in its sole discretion that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 29.10 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security, each of the Transaction Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
 - (ii) each of the Transaction Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Transaction Obligor and the New Lender have assumed and/or acquired the same in place of that Transaction Obligor and the Existing Lender;
 - (iii) the Facility Agent, the Security Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the Arranger and the Existing Lenders shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a “Lender”.

29.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 29.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (b) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing

Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied in its sole discretion it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

Subject to Clause 29.10 (*Pro rata interest settlement*), on the Transfer Date:

- (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (c) Lenders may utilise procedures other than those set out in this Clause 29.6 (*Procedure for assignment*) to assign their rights under the Finance Documents (but not, without the consent of the relevant Transaction Obligor or unless in accordance with Clause 29.5 (*Procedure for transfer*), to obtain a release by that Transaction Obligor from the obligations owed to that Transaction Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 29.2 (*Conditions of assignment or transfer*).

29.7 Copy of Transfer Certificate or Assignment Agreement to Borrowers

The Facility Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement (and in any event no later than three Business Days of execution), send to the Borrowers a copy of that Transfer Certificate or Assignment Agreement.

29.8 Additional Hedge Counterparties

- (a) A Lender may request that it or another Lender or an Affiliate of a Lender or another bank or financial institution becomes an Additional Hedge Counterparty, with the prior approval of the Lenders and (in the case of a request by a Lender) the Borrowers, by delivering to the Facility Agent a duly executed Hedge Counterparty Accession Letter.
- (b) The relevant Lender or Affiliate or other bank or financial institution will become an Additional Hedge Counterparty when the Facility Agent enters into the relevant Hedge Counterparty Accession Letter.

29.9 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 29 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities, except that no such charge, assignment or Security shall:
 - (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by a Transaction Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

29.10 Pro rata interest settlement

- (a) If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a "*pro rata* basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 29.5 (*Procedure for transfer*) or any assignment pursuant to Clause 29.6 (*Procedure for assignment*)) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period:
 - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
 - (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 29.10 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.

- (b) In this Clause 29.10 (*Pro rata interest settlement*) references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 29.10 (*Pro rata interest settlement*) but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

30 CHANGES TO THE OBLIGORS

30.1 Assignment or transfer by Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents, without the prior written consent of the Facility Agent.

30.2 Release of security

- (a) If a disposal of any asset subject to security created by a Security Document is made in the following circumstances:

- (i) the disposal is permitted by the terms of any Finance Document;
- (ii) the Lenders agree to the disposal;
- (iii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or
- (iv) the disposal is being effected by enforcement of a Security Document,

the Security Agent may release the asset(s) being disposed of from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).

- (b) If the Security Agent is satisfied that a release is allowed under this Clause 30.2 (*Release of security*) (at the request and expense of the Borrowers) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Obligor under the Finance Documents.

30.3 Additional Subordinated Creditors

- (a) The Borrowers may request that any person becomes a Subordinated Creditor, with the prior approval of the Facility Agent, by delivering to the Facility Agent:
 - (i) a duly executed Subordination Agreement;
 - (ii) a duly executed Subordinated Debt Security; and

- (iii) such constitutional documents, corporate authorisations and other documents and matters as the Facility Agent may reasonably require, in form and substance satisfactory to the Facility Agent, to verify that the person's obligations are legally binding, valid and enforceable and to satisfy any applicable legal and regulatory requirements.
- (b) A person referred to in paragraph (a) above will become a Subordinated Creditor on the date the Security Agent enters into the Subordination Agreement and the Subordinated Debt Security delivered under paragraph (a) above.

THE FINANCE PARTIES

31 THE FACILITY AGENT, THE ARRANGER AND THE REFERENCE BANKS**31.1 Appointment of the Facility Agent**

- (a) Each of the Arranger, the Lenders and the Hedge Counterparties appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arranger, the Lenders and the Hedge Counterparties authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

31.2 Instructions

- (a) The Facility Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties.
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
 - (i) where a Finance Document requires the Facility Agent to act (on the instruction of the Majority Lenders or the Lenders as applicable) in a specified manner or to take a specified action;

- (ii) in respect of any provision which protects the Facility Agent's own position in its personal capacity as opposed to its role of Facility Agent for the relevant Finance Parties.
- (e) If giving effect to instructions given by the Majority Lenders would in the Facility Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 44 (*Amendments and Waivers*), the Facility Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Facility Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) The Facility Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (g) Without prejudice to the remainder of this Clause 31.2 (*Instructions*), in the absence of instructions, the Facility Agent shall not be obliged to take any action (or refrain from taking action) even if it considers acting or not acting to be in the best interests of the Finance Parties.
- (h) The Facility Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document.

31.3 Duties of the Facility Agent

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to Clause 29.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Notwithstanding anything set out in any Transaction Document, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Facility Agent receives notice from a Party referring to any Finance Document, describing a circumstance and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties but shall not have any duty to verify whether the circumstance described has actually occurred or whether it constitutes a Default, unless it receives instructions from the Majority Lenders to investigate such circumstance.
- (f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent, the Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.

- (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

31.4 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

31.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Facility Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) Neither the Facility Agent nor the Arranger shall be bound to account to other Finance Party for any sum or the profit element of any sum received by it for its own account.

31.6 Application of receipts

Except as expressly stated to the contrary in any Finance Document, any moneys which the Facility Agent receives or recovers in its capacity as Facility Agent shall be applied by the Facility Agent in accordance with Clause 35.5 (*Application of receipts; partial payments*).

31.7 Business with the Group

The Facility Agent and the Arranger may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

31.8 Rights and discretions

- (a) The Facility Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- (ii) assume that:
- (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
- (B) unless it has received notice of revocation, that those instructions have not been revoked; and
- (iii) rely on a certificate from any person:
- (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
- (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,
- as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 28.2 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iii) any notice or request made by any Borrower (other than a Utilisation Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (c) The Facility Agent may engage (at the Borrowers' expense) the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage (at the Borrowers' expense) the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Notwithstanding any other provision of any Finance Document to the contrary and without prejudice to Clause 31.5 (*No fiduciary duties*), neither the Facility Agent nor the Arranger is obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

31.9 Responsibility for documentation

Neither the Facility Agent nor the Arranger is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Arranger, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party or Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

31.10 No duty to monitor

The Facility Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

31.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to paragraph (e) of Clause 35.11 (*Disruption to Payment Systems etc.*) or any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or

- (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
- (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Facility Agent may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent or the Arranger to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party, on behalf of any Finance Party and each Finance Party confirms to the Facility Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Arranger.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent’s liability, any liability of the Facility Agent arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

31.12 Lenders' indemnity to the Facility Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 35.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.

31.13 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Facility Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent may appoint a successor Facility Agent.
- (d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 31 (*The Facility Agent, the Arranger and the Reference Banks*) and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Facility Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Facility Agent shall, at the Borrower's cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Facility Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.

- (f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.4 (*Indemnity to the Facility Agent*) and this Clause 31 (*The Facility Agent, the Arranger and the Reference Banks*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Facility Agent. Any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Borrowers.
- (i) The consent of any Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Facility Agent.
- (j) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
 - (i) the Facility Agent fails to respond to a request under Clause 12.7 (*FATCA Information*) and a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Facility Agent pursuant to Clause 12.7 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Facility Agent notifies the Borrowers and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

31.14 Confidentiality

- (a) In acting as Facility Agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Facility Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Facility Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.

- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

31.15 Relationship with the other Finance Parties

- (a) Subject to Clause 29.10 (*Pro rata interest settlement*), the Facility Agent may treat the person shown in its records as Lender or Hedge Counterparty at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office or, as the case may be, the Hedge Counterparty:
- (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior written notice from that Lender or Hedge Counterparty to the contrary in accordance with the terms of this Agreement.

- (b) Each Finance Party shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Finance Party shall deal with the Security Agent exclusively through the Facility Agent and shall not deal directly with the Security Agent and any reference to any instructions being given by or sought from any Finance Party or group of Finance Parties by or to the Security Agent in this Agreement must be given or sought through the Facility Agent.
- (c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 38.5 (*Electronic communication*) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 38.2 (*Addresses*) and sub-paragraph (ii) of paragraph (a) of Clause 38.5 (*Electronic communication*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

31.16 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Facility Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Facility Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

31.17 Facility Agent's management time

Any amount payable to the Facility Agent under Clause 14.4 (*Indemnity to the Facility Agent*), Clause 16 (*Costs and Expenses*) and Clause 31.12 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Facility Agent under Clause 11 (*Fees*).

31.18 Deduction from amounts payable by the Facility Agent

If any Party owes an amount to the Facility Agent under the Finance Documents, the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

31.19 Reliance and engagement letters

Each Secured Party confirms that each of the Arranger and the Facility Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or the Facility Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

31.20 Full freedom to enter into transactions

Without prejudice to Clause 31.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Facility Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
 - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
 - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to any Borrower or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Facility Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

31.21 Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Facility Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 31.21 (*Role of Reference Banks*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

31.22 Third Party Reference Banks

A Reference Bank which is not a Party may rely on Clause 31.21 (*Role of Reference Banks*), Clause 44.3 (*Other exceptions*) and Clause 46 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

32 THE SECURITY AGENT

32.1 Trust

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 32 (*The Security Agent*) and the other provisions of the Finance Documents.
- (b) Each other Finance Party authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

32.2 Parallel Debt (Covenant to pay the Security Agent)

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of an Obligor:
 - (i) shall become due and payable at the same time as its Corresponding Debt;
 - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For purposes of this Clause 32.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent:
 - (i) is the independent and separate creditor of each Parallel Debt;
 - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
 - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).
- (d) The Parallel Debt of an Obligor shall be:
 - (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Corresponding Debt has increased,

and the Corresponding Debt of an Obligor shall be decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged,

in each case provided that the Parallel Debt of an Obligor shall never exceed its Corresponding Debt.

- (e) All amounts received or recovered by the Security Agent in connection with this Clause 32.2 (*Parallel Debt (Covenant to pay the Security Agent)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 35.5 (*Application of receipts; partial payments*).
- (f) This Clause 32.2 (*Parallel Debt (Covenant to pay the Security Agent)*) shall apply, with any necessary modifications, to each Finance Document.

32.3 Enforcement through Security Agent only

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

32.4 Instructions

- (a) The Security Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by:
 - (A) all Lenders (or the Facility Agent on their behalf) if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders (or the Facility Agent on their behalf); and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or the Facility Agent on their behalf) (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Facility Agent acting on the instructions of the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.

- (d) Paragraph (a) above shall not apply:
- (i) where a Finance Document requires the Security Agent to act (acting on the instructions of the Facility Agent which is acting on the instructions of the Majority Lenders) in a specified manner or to take a specified action;
 - (ii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Secured Parties.
 - (iii) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 32.28 (*Application of receipts*);
 - (B) Clause 32.29 (*Permitted Deductions*); and
 - (C) Clause 32.30 (*Prospective liabilities*).
- (e) If giving effect to instructions given by the Facility Agent acting on the instructions of the Majority Lenders would in the Security Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 44 (*Amendments and Waivers*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
- (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to sub-paragraph (iii) of paragraph (d) above,
- the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 32.4 (*Instructions*), in the absence of instructions, the Security Agent may (but shall not be obliged to) take such action in the exercise of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.
- (i) The Security Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (h) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

32.5 Duties of the Security Agent

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) The Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

32.6 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor or any other person (other than the trustee for the Secured Parties in accordance with Clause 32.1 (*Trust*)).
- (b) The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

32.7 Business with the Group

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

32.8 Rights and discretions

- (a) The Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked;
 - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and

- (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the other Finance Parties through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to any Finance Party.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Secured Parties) that:
 - (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iii) any notice or request made by any Borrower (other than a Utilisation Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (d) The Security Agent may engage (at the Borrowers' expense) the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (c) above or paragraph (f) below, the Security Agent may at any time engage (at the Borrowers' expense) the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Facility Agent or the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Security Agent's gross negligence or wilful misconduct.
- (h) Unless a Finance Document expressly provides otherwise the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under the Finance Documents.

- (i) Without prejudice to Clause 31.5 (*No fiduciary duties*) and notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

32.9 Responsibility for documentation

None of the Security Agent, any Receiver or Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Arranger, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

32.10 No duty to monitor

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

32.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate), none of the Security Agent nor any Receiver or Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;

- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
- (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Security Agent, that Receiver or that Delegate (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,on behalf of any Finance Party and each Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate, any liability of the Security Agent or any Receiver or Delegate arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

32.12 Lenders' indemnity to the Security Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Agent and every Receiver, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the Security Agent's or Receiver's gross negligence or wilful misconduct) in acting as Security Agent or Receiver under the Finance Documents (unless the Security Agent or Receiver has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.

32.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, at the Borrower's cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer, by way of a document expressed as a deed, of all the Security Property to that successor.

- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged, by way of a document executed as a deed, from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 32.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of Clause 14.5 (*Indemnity to the Security Agent*) and this Clause 32 (*The Security Agent*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Security Agent. Any fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrowers.
- (h) The consent of any Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Agent.

32.14 Confidentiality

- (a) In acting as Security Agent for the Finance Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Security Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Security Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Without prejudice to Clause 32.6 (*No fiduciary duties*) and notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

32.15 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;

- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

32.16 Security Agent's management time

- (a) Any amount payable to the Security Agent under Clause 14.5 (*Indemnity to the Security Agent*), Clause 16 (*Costs and Expenses*) and Clause 32.12 (*Lenders' indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Security Agent under Clause 11 (*Fees*).
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default;
 - (ii) the Security Agent being requested by a Transaction Obligor or the Majority Lenders to undertake duties which the Security Agent and the Borrowers agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
 - (iii) the Security Agent and the Borrowers agreeing that it is otherwise appropriate in the circumstances,the Borrowers shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.
- (c) If the Security Agent and the Borrowers fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrowers or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrowers) and the determination of any investment bank shall be final and binding upon the Parties.

32.17 Reliance and engagement letters

Each Secured Party confirms that the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Security Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

32.18 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Transaction Obligor to any of the Security Assets;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Transaction Obligor to take, any step to perfect its title to any of the Security Assets or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Finance Document.

32.19 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Security Assets;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,
 - (iv) and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.
- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders request it to do so in writing and the Security Agent fails to do so within 14 days after receipt of that request.

32.20 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

32.21 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of any such delegate or sub delegate.

32.22 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties; or
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the Borrowers and the Finance Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

32.23 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Transaction Obligor may have to any of the Security Assets and shall not be liable for or bound to require any Transaction Obligor to remedy any defect in its right or title.

32.24 Releases

Upon a disposal of any of the Security Assets pursuant to the enforcement of the Transaction Security by a Receiver, a Delegate or the Security Agent, the Security Agent is irrevocably authorised (at the cost of the Obligors and without any consent, sanction, authority or further confirmation from any other Secured Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

32.25 Winding up of trust

If the Security Agent, with the approval of the Facility Agent (acting on the instructions of the Lenders) determines (acting on the instructions of the Lenders) that:

(a) all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and

(b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Transaction Obligor pursuant to the Finance Documents,

then

(i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and

(ii) any Security Agent which has resigned pursuant to Clause 32.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

32.26 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

32.27 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement and the other Finance Documents. Where there are any inconsistencies between (i) the Trustee Acts 1925 and 2000 and (ii) the provisions of this Agreement and any other Finance Document, the provisions of this Agreement and any other Finance Document shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement and any other Finance Document shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

32.28 Application of receipts

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document, under Clause 32.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or in connection with the realisation or enforcement of all or any part of the Security Property (for the purposes of this Clause 32 (*The Security Agent*), the “**Recoveries**”) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the remaining provisions of this Clause 32 (*The Security Agent*), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) (other than pursuant to Clause 32.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or any Receiver or Delegate;
- (b) in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Secured Parties, for application towards the discharge of all sums due and payable by any Transaction Obligor under any of the Finance Documents in accordance with Clause 35.5 (*Application of receipts; partial payments*);
- (c) if none of the Transaction Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Transaction Obligor; and
- (d) the balance, if any, in payment or distribution to the relevant Transaction Obligor.

32.29 Permitted Deductions

The Security Agent may, in its discretion:

- (a) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
- (b) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

32.30 Prospective liabilities

Following enforcement of any of the Transaction Security, the Security Agent may, in its discretion, or at the request of the Facility Agent, hold any Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later payment to the Facility Agent for application in accordance with Clause 32.28 (*Application of receipts*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent or, in the case of paragraph (b) only, the Facility Agent, reasonably considers, in each case, might become due or owing at any time in the future.

32.31 Investment of proceeds

Prior to the payment of the proceeds of the Recoveries to the Facility Agent for application in accordance with Clause 32.28 (*Application of receipts*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of Clause 32.28 (*Application of receipts*).

32.32 Currency conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

32.33 Good discharge

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Facility Agent on behalf of the Secured Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Facility Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

32.34 Amounts received by Obligors

If any of the Obligors receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, that Obligor will hold the amount received or recovered on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement.

32.35 Application and consideration

In consideration for the covenants given to the Security Agent by each Obligor in relation to Clause 32.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent agrees with each Obligor to apply all moneys from time to time paid by such Obligor to the Security Agent in accordance with the foregoing provisions of this Clause 32 (*The Security Agent*).

32.36 Full freedom to enter into transactions

Without prejudice to Clause 32.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Security Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
 - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
 - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrowers or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Security Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

32.37 Majority Lenders' Instructions

- (a) Notwithstanding anything to the contrary contained in the Transaction Documents, the Parties acknowledge that where any provision in Transaction Document refers to the Security Agent being obliged to or entitled to take any specified action, exercise any discretion, make any determination, give any consent or waiver, or act in a certain way in connection with the transactions contemplated by the Transaction Documents, it shall or may (as the case may be) take such specified action, exercise such discretion, make such determination, give any consent in accordance with the instructions or directions of the Facility Agent (acting on the instructions of the Majority Lenders or all Lenders, as the case may be) and in doing so shall be deemed to have acted reasonably.
- (b) Any instructions given by the Majority Lenders shall be binding in all the Lenders.
- (c) For the avoidance of doubt, in the absence of instructions of all the Lenders (or the Facility Agent on their behalf) or the Majority Lenders (or the Facility Agent on their behalf), as the case may be, the Security Agent shall not be obliged to act.

33 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

34 SHARING AMONG THE FINANCE PARTIES

34.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from a Transaction Obligor other than in accordance with Clause 35 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due to it under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 35 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 35.5 (*Application of receipts; partial payments*).

34.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Transaction Obligor and distribute it among the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 35.5 (*Application of receipts; partial payments*) towards the obligations of that Transaction Obligor to the Sharing Finance Parties.

34.3 Recovering Finance Party’s rights

On a distribution by the Facility Agent under Clause 34.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from a Transaction Obligor, as between the relevant Transaction Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Transaction Obligor.

34.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and

- (b) as between the relevant Transaction Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Transaction Obligor.

34.5 Exceptions

- (a) This Clause 34 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Transaction Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

ADMINISTRATION

35 PAYMENT MECHANICS**35.1 Payments to the Facility Agent**

- (a) On each date on which a Transaction Obligor or a Lender is required to make a payment under a Finance Document, that Transaction Obligor or Lender shall make an amount equal to such payment available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date no later than 12 noon (London time) and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Facility Agent) and with such bank as the Facility Agent, in each case, specifies.

35.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 35.3 (*Distributions to a Transaction Obligor*) and Clause 35.4 (*Clawback and pre-funding*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London), as specified by that Party or, in the case of an Advance, to such account of such person as may be specified by the Borrowers in a Utilisation Request.

35.3 Distributions to a Transaction Obligor

The Facility Agent may (with the consent of the Transaction Obligor or in accordance with Clause 36 (*Set-Off*)) apply any amount received by it for that Transaction Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Transaction Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

35.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

- (c) If the Facility Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrowers before receiving funds from the Lenders then if and to the extent that the Facility Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrowers:
- (i) the Facility Agent shall notify the Borrowers of that Lender's identity and the Borrowers shall on demand refund it to the Facility Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if the Lender fails to do so, the Borrowers shall on demand pay to the Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

35.5 Application of receipts; partial payments

- (a) If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of, and any other amounts owing to, the Facility Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
 - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest and fees due but unpaid to the Lenders under this Agreement;
 - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid to the Lenders under this Agreement;
 - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents (other than any Hedging Agreements);
 - (v) **fifthly**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of and any amounts owing to, the Hedge Counterparty, any Receiver and Delegate under any Hedging Agreements;
 - (vi) **sixthly**, in or towards payment *pro rata* of any periodical payments (not being payments as a result of termination or closing out) due but unpaid to the Hedge Counterparty under the Hedging Agreements;
 - (vii) **seventhly**, in or towards payment *pro rata* of any payments as a result of termination or closing out due but unpaid to the Hedge Counterparty under the Hedging Agreements; and
 - (viii) **eighthly**, in or towards payment *pro rata* of any other sum due to the Hedge Counterparty under the Hedging Agreements.

- (b) The Facility Agent shall, if so directed by the Majority Lenders and the Hedge Counterparties, vary, or instruct the Security Agent to vary (as applicable), the order set out in sub-paragraphs (ii) to (iv) of paragraph (a) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by a Transaction Obligor.

35.6 No set-off by Transaction Obligors

- (a) All payments to be made by a Transaction Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (b) Paragraph (a) above shall not affect the operation of any payment or close-out netting in respect of any amounts owing under any Hedging Agreement.

35.7 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

35.8 Currency of account

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from a Transaction Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

35.9 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (acting on the instructions of the Majority Lenders after consultation with the Borrowers); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting on the instructions of the Majority Lenders) (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting on the instructions of the Lenders acting reasonably and after consultation with the Borrowers) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

35.10 Currency Conversion

- (a) For the purpose of, or pending any payment to be made by any Servicing Party under any Finance Document, such Servicing Party may convert any moneys received or recovered by it from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

35.11 Disruption to Payment Systems etc.

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by a Borrower that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by a Borrower, consult with the Borrowers with a view to agreeing with the Borrowers such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Borrowers in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Borrowers shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties and any Transaction Obligors as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 44 (*Amendments and Waivers*);
- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 35.11 (*Disruption to Payment Systems etc.*); and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

36 SET-OFF

A Finance Party may set off any amount due and payable from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any amount owed by that Finance Party to that Transaction Obligor, regardless of the place of payment, booking branch or currency of such amounts. If the amounts due are in different currencies, the Finance Party may convert the relevant amount at a market rate of exchange in its usual course of business for the purpose of the set-off. The relevant Finance Party shall notify the relevant Obligor as soon as reasonably practicable after any set-off.

37 BAIL-IN AND BREXIT

37.1 Bail-in

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each Party acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

37.2 Brexit

The Original Lender is authorised by the Obligors, at any time during the Security Period, by written notice (including, without limitation, by e-mail communication) to the Obligors, to designate another office or branch of the Original Lender (such office or branch, the “**Designee**”) as the office or branch through which it will perform its obligations, functions or responsibilities or exercise its rights under this Agreement. To the extent permitted by applicable laws and regulations, the Original Lender and, if applicable, any Designee is authorised by the Obligors to delegate the performance of any such obligations, functions or responsibilities to its Affiliates (a “**Delegate**”). For the avoidance of doubt, the Original Lender may disclose any non-public information in relation to any Transaction Obligor, any of the its Affiliates or this Agreement to any Designee or Delegate, and any such Designee or Delegate may disclose any such non-public information to its Affiliates and its and their respective officers, directors and employees.

38 NOTICES

38.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

38.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents are:

- (a) in the case of the Borrowers, that specified in Schedule 1 (*The Parties*);
- (b) in the case of each Lender, each Hedge Counterparty or any other Obligor, that specified in Schedule 1 (*The Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or before the date on which it becomes a Party;
- (c) in the case of the Facility Agent, that specified in Schedule 1 (*The Parties*); and
- (d) in the case of the Security Agent, that specified in Schedule 1 (*The Parties*),
or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

38.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,
and, if a particular department or officer is specified as part of its address details provided under Clause 38.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to a Servicing Party will be effective only when actually received by that Servicing Party and then only if it is expressly marked for the attention of the department or officer of that Servicing Party specified in Schedule 1 (*The Parties*) (or any substitute department or officer as that Servicing Party shall specify for this purpose).
- (c) All notices from or to a Transaction Obligor shall be sent through the Facility Agent unless otherwise specified in any Finance Document.
- (d) Any communication or document made or delivered to the Borrowers in accordance with this Clause will be deemed to have been made or delivered to each of the Transaction Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

38.4 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 38.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

38.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5.00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 38.5 (*Electronic communication*).

38.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Facility Agent (acting on the instructions of the Majority Lenders), accompanied by a certified English translation prepared by a translator approved by the Facility Agent (acting on the instructions of the Majority Lenders) and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

38.7 Hedging Agreement

Notwithstanding anything in Clause 1.1 (*Definitions*), references to the Finance Documents or a Finance Document in this Clause do not include any Hedging Agreement entered into by a Borrower with a Hedge Counterparty in connection with the Facility.

39 CALCULATIONS AND CERTIFICATES

39.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

39.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

39.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

40 PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

41 REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

42 SETTLEMENT OR DISCHARGE CONDITIONAL

Any settlement or discharge under any Finance Document between any Finance Party and any Transaction Obligor shall be conditional upon no security or payment to any Finance Party by any Transaction Obligor or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.

43 IRREVOCABLE PAYMENT

If the Facility Agent considers that an amount paid or discharged by, or on behalf of, a Transaction Obligor or by any other person in purported payment or discharge of an obligation of that Transaction Obligor to a Secured Party under the Finance Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Transaction Obligor or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Finance Documents.

44 AMENDMENTS AND WAIVERS

44.1 Required consents

- (a) Subject to Clause 44.2 (*All Lender matters*) and Clause 44.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and, in the case of an amendment, the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 44 (*Amendments and Waivers*).
- (c) Without prejudice to the generality of Clause 31.8 (*Rights and discretions*), the Facility Agent may at the Borrowers' cost engage, and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Paragraph (c) of Clause 29.10 (*Pro rata interest settlement*) shall apply to this Clause 44 (*Amendments and Waivers*).

44.2 All Lender matters

Subject to Clause 44.4 (*Replacement of Screen Rate*), an amendment of or waiver or consent in relation to any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) a postponement to or extension of the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
- (f) a change to any Transaction Obligor other than in accordance with Clause 30 (*Changes to the Transaction Obligors*);
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) this Clause 44 (*Amendments and Waivers*);

- (i) any change to the preamble (*Background*), Clause 2 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Utilisation*), Clause 6.2 (*Effect of cancellation and prepayment on scheduled repayments*), Clause 7.5 (*Mandatory prepayment on sale or Total Loss*) or Clause 7.6 (*Mandatory prepayment of Hedging Prepayment Proceeds*), Clause 8 (*Interest*), Clause 25.10 (*Compliance with laws etc.*), Clause 25.12 (*Sanctions and Ship trading*), Clause 26.7(a) (*Accounts, application of Earnings and Hedge Receipts*), Clause 29 (*Changes to the Lenders*), Clause 34 (*Sharing among the Finance Parties*), Clause 48 (*Governing Law*) or Clause 49 (*Enforcement*);
- (j) any release of, or material variation to, any Transaction Security, guarantee, indemnity or subordination arrangement set out in a Finance Document;
- (k) (other than as expressly permitted by the provisions of any Finance Document), the nature or scope of:
 - (i) the guarantees and indemnities granted under Clause 17 (*Guarantee and Indemnity*);
 - (ii) the guarantees and indemnities granted under Clause 19 (*Guarantee and Indemnity – Hedge Guarantors*);
 - (iii) the joint and several liability of the Borrowers under Clause 18 (*Joint and Several Liability of the Borrowers*);
 - (iv) the Security Assets; or
 - (v) the manner in which the proceeds of enforcement of the Transaction Security are distributed,

(except in the case of sub-paragraphs (iv) and (v) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- (l) the release of the guarantees and indemnities granted under Clause 17 (*Guarantee and Indemnity*) or Clause 19 (*Guarantee and Indemnity – Hedge Guarantors*) or the release of the joint and several liability of the Borrowers under Clause 18 (*Joint and Several Liability of the Borrowers*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document,

shall not be made, or given, without the prior consent of all the Lenders.

44.3 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of a Servicing Party, the Arranger or a Reference Bank (each in their capacity as such) may not be effected without the consent of that Servicing Party, the Arranger or that Reference Bank, as the case may be.
- (b) An amendment or waiver which relates to and would adversely affect the rights or obligations of a Hedge Counterparty (in its capacity as such) may not be effected without the consent of that Hedge Counterparty.
- (c) The Borrowers and the Facility Agent, the Arranger or the Security Agent, as applicable, may amend or waive a term of a Fee Letter to which they are party.

- (d) The relevant Hedge Counterparty and the relevant Borrower may amend, supplement or waive the terms of any Hedging Agreement or Hedge Counterparty Guarantee if permitted by paragraph (f) of Clause 8.5 (*Hedging*).

44.4 Replacement of Screen Rate

Subject to Clause 44.3 (*Other exceptions*), if a Screen Rate Replacement Event has occurred in relation to the Screen Rate for dollars any amendment or waiver which relates to:

- (a) providing for the use of a Replacement Benchmark in relation to that currency in place of (or in addition to) that Screen Rate; and
- (b) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (i) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (ii) implementing market conventions applicable to that Replacement Benchmark;
 - (iii) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (iv) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrowers.

- (c) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within 10 Business Days (or such longer time period in relation to any request which the Borrowers and the Facility Agent (acting on the instructions of the Majority Lenders) may agree) of that request being made:
 - (i) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
 - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

44.5 Obligor Intent

Without prejudice to the generality of Clauses 1.2 (*Construction*), 17.4 (*Waiver of defences*), 18.2 (*Waiver of defences*) and 19.4 (*Waiver of defences*), each Obligor expressly confirms that it intends that any guarantee contained in this Agreement or any other Finance Document and any Security created by any Finance Document shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents

and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

44.6 Lenders' anti-boycott restrictions

- (a) In relation to any Lender that is resident in Germany (“**Inländer**”) within the meaning of Section 2 Paragraph 15 of the German foreign trade and payments act called Außenwirtschaftsgesetz (“**AWG**”), therefore subject to Section 7 of the German foreign trade ordinance called Außenwirtschaftsverordnung (“**AWV**”) or a subject required to comply with Council Regulation (EC) No. 2271/96 of 22 November 1996 and that notifies the Facility Agent in writing that it elects for the provisions of this Clause 44.6 (*Lenders' anti-boycott restrictions*) to apply to it (which notice may, for the avoidance of doubt, be given at any time) (each a “**Restricted Lender**”), Clauses 25.10 (*Compliance with laws*), and 25.12 (*Sanctions and Ship trading*) (together the “**Sanctions Related Provisions**”) (or any of them as specified by that Restricted Lender in the notice) shall only apply for the benefit of each such Restricted Lender to the extent that application of any Sanctions Related Provision would not result in any violation of, conflict with, or liability under any provision of the Council Regulation (EC) No. 2271/96 of 22 November 1996 or Section 7 AWV (in connection with section 4 paragraph 1 no. 3 AWG) (or any replacement of or any supplement to any of the foregoing).
- (b) On any matter referred to in paragraph (a) above in respect of which the Lenders are to vote but in respect of which a Restricted Lender to whom paragraph (a) above applies shall not vote in accordance with such paragraph:
- (i) for the purposes of determining whether approval of the Majority Lenders is obtained the references in the definition of “Majority Lender” to 66 $\frac{2}{3}$ per cent of the Total Commitments and to 66 $\frac{2}{3}$ per cent of the Loan the outstanding shall for this purpose be construed to refer to 66 $\frac{2}{3}$ per cent of the Total Commitments or, as the case may be, the Loan only taking account of the other Commitments of, or as the case may be, the participation in the Loan of, the Lenders and ignoring the Commitment of or, as the case may be, the participation in the Loan of, such Restricted Lender;
 - (ii) an action taken by the Majority Lenders as such definition is modified by this Clause 44.6 (*Lenders' anti-boycott restrictions*) shall be valid in the applicable circumstances and binding on all parties to this Agreement; and

for the purposes of determining whether the approval of all Lenders is obtained, all Lenders shall be construed to mean the other Lenders ignoring such Restricted Lender and an action taken by all Lenders as modified by this Clause 44.6 (*Lenders' anti-boycott restrictions*) shall be valid in the applicable circumstances and binding on all parties to this Agreement.

45 CONFIDENTIAL INFORMATION

45.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 45.2 (*Disclosure of Confidential Information*) and Clause 45.3 (*Disclosure to numbering service providers*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

45.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 31.15 (*Relationship with the other Finance Parties*));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraph (i) or (ii) of paragraph (b) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, administrative or other investigations, proceedings or disputes;
 - (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 29.8 (*Security over Lenders' rights*);

- (viii) who is a Party, a member of the Group or any related entity of a Transaction Obligor;
- (ix) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document;
- (x) in connection with a Relevant Retrenching; or
- (xi) with the consent of Guarantor A;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to sub-paragraphs (i), (ii) and (iii) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to sub-paragraph (iv) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (C) in relation to sub-paragraphs (v), (vi) and (vii) of paragraph (b) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered in to a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/ Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrowers and the relevant Finance Party;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Transaction Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

45.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Transaction Obligors the following information:
- (i) names of Transaction Obligors;
 - (ii) country of domicile of Transaction Obligors;
 - (iii) place of incorporation or formation of Transaction Obligors;
 - (iv) date of this Agreement;
 - (v) Clause 48 (*Governing Law*);
 - (vi) the names of the Facility Agent and the Arranger;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amount of Total Commitments;
 - (ix) currency of the Facility;
 - (x) type of Facility;
 - (xi) ranking of Facility;
 - (xii) Termination Date for Facility;
 - (xiii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xii) above; and
 - (xiv) such other information agreed between such Finance Party and the Borrowers,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Transaction Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) Each Obligor represents, on behalf of itself and the other Transaction Obligors, that none of the information set out in sub-paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Facility Agent shall notify Guarantor A and the other Finance Parties of:
- (i) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility and/or one or more Transaction Obligors; and

- (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Transaction Obligors by such numbering service provider.

45.4 Entire agreement

This Clause 45 (*Confidential Information*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

45.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

45.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrowers:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (v) of paragraph (b) of Clause 45.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 45 (*Confidential Information*).

45.7 Continuing obligations

The obligations in this Clause 45 (*Confidential Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

46 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

46.1 Confidentiality and disclosure

- (a) The Facility Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.

- (b) The Facility Agent may disclose:
- (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause 8.4 (*Notification of rates of interest*); and
 - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The Facility Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives, if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The Facility Agent's obligations in this Clause 46 (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.4 (*Notification of rates of interest*) **Provided that** (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Facility Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

46.2 Related obligations

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 46.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 46 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

46.3 No Event of Default

No Event of Default will occur under Clause 28.4 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 46 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

47 COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

GOVERNING LAW AND ENFORCEMENT

48 GOVERNING LAW

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

49 ENFORCEMENT

49.1 Jurisdiction

- (a) Unless specifically provided in another Finance Document in relation to that Finance Document, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute regarding the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a “Dispute”).
- (b) The Obligors accept that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Obligor will argue to the contrary.
- (c) This Clause 49.1 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

49.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated or formed in England and Wales):
 - (i) irrevocably appoints Saville & Co. at its registered office for the time being, presently at One Carey Lane, London EC2V 8AE, England as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrowers (on behalf of all the Obligors) must immediately (and in any event within 3 days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1

THE PARTIES

PART A

THE OBLIGORS

Name of Borrower	Place of Formation	Registration number (or equivalent, if any)	Address for Communication
LAERTIS MARINE LLC	Marshall Islands	962564	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
TELEMACHUS MARINE LLC	Marshall Islands	962562	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
PENELOPE MARINE LLC	Marshall Islands	962563	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
Name of Guarantor	Place of Formation	Registration number (or equivalent, if any)	Address for Communication
POSEIDON CONTAINERS HOLDINGS LLC	Marshall Islands	961853	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224

ODYSSIA CONTAINERS HOLDINGS LLC	Marshall Islands	962559	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
K&T MARINE LLC	Marshall Islands	962273	c/o Technomar Shipping Inc. 3-5 Menandrou Street 145 61 Kifissia Greece Fax no: +30 210 80 84 224
Name of Hedge Guarantor	Place of Formation	Registration number (or equivalent, if any)	Address for Communication
LAERTIS MARINE LLC	Marshall Islands	962564	Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands
TELEMACHUS MARINE LLC	Marshall Islands	962562	Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands
PENELOPE MARINE LLC	Marshall Islands	962563	Trust Company Complex, Ajeltake Road, Ajeltake Island, MH96960, Majuro, Marshall Islands

PART B

THE ORIGINAL LENDERS

Name of Original Lender Commitment

DEUTSCHE BANK AG, LONDON BRANCH

Address for Communication

Winchester House
1 Great Winchester Street
London EC2N 2DB

Tel No: +44 207 54 58000
s

Email:

FAO: Global Credit Trading – Shipping

THE HEDGE COUNTERPARTIES

Name of Hedge Counterparty

DEUTSCHE BANK AG, LONDON BRANCH

Address for Communication

Winchester House
1 Great Winchester Street
London EC2N 2DB

Tel No: +44 207 54 58000

Email:

FAO: Global Credit Trading – Shipping

PART C
THE SERVICING PARTIES

Name of Facility Agent

WILMINGTON TRUST (LONDON) LIMITED

Address for Communication

1 King's Arms Yard, London,

EC2R 7AF, England

Tel No: 44 (0)20 7397 3653 /
+44 (0)20 7397 3649

Fax No: +44 (0)20 7397 3601

Email: mmassaki@wilmingtontrust.com /
kreader@wilmingtontrust.com

FAO: Marcy Massaki / Keith Reader

Name of Security Agent

WILMINGTON TRUST (LONDON) LIMITED

Address for Communication

1 King's Arms Yard, London,

EC2R 7AF, England

Tel No: 44 (0)20 7397 3653 /
+44 (0)20 7397 3649

Fax No: +44 (0)20 7397 3601

Email: mmassaki@wilmingtontrust.com /
kreader@wilmingtontrust.com

FAO: Marcy Massaki / Keith Reader

SCHEDULE 2

CONDITIONS PRECEDENT

PART A

CONDITIONS PRECEDENT TO INITIAL UTILISATION REQUEST

1 Obligors

- 1.1 A copy of the constitutional documents of each Transaction Obligor.
- 1.2 A copy of a resolution of the member or board of directors (as applicable) of each Transaction Obligor:
 - (a) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (b) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, a Utilisation Request and each Selection Notice) to be signed and/or despatched by it under, or in connection with, the Finance Documents to which it is a party.
- 1.3 An original of the power of attorney of any Transaction Obligor authorising a specified person or persons to execute the Finance Documents to which it is a party.
- 1.4 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above.
- 1.5 A copy of a resolution signed by Odysia NB as the holder of all issued LLC Shares in each Borrower, approving the terms of, and the transactions contemplated by, the Finance Documents to which that Borrower is a party.
- 1.6 A certificate of each Transaction Obligor (signed by an officer) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on that Transaction Obligor to be exceeded.
- 1.7 A certificate of each Transaction Obligor that is incorporated or formed outside the UK (signed by an officer) certifying either that (i) it has not delivered particulars of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or (ii) it has a UK Establishment and specifying the name and registered number under which it is registered with the Registrar of Companies.
- 1.8 A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document relating to it specified in this Part A of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

- 2 Other Documents**
- 2.1 Copies of each Hedging Agreement executed by a Hedge Counterparty and the relevant Borrower (if applicable).
- 2.2 Copies of any Hedge Counterparty Guarantee executed by a Hedge Counterparty Guarantor in favour of a Borrower (if applicable).
- 3 Finance Documents**
- 3.1 A duly executed original of the Subordination Agreement and copies of each Subordinated Finance Document (if applicable).
- 3.2 A duly executed original of any Finance Document not otherwise referred to in this Schedule 2 (*Conditions Precedent*).
- 3.3 A duly executed original of any other document required to be delivered by each Finance Document if not otherwise referred to this Schedule 2 (*Conditions Precedent*).
- 4 Security**
- 4.1 A duly executed original of the Account Security in relation to each Account and of the Shares Security in respect of each Borrower (and of each document to be delivered under each of them).
- 4.2 A duly executed original of the Hedging Agreement Security in respect of each Borrower (and of each document to be delivered under each of them) (if applicable).
- 4.3 A duly executed original of the Subordinated Debt Security (if applicable).
- 5 Legal opinions**
- 5.1 A legal opinion of Watson Farley & Williams, legal advisers to the Arranger, the Facility Agent and the Security Agent in England, substantially in the form distributed to the Original Lenders before signing this Agreement.
- 5.2 If a Transaction Obligor is incorporated or formed in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Arranger, the Facility Agent and the Security Agent in the relevant jurisdiction, substantially in the form distributed to the Original Lenders before signing this Agreement.
- 6 Other documents and evidence**
- 6.1 Evidence that any process agent referred to in Clause 49.2 (*Service of process*), if not an Obligor, has accepted its appointment.
- 6.2 A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent (acting on the instructions of the Majority Lenders) considers to be necessary or desirable if the Facility Agent (acting on the instructions of the Majority Lenders) has notified the Borrowers accordingly in connection with the entry into and performance of the transactions contemplated by any Transaction Document or for the validity and enforceability of any Transaction Document.

-
- 6.3 The Original Financial Statements.
 - 6.4 The original of any mandates or other documents required in connection with the opening or operation of the Accounts.
 - 6.5 Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and Expenses*) have been paid or will be paid by the Utilisation Date.
 - 6.6 Such evidence as may be required for the Finance Parties to be able to satisfy each of their “anti-money laundering”, “FATCA”, “know your customer”, “common reporting standards” or similar identification procedures in relation to the transactions contemplated by the Finance Documents.

PART B

CONDITIONS PRECEDENT TO UTILISATION

1 Borrowers

A certificate of an authorised signatory of each Borrower certifying that each copy document which it is required to provide under this Part B of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at the Utilisation Date.

2 Ship and other security

- 2.1 A duly executed original of the Mortgage, the General Assignment and any Charterparty Assignment in respect of each Ship and of each document to be delivered under or pursuant to each of them together with documentary evidence that the Mortgage in respect of each Ship has been duly registered or (as the case may be) recorded as a valid first preferred or (as the case may be) priority ship mortgage in accordance with the laws of the jurisdiction of its Approved Flag.
- 2.2 Documentary evidence each Ship:
- (a) is definitively and permanently registered in the name of the relevant Borrower under the Approved Flag applicable to that Ship;
 - (b) is in the absolute and unencumbered ownership of the relevant Borrower save as contemplated by the Finance Documents;
 - (c) maintains the Approved Classification with the Approved Classification Society free of all recommendations and conditions of the Approved Classification Society; and
 - (d) is insured in accordance with the provisions of this Agreement and all requirements in this Agreement in respect of insurances have been complied with.
- 2.3 Documents establishing that each Ship will, as from the Utilisation Date, be managed commercially by the Approved Commercial Manager and managed technically by the Approved Technical Manager on terms acceptable to the Facility Agent acting with the authorisation of all of the Lenders, together with:
- (a) a Manager's Undertaking for each of the Approved Technical Manager and the Approved Commercial Manager of each Ship; and
 - (b) copies of the Approved Technical Manager's Document of Compliance and of each Ship's Safety Management Certificate (together with any other details of the applicable Safety Management System which the Facility Agent (acting on the instructions of the Majority Lenders) requires) and of any other documents required under the ISM Code and the ISPS Code in relation to that Ship, including without limitation an ISSC.
- 2.4 An opinion from an independent insurance consultant acceptable to the Facility Agent (acting on the instructions of the Majority Lenders) on such matters relating to the Insurances as the Facility Agent may (acting on the instructions of the Majority Lenders) require.
- 2.5 One valuation of each Ship, addressed to the Facility Agent on behalf of the Finance Parties, stated to be for the purposes of this Agreement and dated not earlier than 30 days before the Utilisation Date, from Maersk Brokers and if such valuation sets the market value as ranging between a lower and a higher figure, the value to be used for such valuation will be the lower of such figures.

2.6 Copies of the Initial Charters duly executed by the parties thereto and of each document delivered pursuant to it, together with such documentary evidence as the Facility Agent and its legal advisers may require in relation to the due authorisation and execution of that Assignable Charter by each of the parties thereto.

2.7 An independent legal review of the Initial Charters has been carried out in all respects acceptable to the Facility Agent.

3 Legal opinions

Legal opinions of the legal advisers to the Arranger, the Facility Agent and the Security Agent in the jurisdiction of the Approved Flag of each Ship and such other relevant jurisdictions as the Facility Agent may require.

4 Minimum Liquidity

Evidence that the Borrowers are in compliance with their obligations under Clause 22.1 (*Borrowers' minimum liquidity*).

5 Release of Existing Security

Documentary evidence that the Existing Indebtedness has been duly paid or will be paid in full (as agreed in the closing arrangements) on the Utilisation Date and an executed original of a Deed of Release (and of each document to be delivered under or pursuant to it), in respect of the Existing Security under each Existing Facility Agreement together with evidence satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) of its due execution by the parties to it.

6 Other documents and evidence

Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and Expenses*) have been paid or will be paid by the Utilisation Date.

SCHEDULE 3

REQUESTS

PART A

UTILISATION REQUEST

From: **LAERTIS MARINE LLC**
PENELOPE MARINE LLC
TELEMACHUS MARINE LLC

To: **WILMINGTON TRUST (LONDON) LIMITED**

Dated: [•]

Dear Sirs

Laertis Marine LLC, Penelope Marine LLC, Telemachus Marine LLC – US\$180,500,000 Facility Agreement dated [•] 2018 (the “Agreement”)

- 1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2 We wish to borrow the Loan on the following terms:
Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)
Amount: [•] or, if less, the Available Facility
Interest Period: [•]
- 3 We confirm that each condition specified in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*) of the Agreement as they relate to the Advance to which this Utilisation Request refers is satisfied on the date of this Utilisation Request.
- 4 The [net] proceeds of the Loan should be credited to [account].
- 5 This Utilisation Request is irrevocable.

Yours faithfully

[•]
authorised signatory for
LAERTIS MARINE LLC

[•]
authorised signatory for
TELEMACHUS MARINE LLC

[•]
authorised signatory for
PENELOPE MARINE LLC

PART B
SELECTION NOTICE

From: Laertis Marine LLC
Penelope Marine LLC
Telemachus Marine LLC

To: Wilmington Trust (London) Limited

Dated: [•]

Dear Sirs

Laertis Marine LLC, Penelope Marine LLC, Telemachus Marine LLC – US\$180,500,000 Facility Agreement dated [•] 2018 (the “Agreement”)

- 1 We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
- 2 We request [that the next Interest Period for the Loan be [•]] OR [an Interest Period for a part of the Loan in an amount equal to [•] (which is the amount of the Repayment Instalment next due) ending on [•] (which is the Repayment Date relating to that Repayment Instalment) and that the Interest Period for the remaining part of the Loan shall be [•].
- 3 This Selection Notice is irrevocable.

Yours faithfully

[•]
authorised signatory for
LAERTIS MARINE LLC

[•]
authorised signatory for
TELEMACHUS MARINE LLC

[•]
authorised signatory for
PENELOPE MARINE LLC

SCHEDULE 4

FORM OF TRANSFER CERTIFICATE

To: Wilmington Trust (London) Limited as Facility Agent

From: [The Existing Lender] (the “Existing Lender”) and [The New Lender] (the “New Lender”)

Dated: [•]

Dear Sirs

Laertis Marine LLC, Penelope Marine LLC, Telemachus Marine LLC – US\$180,500,000 Facility Agreement dated [•] 2018 (the “Agreement”)

- 1 We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to Clause 29.5 (*Procedure for transfer*) of the Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all of the Existing Lender’s rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender’s Commitment and participation in the Loan under the Agreement as specified in the Schedule in accordance with Clause 29.5 (*Procedure for transfer*) of the Agreement.
 - (b) The proposed Transfer Date is [•].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 38.2 (*Addresses*) of the Agreement are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 29.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
- 4 This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 5 This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 6 This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender’s interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender’s Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details
for notices and account details for payments.]

[Existing Lender]

[New Lender]

By: [●]

By: [●]

This Transfer Certificate is accepted by the Facility Agent and the Transfer Date is confirmed as [●].

Wilmington Trust (London) Limited

By: [●]

SCHEDULE 5

FORM OF ASSIGNMENT AGREEMENT

To: Wilmington Trust (London) Limited as Facility Agent and [•] and [•] as Borrowers, for and on behalf of each [Transaction] Obligor

From: [the Existing Lender] (the “Existing Lender”) and [the New Lender] (the “New Lender”)

Dated: [•]

Dear Sirs

Laertis Marine LLC, Penelope Marine LLC, Telemachus Marine LLC – US\$180,500,000 Facility Agreement dated [•] 2018 (the “Agreement”)

- 1 We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
- 2 We refer to Clause 29.6 (*Procedure for assignment*) of the Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender’s Commitment and participations in the Loan under the Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitments and participations in the Loan under the Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
 - (d) All rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender’s title and of any rights or equities which the Borrower or any other [Transaction] Obligor had against the Existing Lender.
- 3 The proposed Transfer Date is [•].
- 4 On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
- 5 The Facility Office and address, fax, number and attention details for notices of the New Lender for the purposes of Clause 38.2 (*Addresses*) of the Agreement are set out in the Schedule.
- 6 The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 29.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
- 7 This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 29.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrowers*) of the Agreement, to the Borrowers (on behalf of each [Transaction] Obligor) of the assignment referred to in this Assignment Agreement.

- 8 This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
- 9 This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 10 This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment rights and obligations to be transferred by assignment, release and accession

[insert relevant details]

[Facility office address, fax number and attention details for notices
and account details for payments]

[Existing Lender]

[New Lender]

By: [●]

By: [●]

This Assignment Agreement is accepted by the Facility Agent and the Transfer Date is confirmed as [●].

Signature of this Assignment Agreement by the Facility Agent constitutes confirmation by the Facility Agent of receipt of notice of the assignment referred to herein, which notice the Facility Agent receives on behalf of each Finance Party.

WILMINGTON TRUST (LONDON) LIMITED

By:

SCHEDULE 6

FORM OF COMPLIANCE CERTIFICATE

To: Wilmington Trust (London) Limited as Facility Agent

From: [●]

Dated: [●]

Dear Sirs

Laertis Marine LLC, Penelope Marine LLC, Telemachus Marine LLC – US\$180,500,000 Facility Agreement dated [●] 2018 (the “Agreement”)

- 1 We refer to the Agreement. This is a Compliance Certificate. 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: [Insert details of covenants to be certified]
- 3 [We confirm that no Default is continuing.]

Signed:

[Officer title]
of
[●]

[Officer title]
of
[●]

[insert applicable certification language]

for and on behalf of
[●]

SCHEDULE 7

DETAILS OF THE SHIPS

<u>Ship name</u>	<u>Name of the Borrower owner</u>	<u>Type</u>	<u>GRT</u>	<u>NRT</u>	<u>Approved Flag</u>	<u>Approved Classification Society</u>	<u>Approved Classification</u>	<u>Approved Commercial Manager</u>	<u>Approved Technical Manager</u>
UASC AL KHOR	Laertis Maritime LLC	Container vessel	94416	54249	Liberia	DNV-GL	<u>Hull</u> • 100 A5 HLP RSD(F25) IW BWM(D2) DG Container Ship, LC, RSCS <u>Machinery</u> • MC AUT CM- PS EP-D	Conchart Commercial Inc	Technomar Shipping Inc.
ANTHEA Y	Telemachus Maritime LLC	Container vessel	94416	54249	Liberia		<u>Hull</u> • 100 A5 HLP RSD(F25) IW BWM(D2) DG Container Ship, LC, RSCS <u>Machinery</u> • MC AUT CM- PS EP-D	Conchart Commercial Inc	Technomar Shipping Inc.
MAIRA XL	Penelope Maritime LLC	Container vessel	94416	54249	Liberia		<u>Hull</u> • 100 A5 HLP RSD(F25) IW BWM(D2) DG Container Ship, LC, RSCS <u>Machinery</u> • MC AUT CM- PS EP-D	Conchart Commercial Inc	Technomar Shipping Inc.

SCHEDULE 8

FORM OF HEDGE COUNTERPARTY ACCESSION LETTER

[•] as Facility Agent

From: [Additional Hedge Counterparty] (the “**Additional Hedge Counterparty**”)

Dated: [•]

Dear Sirs

[Laertis Marine LLC, Penelope Marine LLC, Telemachus Marine LLC – US\$180,500,000 Facility Agreement dated [•] 2018 (the “Agreement”)]

- 1 We refer to the Agreement. This is a Hedge Counterparty Accession Letter. Terms defined in the Agreement have the same meaning in this Hedge Counterparty Accession Letter unless given a different meaning in this Hedge Counterparty Accession Letter.
- 2 We refer to Clause 29.8 (*Additional Hedge Counterparties*). The Additional Hedge Counterparty agrees to become an Additional Hedge Counterparty and to be bound by the terms of the Agreement as an Additional Hedge Counterparty.
- 3 This Hedge Counterparty Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

[Additional Hedge Counterparty]

By: [•]

[Facility Agent]

By: [•]

SCHEDULE 9

TIMETABLES

Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) or a Selection Notice (Clause 9.1 (<i>Selection of Interest Periods</i>))	Three Business Days before the intended Utilisation Date (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) or the expiry of the preceding Interest Period (Clause 9.1 (<i>Selection of Interest Periods</i>))
Facility Agent notifies the Lenders of the Advance in accordance with Clause 5.4 (<i>Lenders' participation</i>)	Three Business Days before the intended Utilisation Date.
LIBOR is fixed	Quotation Day as of 11:00 am London time
Reference Bank Rate calculated by reference to available quotations in accordance with Clause 10.2 (<i>Calculation of Reference Bank Rate</i>)	Noon on the Quotation Day

BORROWERS

SIGNED by Aikaterini Emmanouil
duly authorised
attorney-in-fact
for and on behalf of
LAERTIS MARINE LLC
in the presence of:

)
)
)
)
)
)



Witness' signature:
Witness' name:
Witness' address:

)
)
)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SIGNED by Aikaterini Emmanouil
duly authorised
attorney-in-fact
for and on behalf of
PENELOPE MARINE LLC
in the presence of:

)
)
)
)
)



Witness' signature:
Witness' name:
Witness' address:

)
)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SIGNED by Aikaterini Emmanouil
duly authorised
attorney-in-fact
for and on behalf of
TELEMACHUS MARINE LLC
in the presence of:

)
)
)
)
)



Witness' signature:
Witness' name:
Witness' address:

)
)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

GUARANTORS

SIGNED by Aikaterini Emmanouil
duly authorised
attorney-in-fact
for and on behalf of
POSEIDON CONTAINERS HOLDINGS LLC
in the presence of:

)
)
)
)
)



Witness' signature:
Witness' name:
Witness' address:

)
)
)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SIGNED by Aikaterini Emmanouil
duly authorised
for and on behalf of
attorney-in-fact
ODYSSIA CONTAINERS HOLDINGS LLC
in the presence of:

)
)
)
)
)



Witness' signature:
Witness' name:
Witness' address:

)
)
)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SIGNED by Aikaterini Emmanouil
duly authorised
attorney-in-fact
for and on behalf of
K&T MARINE LLC
in the presence of:

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Witness' signature:
Witness' name:
Witness' address:

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)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

HEDGE GUARANTORS

SIGNED by Aikaterini Emmanouil
duly authorised
attorney-in-fact
for and on behalf of
LAERTIS MARINE LLC
in the presence of:

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Witness' signature:
Witness' name:
Witness' address:

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ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SIGNED by Aikaterini Emmanouil
for and on behalf of
attorney-in-fact
duly authorised
PENELOPE MARINE LLC
in the presence of:

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Witness' signature:
Witness' name:
Witness' address:

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ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SIGNED by Aikaterini Emmanouil
duly authorised
attorney-in-fact
for and on behalf of
TELEMACHUS MARINE LLC
in the presence of:

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)



Witness' signature:
Witness' name:
Witness' address:

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)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

ORIGINAL LENDERS

SIGNED by John Harry Webster
duly authorised
attorney-in-fact
for and on behalf of
DEUTSCHE BANK AG, LONDON BRANCH
in the presence of:

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)
)
)



Witness' signature:
Witness' name:
Witness' address:

)
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)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

HEDGE COUNTERPARTIES

SIGNED by John Harry Webster
duly authorised
attorney-in-fact
for and on behalf of
DEUTSCHE BANK AG, LONDON BRANCH
in the presence of:

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)



Witness' signature:
Witness' name:
Witness' address:

)
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)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

ARRANGER

SIGNED by John Harry Webster
duly authorised
attorney-in-fact
for and on behalf of
DEUTSCHE BANK AG, LONDON BRANCH
in the presence of:

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Witness' signature:
Witness' name:
Witness' address:

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)

ELENI ANTONAKOU
ATTORNEY-AT-LAW
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

FACILITY AGENT

SIGNED by)
duly authorised)

for and on behalf of **WILMINGTON**)
TRUST)
(LONDON) LIMITED)

in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)



Keith Reader
Authorised Signatory



Marcy Massaki

Third Floor
1 King's Arms Yard
London
EC2R 7AF

SECURITY AGENT

SIGNED by)
duly authorised)

for and on behalf of **WILMINGTON**)
TRUST (LONDON) LIMITED)
in the presence of:)

Witness' signature:)
Witness' name:)
Witness' address:)



Keith Reader
Authorised Signatory



Marcy Massaki

Third Floor
1 King's Arms Yard
London
EC2R 7AF

Global Ship Lease Services Limited

and

Ian J. Webber

AMENDED AND RESTATED SERVICE AGREEMENT

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SERVICE AGREEMENT

DATE

1 June 2018

PARTIES

- (1) GLOBAL SHIP LEASE SERVICES LIMITED (registered no. 06285694) whose registered office is at 150 Aldersgate Street, London EC1A 4AB, United Kingdom (“the Company”); and
- (2) IAN J WEBBER of Westbury House, Icehouse Wood, Oxted, Surrey, RH8 9DW (“the Executive”).

WHEREAS The Company has offered to provide services to Global Ship Lease, Inc. a company incorporated and registered in the Republic of the Marshall Islands (the “Client”) under the Services Memorandum.

WHEREAS The Executive has agreed as an employee of the Company to oversee and participate in the provision of the services and, in particular, to act as Chief Executive Officer of the Client on the terms of this Agreement.

WHEREAS The Client is party to the Agreement and Plan of Merger, dated as of March 21, 2008, by and among Marathon Acquisition Corp., GSL Holdings, Inc., CMA CGM S.A. and the Client (the “Merger Agreement”).

WHEREAS

(A) The Executive and the Company entered into a service agreement dated 14 August 2008 which was re-executed as a deed on 1 December 2008 and was further amended by a Deed of Amendment dated 20 November 2013 (“the **Deed of Amendment**”).

(B) The Executive and the Company have agreed that certain further amendments be made to the Service Agreement and these, together with previous amendments, be consolidated into this Amended and Restated Service Agreement (“the **Agreement**”).

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Agreement the following words and expressions shall have the following meanings:

“**the Board**” means the board of directors of the Company;

“**Change in Control Transaction**” means the consummation, following the date of the Merger, of any of the following transactions:

a. the acquisition, directly or indirectly, by any individual, partnership, firm, company, association, trust, unincorporated organization or other entity (a "Person"), or any Persons acting as a "group" within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (other than the Client or a person that directly or indirectly controls, is controlled by, or is under common control with, the Client) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities of the Client representing more than 50% of the total combined voting power of the Client's then outstanding securities entitled to vote in the election of the directors of the Client (the "Voting Shares");

b. the Client disposing of all or substantially all of its assets;

c. 10% or more of the value of the assets of the Client, or the Voting Shares of the Client are about to be transferred, or have been transferred, because of any taking, seizure, or defeasance as a result of, or in connection with (i) nationalization, expropriation, confiscation, coercion, force or duress, or other similar action under the laws of the Republic of the Marshall Islands, or (ii) the imposition by the Republic of the Marshall Islands of a confiscatory tax, assessment, or other governmental charge or levy;

d. the merger of the Client with or into another corporation in which securities possessing more than 50% of the total combined voting power of the Client are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction; or

e. the Client Board by resolution duly adopted by the affirmative vote of a simple majority of the votes cast by the Client Board determines that for the purposes of this Agreement, a Change in Control Transaction has occurred; or

f. there is a change in boardroom control of the Client. A change in boardroom control for the purpose of this clause shall mean a change in the directors of the board of the Client such that the majority of directors of the Client Board following such change are directors who were not directors at 20 November 2013.

A transaction shall not constitute a Change in Control Transaction if its sole purpose is to change the state of the Client's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Client's securities immediately before such transactions.

"Client" means Global Ship Lease, Inc.

"Client Board" means the board of directors of the Client as from time to time constituted or any duly appointed committee of the

Client Board.

“Good Reason” means the assignment to the Executive by the Company (including an assignment requested to be made by the Client pursuant to the Services Memorandum) of any duties or responsibilities inconsistent with the Executive’s position, including but not limited to, any change in title the effect of which results in the Executive having a lesser status than Chief Executive Officer, a reduction in the Executive’s base salary or any change in location of the Company’s principal administrative office or the Executive’s normal place of work to be outside of England, Wales or Scotland.

“Group Company” means the Client, any company of which it is a subsidiary (its holding company) and any other subsidiaries of the Client or such holding company, other than the Company (as such expressions are defined in sections 258, 259 and 736 Companies Act 1985, an enactment of the United Kingdoms of England and Wales);

“Material Transaction” means any merger or acquisition (which is not a Change of Control Transaction) which is determined by the Board acting reasonably and in good faith to be a material merger or acquisition having a material impact on the ownership structure of the Group (meaning the Company and the Group Companies);

“Merger” means the consummation of the merger contemplated under the Merger Agreement.

“Relevant Stock Exchange” means the New York Stock Exchange and/or any other stock exchange, recognised investment exchange or automated quotation system on which any Group Company or any of their securities, as applicable, is listed, dealt in or admitted for trading;

“Services Memorandum” means the Memorandum of Agreement for Intra-group Management Services between the Company and the Client.

“Stock Incentive Plan” means the Stock Incentive Plan of the Client.

“Subsidiary Company” means any Group Company other than the Client.

“Termination Date” means the date of the termination of the employment of the Executive hereunder, howsoever caused.

1.2 In this Agreement (unless the context otherwise requires):

- (A) any reference to any statute or statutory provision shall be construed as including a reference to any modification, re-enactment or extension of such statute or statutory provision for the time being in force or to any subordinate legislation made under the same;
- (B) any reference to a clause is to a clause of this Agreement;
- (C) the expression **“directly or indirectly”** means (without prejudice to the generality of the expression) either alone or jointly with or on behalf of any other person, firm or body corporate and whether on his own account or in partnership with another or others or as the holder of any interest in or as officer, employee or agent of or consultant to any other person, firm or body corporate.

1.3 The headings contained in this Agreement are for convenience only and do not form part of and shall not affect the construction of this Agreement or any part of it.

2. APPOINTMENT

2.1 The Company hereby appoints the Executive and the Executive agrees to serve the Company as director and Chief Executive Officer. Under the terms of the Services Memorandum the Company has agreed to provide Chief Executive Officer services to the Client and the Executive has agreed to serve the Company in that capacity.

2.2 The Executive warrants that by virtue of entering into this Agreement he will not be in breach of any express or implied terms of any contract with or of any other obligation to any third party which are binding upon him.

3. TERM AND NOTICE

3.1 The terms of this Agreement and the provision of services to the Company during the course of the Executive's employment by the Company shall commence on the date of the initial closing of the Merger and, subject to the provisions of clause 17, continue thereafter unless and until terminated by:

(A) the Company giving to the Executive not less than 12 months' written notice; or

(B) subject to clauses 16.1(A) and 16.1(B), the Executive giving to the Company not less than 6 months' written notice.

3.2 For the purposes of the Employment Rights Act 1996, the Executive's period of continuous employment with the Company commenced on 19 June 2007.

3.3 The Company reserves the right at any time, in its absolute discretion, to terminate the Executive's employment by paying to the Executive a sum equal to his salary and contractual benefits for the relevant period of notice, such sum to be subject to deductions for income tax and National Insurance Contributions as appropriate.

4. DUTIES

4.1 The Executive shall during the continuance of his employment:

(A) exercise such powers and perform such duties in relation to the business of the Company or of any Subsidiary Company as may from time to time be vested in or assigned to him by the Board;

- (B) well and faithfully serve the Company and any relevant Subsidiary Companies and the Client to the best of his ability and carry out his duties with all due care, skill and ability, and use his best endeavours to promote and maintain their interests and reputation;
 - (C) if so requested by the Board, remain or become a director of the Company and remain in such capacity without any additional remuneration; and
 - (D) if so requested by the Board, exercise such powers and perform such duties in relation to the business of the Client as shall be exercisable, or required to be performed, by the Company under the terms of the Services Memorandum.
- 4.2 The Executive will serve the Company and any Subsidiary Company in such capacity as the Board shall determine from time to time. In performance of his duties the Executive shall:
- (A) work normal office hours of 9 am to 5 pm together with such additional hours as are necessary for the proper performance of his duties and the parties acknowledge for the purposes of the Working Time Regulations 1998 that the Executive is a managing executive with autonomous decision making powers;
 - (B) perform his duties in London, England or at such other location within England, Wales or Scotland as the position of the Executive shall reasonably require, whether on a permanent or temporary basis;
 - (C) devote the whole of his working time, skill, ability and attention to the business of the Company and, as required by sub-clause (G) below, the Client;
 - (D) in all respects conform to and comply with lawful directions and regulations given and made by the Board;
 - (E) in all respects conform to and comply with all relevant rules and/or codes issued by or on behalf of any Relevant Stock Exchange;
 - (F) travel to such places (whether inside or outside the United Kingdom) in such manner and on such occasions and for such periods as the position of the Executive may from time to time reasonably require; and
 - (G) unless the Client requires the Company pursuant to the Services Memorandum to cause the Executive to cease to provide services and otherwise for so long as the Board may require, serve the Client as Chief Executive Officer pursuant to and subject to the terms of the Services Memorandum and in that capacity the Executive shall in all respects conform to and comply with all and any lawful directions and regulations given and made by the Client Board.

- 4.3 The Executive shall promptly disclose forthwith to the Board any and all information he has or acquires which relates or may relate to the business or any potential business of the Company or any Group Company.
- 4.4 The Executive shall immediately upon the Company's request supply any and all information which the Company or any Group Company may reasonably require in order to be able to comply with any statutory or regulatory provision or stock exchange rule or requirement of any Relevant Stock Exchange.
- 4.5 The Executive shall not undertake or purport to undertake any transactions on behalf of the Client or any Group Company other than in the course of providing services pursuant to and in accordance with the Services Memorandum (or other similar agreement between the Company and any Group Company) and, for the avoidance of doubt, the Executive shall not otherwise, without the prior express written authority of the Board;
 - (A) incur any expenditure in the name of or for the account of the Client or any Group Company;
 - (B) hold himself out as having authority to bind the Client or any Group Company.
- 4.6 The Executive shall comply with the Client's or any Group Company's health and safety procedure from time to time in force.

5. SALARY

- 5.1 The Company shall pay to the Executive by way of remuneration for his services under this Agreement a basic salary of £313,800 per annum (inclusive of any director's fees payable to him by the Company or any Group Company) which shall accrue from day to day and shall be payable in arrears by equal monthly installments on or about the 1st day of every month (or pro rata where the Executive is only employed during part of a month).
- 5.2 Such salary shall be reviewed by (with the outcome of such review being at the absolute discretion of) the Board (or if appropriate the remuneration committee thereof) on or about 1 January in each calendar year with the first such review to take place as at 1 January 2019 without commitment to increase.
- 5.3 The Company shall be entitled to deduct from any sums payable to the Executive (including salary):
 - (A) all sums from time to time owed by the Executive to the Company or to any Group Company howsoever arising;

- (B) all appropriate deductions for income tax, employee national insurance contributions and all other statutory deductions due in respect of his salary and any other benefits provided to him by the Company or any Group Company; and
- (C) such sums as the Executive notifies the Company in writing to pay directly into any personal pension scheme of the Executive.

6. EXPENSES

The Company shall reimburse the Executive all reasonable travelling, hotel, entertainment and other out of pocket expenses properly incurred by him in or about the performance of his duties under this Agreement subject to his compliance with the Company's then current guidelines, if any, relating to expenses and to the production, if required, of receipts, vouchers or other supporting documents.

7. BONUS SCHEME

The Executive will be entitled to participate in any contractual bonus scheme or schemes established from time to time by the Company for executives of equivalent status to the Executive, subject always to the rules of those schemes. The Executive may from time to time receive a bonus payment up to an annual maximum of 60% of the Executive's basic salary as set out in clause 5.1 above based on achievement of objectives to be agreed between the Executive and the Company from time to time. The payment and amount of any payment (within the 60% of basic salary threshold) is at the Company's absolute discretion. A payment at any particular time will not create any entitlement to or expectation of any future payment or the amount of any future payment. Save in the case of any accrued bonus under any bonus scheme in which the Executive is participating, the Executive will not be entitled to receive any such bonus payment if, at the date the bonus payment under the bonus scheme would ordinarily be made, he is not employed by the Company or if the Executive has served notice to terminate his employment without Good Reason (as defined above).

8. SHARE SCHEMES

The Executive will be entitled to participate in such share schemes as the Client may operate upon such terms as the Board may from time to time determine and subject always to the rules and eligibility requirements of the scheme or schemes from time to time in force.

9. HEALTH, LIFE AND MEDICAL INSURANCE

9.1 The Executive shall during his employment be entitled to participate in the Company's:

- (A) permanent health insurance scheme; and

- (B) arrangements for private medical treatment or medical health insurance including spouse or partner or anyone living as such and dependent children under the age of 21 years; and
- (C) life assurance

(together “**Insurance Schemes**”) operated from time to time by or for the Company for the benefit of employees of the Company or any Group Company of equivalent status to the Executive, subject to any applicable rules and conditions of the Insurance Schemes. To the extent that there is any disparity between the rules and conditions of the relevant Insurance Scheme and the terms of this Agreement the relevant scheme rules and conditions shall take precedence. The Company shall not have any liability to pay any benefit to the Executive (or any family member) under any Insurance Scheme unless it receives payment of the benefit from the insurer under the scheme and shall not be responsible for providing the Executive (or any family member) with any benefit under an Insurance Scheme in the event that the relevant insurer refuses for whatever reason to pay or provide or to continue to pay or provide that benefit to the Executive (or family member).

- 9.2 Any Insurance Scheme which is provided for the Executive is also subject to the Company’s right to alter the cover provided or any term of that scheme or to cease to provide (without replacement) the scheme at any time if in the opinion of the Board (after the Executive has been examined by a medical practitioner nominated by the insurers or by the Company) the state of health of the Executive is or becomes such that the Company is unable to insure the benefits under the scheme at the normal premiums applicable to a person of the Executive’s age.
- 9.3 No contracting out certificate is in force in relation to this employment.

10. ILLNESS

- 10.1 In the event of illness or other incapacity beyond his control as a result of which he is unable to perform his duties the Executive shall remain entitled to receive his salary in full for any continuous period of 3 months or an aggregate period of 90 days’ absence in any consecutive twelve month period subject to:
 - (A) compliance with the Company’s procedures relating to sickness notification, statutory sick pay and self-certification to cover absence from work due to sickness or other incapacity and to the provision of medical certificates and/or (at the Company’s discretion) undergoing a medical examination by a doctor appointed by the Company. The Executive shall co-operate in ensuring the prompt delivery of such report to the Company and authorise his own medical practitioner to supply all such information as may be required by that doctor and, if so requested by the Company, authorise his medical practitioner to disclose to the Company his opinion of the Executive’s state of health;

- (B) a deduction (at the Company's discretion) from his salary of an amount or amounts equal to any statutory sick pay or social security benefits to which the Executive is entitled; and
- (C) a deduction (at the Company's discretion) from his salary of an amount or amounts equal to any payment made to the Executive under any health insurance arrangements effected from time to time by the Company and/or any Group Company on his behalf.

11. HOLIDAYS

- 11.1 The Executive shall be entitled to 25 working days' holiday (in addition to the normal United Kingdom public holidays) in each calendar year commencing on 1 January in each year (which shall accrue on a monthly basis). Holidays shall be taken at such times as are reasonable and convenient having regard to the requirements of the Company's business.
- 11.2 If at the end of the calendar year the Executive has accrued holiday entitlement which he has not taken he shall be entitled to carry forward an absolute maximum of up to 10 days into the following calendar year.
- 11.3 The Company reserves the right, at its absolute discretion, to require the Executive to take any outstanding holiday during any notice period.
- 11.4 On termination of the Executive's employment (howsoever occasioned), if the Executive has taken more or less than his annual holiday entitlement an appropriate adjustment shall be made to any payment of salary or benefits from the Company to the Executive. In this event the calculation shall be made on the basis that each day of holiday is worth 1/260 of his basic salary as set out in clause 5.1.

12. OTHER BUSINESS INTERESTS

- 12.1 The Executive shall not during the continuance of his employment (whether during or outside working hours) without the prior consent in writing of the Board, be directly or indirectly engaged, concerned or interested in any business, profession or occupation other than the Company or any Group Company in accordance with the terms of this Agreement provided that nothing in this clause 12 shall prohibit the Executive from being the holder of not more than three per cent. of any class of stock, shares or debentures or other securities in any company which is listed, dealt in and/or admitted for trading on any stock exchange, recognised investment exchange or automated quotation system ('Exchange'); or
- 12.2 The Executive shall not during the continuance of his employment (except with the prior written consent of the Board) introduce to any other person, firm or company business of any kind which could appropriately be dealt with by the Company or any Group Company, nor shall he have any financial interest in or derive any financial benefit from any contracts made by the Company or any Group Company with any third party.

13. CONFIDENTIAL AND BUSINESS INFORMATION

13.1 In addition to and without prejudice to the Executive's common law obligations to keep information secret, the Executive shall not (except for the purpose of performing his duties hereunder or unless ordered to do so by a court of competent jurisdiction) either during his employment or after its termination directly or indirectly use, disclose or communicate Confidential and Business Information and he shall use his best endeavours to prevent the improper use, disclosure or communication of Confidential and Business Information:

- (A) concerning the business of the Company or any Group Company and which comes to the Executive's attention during the course of or in connection with his employment or provision of services to the Company or any Group Company from any source within the Company or any Group Company; or
- (B) concerning the business of any person having dealings with the Company or any Group Company and which is obtained in circumstances in which the Company or any Group Company is subject to a duty of confidentiality in relation to that information.

13.2 For the purposes of clause 13.1, Confidential and Business Information means:

- (A) any information of a confidential nature (whether trade secrets, other private or secret information including secrets and information relating to corporate strategy, business development plans, product designs, intellectual property, business contacts, terms of business with customers and potential customers and/or suppliers, annual budgets, management accounts and other financial information); and/or
- (B) any confidential report or research undertaken by or for the Company or any Group Company before or during the course of the Executive's employment; and/or
- (C) lists or compilations of the names and contact details of the individuals or clients and counterparts with whom the Company or any Group Company transacts business; and/or
- (D) the previous 18 months' financial results of any individual part of the business of the Company or any Group Company; and/or
- (E) details of all computer systems and/or data processing or analysis software developed by the Company or any Group Company; and/or

- (F) details of the requirements, financial standing, terms of business and dealings with any Company or Group Company of any client of the Company or any Group Company; and/or
 - (G) contact details of all employees and directors of the Company or any Group Company together with details of their remuneration and benefits; and/or
 - (H) information so designated by the Company or any Group Company or which to the Executive's knowledge has been supplied to the Company or any Group Company subject to any obligation of confidentiality.
- 13.3 The restrictions contained in this clause 13 shall cease to apply with respect to any information which would otherwise have been Confidential and Business Information but which comes into the public domain otherwise than through an unauthorised disclosure by the Executive or a third party.
- 13.4 Notwithstanding the obligations and restrictions contained in this clause 13, nothing in this Agreement shall operate to prevent the Executive making a "protected disclosure" pursuant to the Part IVA of the Employment Rights Act 1996.
- 13.5 The obligations of the Executive under this clause 13 shall continue to apply after the termination of the Executive's employment (howsoever terminated).

14. DATA PROTECTION

14.1 The Executive hereby acknowledges that:

- (A) the Company will collect and process information about the Executive, such as the Executive's name and contact details as well as more sensitive information, for various purposes in connection with the Executive's employment, including to manage benefits and payments, to manage expenses, to manage recruitment and on-boarding, to manage absences, for security purposes, to handle claims and disciplinary actions, to monitor performance and use of the IT systems, to conduct certain background checks and to comply with the Company's legal obligations;
- (B) the Company will collect from the Executive and store personal data about the Executive's next of kin, such as their name and contact details, for use in emergency situations, and the Executive agrees that the Executive has informed such individuals that their details have been provided to the Company;

- (C) the Company may pass the Executive's information to third parties such as the Executive's previous employers, companies for which the Executive provided services, public authorities, law enforcement agencies, fraud prevention agencies and regulators who use it in connection with the purposes set out above. The Company may also pass the Executive's information to third party agents who handle it on behalf of the Company; and
- (D) depending on the circumstances, the Company's use of personal data may involve a transfer of data outside the UK and the European Economic Area.

14.2 The Company's Privacy Notice gives more details of the personal information about the Executive and the Executive's next of kin that the Company collects and processes. The Executive confirms that the Executive has read the notice. The Privacy Notice does not form part of the terms and conditions of the Employment, and the Company reserves the right to amend it from time to time and to update the uses of personal data listed above and in the Privacy Notice.

14.3 The Executive shall comply with Company and Group Company policies relating to data privacy when handling personal data in the course of the employment, including personal data relating to any employee, customer, client, supplier or agent of the Company. The Executive will also comply with the Company and Group Company policies from time to time in place relating to IT and communications systems, use of social media and other policies as included from time to time.

14.4 Failure to comply with Company and Group Company policies relating to data privacy or any of the policies listed above in clause 14.3 may be dealt with under the Company's disciplinary procedure and, in serious cases, may be treated as gross misconduct leading to summary dismissal.

15. NON COMPETITION

15.1 For the purposes of this clause the following expressions shall have the following meanings:

- (A) **"Relevant Employee"** means any senior employee or consultant to the Company or any Group Company who has significant client contacts and with whom the Executive has had significant contact during the course of his employment hereunder;
- (B) **"Relevant Customer"** means a person, firm or company who during the period of twelve months immediately preceding the Termination Date conducted a business relationship (including, without limitation, the provision of services and the negotiation for the same) with the Company or any Group Company and with whom the Executive had significant contact as an employee of the Company;
- (C) **"Relevant Business"** means any business or part thereof howsoever carried on involving the supply of Restricted Goods and/or Services;

- (D) **“Relevant Supplier”** means any person firm or company who is or was at any time during the twelve months preceding the Termination Date a supplier or procurer of goods and/or services to the Company or any Group Company as part of the trading activities within a Relevant Business;
- (E) **“Restricted Goods and/or Services”** means any goods and/or services with the provision and/or supply of which the Executive was materially concerned on behalf of the Company and/or any Group Company during the period of twelve months immediately prior to the Termination Date.

15.2 In order to safeguard the legitimate business interests of the Company and any Group Company and particularly the goodwill of the Company and any Group Company in connection with its clients, suppliers and employees the Executive hereby undertakes with the Company (for itself and as trustee for each Group Company) that, and so that each undertaking below shall constitute an entirely separate, severable and independent obligation of the Executive, he will not (except with the prior written consent of the Company) directly or indirectly:

- (A) during his employment or for a period of 12 months after the Termination Date entice or solicit or endeavour to entice or solicit away from the Company or any Group Company any Relevant Employee;
- (B) during his employment or for a period of 12 months after the Termination Date employ or otherwise engage any Relevant Employee;
- (C) during his employment or for a period of 12 months after the Termination Date in competition with the Company or any Group Company endeavour to supply or solicit the custom of any Relevant Client in respect of Restricted Goods and/or Services;
- (D) during his employment or for a period of 12 months after the Termination Date in competition with the Company or any Group Company supply Restricted Goods and/or Services to any Relevant Customer;
- (E) during his employment or for a period of 12 months after the Termination Date carry on or be concerned in any Relevant Business in competition with the business of the Company or any Group Company;
- (F) during his employment or for a period of 12 months after the Termination Date to the detriment of the Company or any Group Company, persuade or endeavour to persuade any Relevant Supplier to cease doing business or materially reduce its business with the Company or any Group Company.

15.3 For the purposes of clause 15.2 (E) the Executive is concerned in a business if (without limitation):-

- (A) he carries it on as principal or agent; or
- (B) he is a partner, director, employee, secondee, consultant, investor, shareholder or agent in, of or to any person who carries on the business;

disregarding only during the 12 month period after the Termination Date any financial interest of a person in securities which are listed, dealt in and/or admitted for trading on any Relevant Stock Exchange, if that person, the Executive and any person connected with him are interested in securities which amount to less than three per cent. of the issued securities of that class and which, in all circumstances, carry less than three per cent. of the voting rights (if any) attaching to the issued securities of that class.

- 15.4 The Executive shall not (except with the prior written consent of the Company) at any time after the termination of his employment represent himself to be connected with or interested in the business of or employed by the Company or any Group Company or use for any purpose the name of the Company or any Group Company or any name capable of confusion therewith.
- 15.5 The Executive shall not during his employment whether during or outside office hours undertake any steps of any kind to promote or establish (or assist therein) any business which in the reasonable opinion of the Company is or is intended to be or may become in competition with any business operated by the Company or any Group Company.
- 15.6 The Executive shall not at any time (whether during or after the termination of his employment) make whether directly or indirectly any untrue, misleading or derogatory oral or written statement concerning the business, affairs, officers or employees of the Company or any Group Company.
- 15.7 The Executive agrees to enter into the restrictions in this clause 15 in consideration for the Company agreeing to employ him on the terms contained in this Agreement.
- 15.8 While the restrictions in this clause 15 are considered by the Executive and the Company to be reasonable in all the circumstances, it is recognised that such restrictions may fail for reasons unforeseen and, accordingly, it is hereby declared and agreed that if any of the restrictions shall be adjudged to be void as going beyond what is reasonable in all the circumstances for the protection of the interests of the Company but that they would be valid if part of the wording thereof were deleted and/or if the periods (if any) specified therein were reduced and/or the areas dealt with thereby reduced in scope, the said restrictions shall apply with such modifications as may be necessary to make them valid and effective.

16. CHANGE IN CONTROL AND MATERIAL TRANSACTIONS

16.1 Following a Change in Control Transaction, if:

- (A) circumstances amounting to Good Reason come into existence within a period of 2 years from the date of completion of the Change of Control Transaction and the Executive serves written notice on the Company terminating his employment for that Good Reason within 90 days of that Good Reason coming into existence (and in these circumstances the Executive shall be entitled to terminate his employment on 14 days' notice); or
- (B) the Executive's employment is terminated by the Company or notice of termination of employment is served by the Company, in each case within 6 months of the completion of a Change in Control Transaction (save where the Company terminates the Executive's employment pursuant to clause 17.1 or for genuine and material poor-performance or misconduct reasons), the Executive will (subject to clauses 16.3, 16.4 and 16.5), be entitled to receive within 7 days of the Termination Date a severance payment of an amount equal to 12 months' salary and the cost to the Company of the provision of contractual benefits to the Executive for 12 months, bonus in respect of the bonus year completed immediately prior to the bonus year in which the Termination Date falls, calculated on the basis of the Executive's maximum annual bonus percentage unless a lower percentage has already been determined by the Company (less any bonus actually received in respect of that previous bonus year, and this payment will replace any outstanding entitlement to bonus in respect of that previous bonus year), a pro-rated bonus (reflecting the portion of the bonus year that has elapsed as at the Termination Date) in respect of the bonus year which is current at the Termination Date calculated on the basis of the Executive's maximum annual bonus percentage (and this payment will replace any further entitlement to bonus that the Executive may have under clause 7), less any payments on account of the annual bonus, and a further bonus payment calculated on the basis of the Executive's maximum annual bonus percentage for a full bonus year (without reduction), and the Company shall use reasonable endeavours to procure that (i) the Executive receives the full benefit of any awards under the Stock Incentive Plan (including, without limitation, any acceleration of vesting or extension of the post-termination exercise term of the Executive's awards as provided for in the applicable award agreement) and (ii) he is treated as being a "Good Leaver" (as defined in the relevant scheme(s) and subject always to the rules and provisions of such scheme(s)) for the purposes of any other applicable bonus or incentive scheme (besides the Stock Incentive Plan) which is operated by the Company or any Group Company from time to time and in which the Executive is participating as at the Termination Date.

16.2 Following a Material Transaction which is completed on or before **1 June 2019**, if:

- (A) circumstances amounting to Good Reason come into existence within a period of 2 years from the date of completion of the Material Transaction and the Executive serves written notice on the Company terminating his employment for that Good Reason within 90 days of that Good Reason coming into existence (and in these circumstances the Executive shall be entitled to terminate his employment on 14 days' notice); or

- (B) the Executive's employment is terminated by the Company or notice of termination of employment is served by the Company, in each case within 6 months of the completion of a Material Transaction (save where the Company terminates the Executive's employment pursuant to clause 17.1 or for genuine and material poor performance or misconduct reasons),

the Executive will (subject to clauses 16.3, 16.4 and 16.5) be entitled to receive within 7 days of the Termination Date a severance payment of an amount equal to 12 months' salary and the cost to the Company of the provision of contractual benefits to the Executive for 12 months, bonus in respect of the bonus year completed immediately prior to the bonus year in which the Termination Date falls, calculated on the basis of the Executive's maximum annual bonus percentage unless a lower percentage has already been determined by the Company (less any bonus actually received by the Executive in respect of that previous bonus year, and this payment will replace any outstanding bonus entitlement to bonus in respect of that previous bonus year), a pro-rated bonus (reflecting the portion of the bonus year that has elapsed as at the Termination Date) in respect of the bonus year which is current at the Termination Date calculated on the basis of the Executive's maximum bonus percentage (and this payment will replace any further entitlement to bonus that the Executive may have under clause 7), less any payments on account of the annual bonus, and a further bonus payment calculated on the basis of the Executive's maximum annual bonus for a full bonus year (without reduction), and the Company shall use reasonable endeavours to procure that (i) the Executive receives the full benefit of any awards under the Stock Incentive Plan (including, without limitation, any acceleration of vesting or extension of the post-termination exercise term of the Executive's awards as provided for in the applicable award agreement) and (ii) he is treated as being a "Good Leaver" (as defined in the relevant scheme(s) and subject always to the rules and provisions of such scheme(s)) for the purposes of any other applicable bonus or incentive scheme (besides the Stock Incentive Plan) which is operated by the Company or any Group Company from time to time and in which the Executive is participating as at the Termination Date.

- 16.3 Any severance payment payable under clause 16.1 and 16.2 shall be in addition to any salary paid to the Executive during any part of his contractual notice period which he is required to work or during which he is placed on garden leave and any cost to the Company of the provision of contractual benefits provided to the Executive during that period, but shall be reduced by an amount equal to any payment in lieu of notice made to the Executive pursuant to clause 3.3.

16.4 The Company's obligations under clauses 16.1 and 16.2 are subject to and conditional on:

(A) the Executive entering into, and complying with the terms of, a statutory settlement agreement with the Company in a form satisfactory to the Company pursuant to which the Executive will waive all claims that he may have against the Company or any Group Company arising from his employment or its termination and any directorships or other offices and their termination; and

(B) the Executive's compliance with his material obligations under this Agreement (including, but not limited to, his obligations under clauses 13 (CONFIDENTIAL AND BUSINESS INFORMATION) and 15 (NON COMPETITION)). In the event that the Executive commits any breach of such material obligations, the Company shall be released from its obligations under clauses 16.1 and 16.2, and in the event that the Executive commits any such breach following receipt of any payment pursuant to clause 16.1 or 16.2, or the Company becomes aware of any such breach following the Executive having received a payment under clause 16.1 or 16.2, an amount equal to the net payment made under clause 16.1 or 16.2 (plus any tax deducted from such payment that the Executive is able to recover from HMRC) shall be immediately repayable by the Executive to the Company as a debt.

16.5 For the avoidance of doubt, if the Executive has received or is entitled to receive any payment pursuant to clause 16.1 under no circumstances shall he have any entitlement to any payment under clause 16.2, and vice versa. Any amount payable under clause 16.1 or 16.2 shall be subject to deductions for income tax and National Insurance Contributions as appropriate.

17. SUMMARY TERMINATION

17.1 The employment of the Executive may be terminated by the Company without notice or payment in lieu of notice if:

- (A) the Executive is guilty of misconduct or commits any serious breach or non-observance (and in the case of any misconduct, serious breach or non-observance which is capable of being remedied by the Executive, having been given notice in writing and having failed to remedy the same within 7 days of such notice having been served) of any of the provisions of this Agreement or of his obligations to the Company or any Group Company (whether under this Agreement or otherwise) or any lawful acts or directions of the Board or relevant rules and/or codes issued by or on behalf of any Relevant Stock Exchange or (having been given notice in writing and having failed to remedy the same within 7 days of such notice having been served) is guilty of any continued or successive breaches or non-observance of any of such provisions, obligations, acts or directions, rules and/or codes in spite of written warning to the contrary by the Board;

- (B) the Executive is in the reasonable opinion of the Board negligent or incompetent in the performance of his duties;
- (C) the Executive is adjudged bankrupt or enters into any composition or arrangement with or for the benefit of his creditors including a voluntary arrangement under the Insolvency Act of 1986;
- (D) the Executive is guilty of any fraud or dishonesty or acts in any manner which in the reasonable opinion of the Board brings or is likely to bring the Company or any Group Company into disrepute or is materially adverse to the interests of the Company or any Group Company;
- (E) the Executive performs any act or omission which in the reasonable opinion of the Board may seriously damage the interests of the Company or any Group Company or willfully or negligently breaches any legislation or any regulation to which the Company or Group Company may be subject which may result in any penalties being imposed on him or any Directors of the Company or Group Company.
- (F) the Executive becomes prohibited by law or is disqualified from being a director or officer of a company;
- (G) the Executive is convicted of any criminal offence by a court of competent jurisdiction (other than a minor offence for which a fine or other non-custodial penalty is imposed);
- (H) the Executive commits any act of deliberate discrimination or harassment on grounds of race, sex, disability, sexual orientation, religion or belief or age;
- (I) the Executive becomes of unsound mind or a patient for the purpose of any statute relating to mental health;
- (J) the Executive is convicted of an offence under the Criminal Justice Act 1993 (or the Financial Services Authority becomes entitled to impose a penalty on the Executive pursuant to section 123 of the Financial Services and Markets Act 2000) or the Executive is otherwise convicted or found liable under any other present or future statutory enactment or regulation relating to insider dealing and/or market abuse;
- (K) the Executive resigns as a director or officer of the Company other than at the request of the Company;
- (L) the Client requires the Company to cause the Executive to cease providing services to it pursuant to clause 3.4 of the Services Memorandum; or

(M) the Executive commits any other act warranting summary termination at common law including (but not limited to) any act justifying dismissal without notice in the terms of the Company's generally-applicable Disciplinary Rules in place from time to time.

- 17.2 The Company's normal retirement age is 65 and subject to any statutory right to request that his retirement be extended to a greater age including the service of notices in respect of the same, the employment of the Executive shall automatically terminate on the day upon which the Executive reaches the age of 65.
- 17.3 The termination of the Executive's employment hereunder for whatsoever reason shall not affect those terms of this Agreement which are expressed to have effect after such termination and shall be without prejudice to any accrued rights or remedies of the parties.
- 17.4 On the termination of the Executive's employment either summarily or otherwise, or at any other time in accordance with instructions given to him by the Board, the Executive will immediately return to the Company all equipment, correspondence, records, specifications, software, models, notes, reports and other documents and any copies thereof and any other property belonging to the Company or any Group Company (including but not limited to credit cards, keys and passes) which are in the Executive's possession or under his control.
- 17.5 On the termination of the Executive's employment either summarily or otherwise, or at any other time in accordance with instructions given to him by the Board, the Executive will immediately irretrievably delete any information relating to the business of the Company or any Group Company stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Company or any Group Company.
- 17.6 Upon the request of the Board, the Executive will provide a signed written statement that he has fully complied with his obligations under clauses 17.4 and/or 17.5 and the Company may withhold any sums owing to the Executive on the Termination Date until the obligations in clause 17.4 and/or 17.5 have been complied with.

18. INVENTIONS AND IMPROVEMENTS

18.1 For the purposes of this clause 18 the following words and expressions shall have the following meanings:

"Intellectual Property Rights" means (i) copyright, patents, know-how, confidential information, database rights, and rights in trade marks and designs (whether registered or unregistered), (ii) applications for registration, and the right to apply for registration, for any of the same, and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

“Invention” means any method, idea, concept, experimental work, theme, invention, discovery, process, model, formula, prototype, sketch, drawing, plan, composition, design, configuration, improvement or modification of any kind conceived, developed, discovered, devised or produced by the Executive alone or with one or more others during his employment and which pertains to or is actually or potentially useful to the activities from time to time of the Company (or any Group Company) or any product or service of the Company (or any Group Company) or which pertains to, results from or is suggested by any work which the Executive or any other employee of the Company (or any Group Company) has done or may hereafter during his employment do for the Company (or any Group Company).

- 18.2 The Executive shall promptly disclose and deliver to the Company in confidence full details of each Invention (whether or not it was made, devised or discovered during normal working hours or using the facilities of the Company, and whether or not the Executive considers that by virtue of section 39 Patents Act 1977 rights to such Invention fail to vest in the Company) to enable the Company to determine whether rights to such Invention vest in the Company, upon the making, devising or discovering of the same and shall at the expense of the Company give all such explanations, demonstrations and instructions as the Company may deem appropriate to enable the full and effectual working, production and use of the same. To the extent that by virtue of section 39 Patents Act 1977 rights to such Invention vest in the Executive the Company shall return to the Executive any documentation provided by the Executive pursuant to this clause 18 and the Company shall keep such details confidential unless or until such time as such details are in or enter the public domain, other than by a breach of this Agreement.
- 18.3 The Executive hereby assigns (in so far as title has not automatically vested in the Company through the Executive’s employment) to the Company with full title guarantee by way of future assignment all copyright, database right, design right and other similar rights for the full terms (including any extension or renewals thereof) thereof throughout the world in respect of all works, designs or materials (including, without limitation, source code and object code for software) originated, conceived, written or made by the Executive during the period of his employment (except only those works or designs originated, conceived, written or made by the Executive wholly outside his normal working hours which are wholly unconnected with any business activity undertaken or planned to be undertaken by the Company or any Group Company) to hold unto the Company absolutely. The aforementioned assignment shall include the right to sue for damages and/or other remedies in respect of any infringement (including prior to the date hereof).
- 18.4 The Executive hereby irrevocably and unconditionally waives in favour of the Company any and all moral rights conferred on him by Chapter IV of Part I of the Copyright Designs and Patents Act 1988 for any work in which copyright or design right is vested in the Company whether by this clause 18 or otherwise.

- 18.5 The Executive shall, without additional payment to him (except to the extent provided in section 40 Patents Act 1977, or any similar provision of applicable law) at the request and expense of the Company and whether or not during the continuance of his employment, promptly execute all documents and do all acts, matters and things as may be necessary or desirable to enable the Company or its nominee to obtain, maintain, protect and enforce any Intellectual Property Right vested in the Company (save only to the extent that any Intellectual Property Rights fail to vest in the Company by virtue of section 39 Patents Act 1977) in any or all countries relating to the Intellectual Property Right and to enable the Company to exploit any Intellectual Property Right vested in the Company.
- 18.6 The Executive shall not do anything (whether by omission or commission) during his employment or at any time thereafter to affect or imperil the validity of any Intellectual Property Right obtained, applied for or to be applied for by the Company or its nominee, and in particular the Executive shall not disclose or make use of any Invention which is the property of the Company without the prior written consent of the Company. The Executive shall during or after the termination of his employment with the Company, at the request and expense of the Company, provide all reasonable assistance in obtaining, maintaining and enforcing the Intellectual Property Right or in relation to any proceeding relating to the Company's right, title or interest in any Intellectual Property Right.
- 18.7 Without prejudice to the generality of the above clauses, the Executive hereby irrevocably authorises the Company to appoint a person to be his attorney in his name and on his behalf to execute any documents and do any acts, matters or things as may be necessary for or incidental to grant the Company the full benefit of the provisions of this clause 18.
- 18.8 The obligations of the Executive under this clause 18 shall continue to apply after the termination of his employment (howsoever terminated).
- 18.9 For the avoidance of doubt, nothing in this Agreement shall oblige the Company (or any other Group Company) to seek protection for or exploit any Intellectual Property Right.

19. RESIGNATION OF OFFICES

The Executive shall immediately upon the earlier of termination of his employment or notice of termination being served by either party in accordance with this Agreement give written notice resigning forthwith as a director or trustee or from any other office he may hold from time to time with the Company and/or any Group Company or arising from his engagement by the Company and/or any Group Company without any further compensation.

20. GRIEVANCE AND DISCIPLINARY PROCEDURES

- 20.1 In the event of the Executive wishing to seek redress of any grievance relating to his employment he should lay his grievance before the Board or the board of directors of the parent company of any group of which the Company is a member from time to time (in this Clause 20, "Ultimate Board") in writing, who will afford the Executive the opportunity of a full hearing before the board or a committee of the board or the Ultimate Board (as appropriate) whose decision on such grievance shall be final and binding.

- 20.2 The Company's usual disciplinary procedures do not apply to the Executive. In the event that any disciplinary action is to be taken against the Executive, any hearing in respect thereof will be conducted by such director of the Company or the parent company of any group of which the Company is a member from time to time as the Board or the Ultimate Board may in its reasonable discretion nominate. If the Executive seeks to appeal against any disciplinary action taken against him he should do so to the Ultimate Board submitting full written grounds for his appeal to the Chairman of the Ultimate Board within 7 days of the action appealed against. The decision of the Ultimate Board or a delegated committee thereof shall be final and binding. For the avoidance of doubt, the Executive has no contractual right to either a disciplinary hearing or appeal.
- 20.3 The Company may in its absolute discretion suspend the Executive from some or all of his duties (and if applicable, from the Board) and/or require him to remain away from work during any investigation conducted into an allegation relating to the Executive's conduct or performance. During such period, the Executive's salary will continue to be paid and he will continue to be entitled to all benefits provided to him, including participating in any relevant bonus or share option schemes subject always to the rules of those schemes.

21. GENERAL

- 21.1 No failure or delay by either party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by either party of any right, power or privilege hereunder preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 21.2 The Executive shall have no claim against the Company or any Group Company in respect of the termination of his employment hereunder in relation to any provision in any articles of association, agreement, scheme, plan or arrangement which has the effect of requiring the Executive to sell, transfer or give up any shares, securities, options or rights at any price or which causes any options or other rights granted to him to become prematurely exercisable or to lapse by reason of his termination or because he has given or received notice of termination
- 21.3 The Executive hereby irrevocably and by way of security appoints the Company and each Group Company now or in the future existing to be his attorney and in his name and on his behalf and as his act and deed to sign, execute and do all acts, things and documents which he is obliged to execute and do under the provisions of this Agreement and in particular, but without limitation, clauses 18 and 19 and the Executive hereby agrees forthwith on the request of the Company to ratify and confirm all such acts, things and documents signed, executed or done in pursuance of this power.

- 21.4 There are no collective agreements which affect the terms and conditions of the employment of the Executive hereunder.
- 21.5 For the avoidance of doubt any payments made to or other benefits provided to the Executive or his family which are not expressly referred to in this Agreement shall be regarded as ex gratia payments or benefits provided at the entire discretion of the Company and do not form part of the Executive's contract of employment.
- 21.6 If any clause or provision in this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such clause or provision shall be severed from the remainder of the Agreement or clause and that remainder shall continue to be valid and enforceable to the fullest extent permitted by law. In that case, the parties shall negotiate in good faith to replace any invalid, unlawful or unenforceable clause or provision with a suitable substitute clause or provision which maintains as far as possible the purpose and effect of this Agreement.
- 21.7 This Agreement may be executed in any number of counterparts, each of which when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument. Delivery of an executed signature page of a counterpart by facsimile transmission or by electronic mail in Adobe TM Portable Document Format (PDF), shall take effect as delivery of an executed counterpart of this Agreement.
- 21.8 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- 21.9 No amendment, modification or waiver of this Agreement or any of its provisions shall be binding upon the parties hereto unless made in writing and duly signed by the parties.

22. NOTICES

- 22.1 Any notice or communication given or required under this Agreement may be served by personal delivery or by leaving the same at or by sending the same through the post addressed in the case of the Company to its registered office from time to time and in the case of the Executive to his aforesaid address or to the address provided from time to time by the Executive to the Company for the purposes of its employment records or by facsimile transmission.
- 22.2 Any notice sent by post shall be deemed to have been served 24 hours after the time of posting by first class mail and service thereof shall be sufficiently proved by proving that the notice was duly despatched through the post in a pre-paid envelope addressed as aforesaid. In the case of facsimile transmission it shall be deemed to have been received when in the ordinary course of such transmission it would be received by the addressee or if transmitted after 5pm or on a day that is not an ordinary business day on the next business day.

23. EXTENT AND SUBSISTENCE OF AGREEMENT

This Agreement supersedes all other agreements other than those expressly referred to in this Agreement (however including the Deed of Amendment) whether written or oral between the Company and the Executive relating to the employment of the Executive. The Executive acknowledges and warrants to the Company that he is not entering into this Agreement in reliance upon any representation not expressly set out herein.

24. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim, dispute or matter arising out of or relating to this Agreement.

IN WITNESS whereof a duly authorised representative of the Company has executed this Agreement and the Executive has executed this Agreement as his Deed on the date of this Agreement.

EXECUTED as a **DEED** by the Company

acting by Susan J Cook, a Director) /s/ Susan J Cook
in the presence of:)

Witness' signature /s/ Thomas Lister
Witness' name Thomas Lister
Address 49 Devonshire Road, London W4 2HU

Occupation Ship Finance

the said **Ian J Webber**)
as his **DEED** in the presence of:) /s/ Ian J Webber

Witness' signature /s/ Thomas Lister
Witness' name Thomas Lister
Address 49 Devonshire Road, London W4 2HU

Occupation Ship Finance

Confidential

Dated

16 October 2018

GLOBAL SHIP LEASE SERVICES LIMITED

and

IAN J WEBBER

**DEED OF AMENDMENT TO SERVICE
AGREEMENT**

THIS DEED is dated 16 October 2018 and is made **BETWEEN**:

- (1) **Global Ship Lease Services Limited** (No. 06285694) whose registered office is at 150 Aldersgate Street, London, United Kingdom, EC1A 4AB (the **Company**); and
- (2) **Ian J Webber** of Westbury House, Icehouse Wood, Oxted, Surrey, RH8 9DW (the **Executive**).

WHEREAS

- (A) The Executive and the Company entered into an Amended and Restated Service Agreement dated 1 June 2018 (the **Service Agreement**).
- (B) The Executive and the Company have agreed that certain amendments be made to the Service Agreement and the purpose of this Deed is to record those amendments and act as an addendum to the Service Agreement.

NOW IT IS HEREBY AGREED as follows:

1 Amendments to Service Agreement

1.1 With effect from 1 October 2018 (the **Effective Date**) the Service Agreement shall be amended such that:

- (a) Good Reason: the definition of Good Reason is deleted and replaced by:

“Good Reason” means the assignment to the Executive by the Company (including an assignment requested to be made by the Client pursuant to the Services Memorandum) of any duties or responsibilities inconsistent with (i) the Executive’s position, (ii) his actual responsibilities or (iii) the actual content and/or status and/or size of the role (all as at the date of this Agreement), including but not limited to, any change in title the effect of which results in the Executive having a lesser status than Chief Executive Officer, a reduction in the Executive’s base salary or any change in location of the Company’s principal administrative office or the Executive’s normal place of work to be outside of England, Wales or Scotland.

(b) Completion of the Transition: a new definition for “Completion of the Transition” is added:

“**Completion of the Transition**” means, provided that the Poseidon Merger is completed, the date of the substantive completion of the transfer of the accounting, finance and other administrative services performed as of the date of this Agreement by the Company’s employees at the principal administrative office in London to a new jurisdiction with such date being determined, inter alia, by the earliest date on which (i) the employment of the last but one of the five employees, as of the date of this Deed, within the finance department in London terminates or, (ii) the Client’s last quarterly earnings release which contains financial information prepared in London is issued or, (iii) the last monthly management accounts are prepared in London or, (iv) the early termination of the lease of the offices at Portland House, Stag Place, London SW1E 5RS or otherwise a date determined by the Board or the Client Board, acting reasonably, such date to be confirmed in writing by the Company to the Executive.

(c) Merger with Poseidon Containers Holdings LLC and others: a new definition for “Poseidon Merger” is added:

“**Poseidon Merger**” means the mergers contemplated by an Agreement and Plan of Merger, anticipated to be completed by the end of 2018, among Poseidon Containers Holdings LLC, K&T Marine LLC, Global Ship Lease, Inc. and the other parties named therein which, if it completes, will constitute a Change in Control Transaction for the purposes of this Agreement.

(d) Term and Notice: Clause 3.1(A) and (B) are deleted and replaced by:

- (A) subject to clause 16.1(C)(ii), the Company giving to the Executive not less than 12 months’ written notice; or
- (B) subject to clauses 16.1(A), 16.1(C)(ii), and 16.2(A), the Executive giving to the Company not less than 6 months’ written notice.

(e) Bonus Scheme: Clause 7 is amended to number the existing clause to be 7.1 and include the following additional provisions:

7.2 The Executive shall also be entitled to receive a special transaction bonus equal to six months’ bonus at the maximum percentage such amount to be paid in the payroll immediately following the completion of the Poseidon Merger less usual deductions (the **Transaction Bonus**), provided always that on the date for payment the Executive has not given notice to terminate his employment with the Company (whether on notice or with immediate effect) and the Company has not given notice to terminate the Executive’s employment pursuant to clause 17.1 (in which case the Executive shall have no entitlement to the same). This bonus is additional to annual bonus and shall not be taken into account for the purpose of calculating pension contributions or any other salary-linked benefits. If the Poseidon Merger does not complete then the Transaction Bonus shall not be payable.

7.3 The Company agrees and confirms that in the event that the Poseidon Merger completes and completion is within 2018, the bonus amount payable to the Executive for the first three quarters of 2018 shall be calculated at the maximum percentage, such amount to be paid in the payroll immediately following the completion of the Poseidon Merger less usual deductions, provided always that on the date for payment the Executive has not given notice to terminate his employment with the Company (whether on notice or with immediate effect) and the Company has not given notice to terminate the Executive's employment pursuant to clause 17.1 (in which case the Executive shall have no entitlement to the same). The bonus amount payable for the final quarter of 2018 would be a matter for determination in 2019 by the then Board of the Company.

(f) Change in Control and Material Transactions: Clause 16.1 is deleted and replaced by:

16.1 Following a Change in Control Transaction, if:

- (A) circumstances amounting to Good Reason come into existence within a period of 2 years from the date of completion of a Change of Control Transaction (other than completion of the Poseidon Merger) and the Executive serves 14 days' written notice on the Company terminating his employment for that Good Reason within 90 days of that Good Reason coming into existence (for the avoidance of doubt, the Executive shall have no rights under this clause 16.1(A) in connection with the Poseidon Merger including its completion); or
- (B) the Executive's employment is terminated by the Company or notice of termination of employment is served by the Company either (i) within 6 months of the completion of a Change in Control Transaction (unless the Change in Control is the Poseidon Merger, in which case only limb (ii) shall apply) or (ii) if the Poseidon Merger is completed, at any time up to the end of 90 days following the date falling on the earlier of (i) the Completion of the Transition and (ii) 12 months after the completion of the Poseidon Merger (save in either case where the Company terminates the Executive's employment pursuant to clause 17.1 or, subject to Clauses 20.2 and 20.3, for genuine and material poor-performance or misconduct reasons),

the Executive will (subject to clauses 16.3, 16.4 and 16.5), be entitled to receive within 7 days of the Termination Date:

- (i) severance payment of an amount equal to 12 months' salary and the cost to the Company of the provision of contractual benefits to the Executive for 12 months; and
- (ii) bonus in respect of the bonus year completed immediately prior to the bonus year in which the Termination Date falls, calculated on the basis of the Executive's maximum annual bonus percentage (unless a lower percentage has already been determined by the Company although in the event that the Poseidon Merger completes the provision of clause 7.3 shall apply to the exclusion of this clause 16.1(B)(ii)) less any payments on account of the bonus for that previous year which have been paid to the Executive (and this payment will replace any outstanding entitlement to bonus in respect of that previous bonus year); and
- (iii) a pro-rated bonus (reflecting the portion of the bonus year that has elapsed as at the Termination Date) in respect of the bonus year which is current at the Termination Date calculated on the basis of the Executive's maximum annual bonus percentage (and this payment will replace any further entitlement to bonus for that current year that the Executive may have under clause 7.1 of the Service Agreement), less any payments on account of the bonus for that current year which have been paid to the Executive; and
- (iv) a further bonus payment calculated on the basis of the Executive's maximum annual bonus percentage for a full bonus year; and
- (v) the Transaction Bonus, less any payments on account of the Transaction Bonus which have been paid to the Executive; **however**

(should the Poseidon Merger be completed, the amounts provided for in sub-clauses (i) through (v) (inclusive) together comprise the "**Retention Amount**" and shall be payable to the Executive subject to and in accordance with clause 16.1.C)

- (vi) **less** an amount equal to the sum of any Poseidon Payments on Account already paid to the Executive as provided for in subclause 16.1(C)(i); and
 - (vii) the Company shall use reasonable endeavours to procure that (i) the Executive receives the full benefit of any awards under the Stock Incentive Plan (including, without limitation, any acceleration of vesting or extension of the post-termination exercise term of the Executive's awards as provided for in the applicable award agreement) and (ii) he is treated as being a "Good Leaver" (as defined in the relevant scheme(s) and subject always to the rules and provisions of such scheme(s)) for the purposes of any other applicable bonus or incentive scheme (besides the Stock Incentive Plan) which is operated by the Company or any Group Company from time to time and in which the Executive is participating as at the Termination Date and, for the avoidance of doubt, the provision of this Clause 16.1 (B) shall also apply in the event that the Poseidon Merger is completed as provided for in Clause 16.1 (C).
- (C) If the Poseidon Merger is completed:
- (i) subject to Clause 16.4, the Executive shall receive a total gross amount of £611,910, in nine equal monthly instalments of £67,990 payable in each payroll subsequent to the completion of the Poseidon Merger, less usual deductions, such gross amount being the "**Poseidon Payments on Account**", **provided always** that on the date for payment of each of the Poseidon Payments on Account the Executive has not resigned from the employment and has not lawfully been given notice of termination by the Company pursuant to Clause 17.1 or, subject to Clauses 20.2 and 20.3, for genuine and material poor-performance or misconduct reasons; and
 - (ii) without prejudice to the Company's ability at any time to terminate the Executive's employment pursuant to Clause 17.1 or, subject to Clauses 20.2 and 20.3, for genuine and material poor-performance or misconduct reasons, the Executive and the Company may elect to terminate the employment by serving one month's written notice on the other (save where the employment is terminated by the Company pursuant to clause 17.1) at any time within the 90 days following the date falling on the earlier of (a) the Completion of the Transition and (b) 12 months after the completion of the Poseidon Merger; and

- (iii) where the employment is terminated pursuant to Clause 16.1(C)(ii) and the Executive is not required to work out the one month's notice period then, subject to Clause 16.4, the Executive shall receive a payment in lieu of the one month notice period which shall be paid in addition to the Retention Amount payable in accordance with Clause 16.1.(B) above; and
- (iv) where the employment is terminated by the Company in accordance with Clause 16.1(B) but where the Executive has already received some or all of the Poseidon Payments on Account then the amounts due to the Executive in accordance with Clause 16.1 shall be reduced by an amount equal to the sum of any Poseidon Payments on Account already paid to the Executive.

For the avoidance of doubt, it is confirmed that the Poseidon Payments on Account shall be paid in addition to the Executive's normal contractual salary and benefits.

- (g) Change in Control and Material Transactions: Clause 16.3 is deleted and replaced by:

“Any severance payment payable under clause 16.1 and 16.2 shall be in addition to any salary paid to the Executive during any part of his contractual notice period which he is required to work or during which he is placed on garden leave and any cost to the Company of the provision of contractual benefits provided to the Executive during that period, but shall be reduced by an amount equal to any payment in lieu of notice made to the Executive pursuant to clause 3.3 (however for the avoidance of doubt, not pursuant to Clause 16.1(C)(iii)).”

- (h) Change in Control and Material Transactions: Clause 16.4(A) and Clause 16.4 (B) are deleted and replaced by:

(A) where the Executive's employment terminates or is to terminate, the Executive entering into, and complying with the terms of, a statutory settlement agreement, together with a ACAS COT3 Form ("**COT3**") waiving any residual claims not covered by the settlement agreement. Such agreements will be in a form satisfactory to the Company (acting reasonably), which is expected to be similar to that annexed to this Deed (without prejudice to the Company's right (acting reasonably) to require the Executive to enter into agreements in a different form but in the expectation that it remains similar in content), pursuant to which the Executive will waive all claims that he may have against the Company or any Group Company, and any of its or their officers, trustees, directors, shareholders, employees or agents, including any claims arising from his employment or its termination and any directorships or other offices and their termination. In circumstances where the Executive has received any Poseidon Payments on Account the Company will retain a right to require the repayment of the same as a debt in the event that either: (i) the Executive fails to enter into the settlement agreement and COT3 in accordance with this Clause 16.4(A); and/or (ii) brings any claim against the Company or any Group Company or Technomar Shipping Inc. ("**Technomar**") or any of its or their officers, trustees, directors, shareholders, employees or agents, including any claims arising from his employment or its termination and any directorships or other offices and their termination; and/or (iii) at any time prior to the payment of the final Poseidon Payment on Account, the Executive resigns from the employment or the Company lawfully determines that it is or has been entitled to give notice to terminate the employment in accordance with Clause 17.1 or, subject to Clauses 20.2 and 20.3, for genuine and material poor-performance or misconduct reasons, and the Executive hereby authorises the Company to deduct from any outstanding amounts due to the Executive (other than in respect of clauses 7.2, 7.3 or 16.1 (B) (ii) (v) and (vii)) an amount equal to any amount the Executive is required to repay under this clause, and no further instalments of the Poseidon Payments on Account and no Retention Amount shall be payable to the Executive. Further, in the event that the Executive fails to enter into the settlement agreement and COT3 in accordance with this Clause 16.4(A) and brings any claim against the Company or any Group Company or Technomar or any of its or their officers, trustees, directors, shareholders, employees or agents, including any claims arising from his employment or its termination and any directorships or other offices and their termination, the Executive hereby agrees that the relevant court or tribunal should reduce any sum(s) which it would otherwise award to the Executive by £1 for each £1 received by the Executive by way of the Poseidon Payments on Account; and

- (B) the Executive's compliance with his material obligations under this Agreement (including, but not limited to, his obligations under clauses 13 (CONFIDENTIAL AND BUSINESS INFORMATION) and 15 (NON COMPETITION)). In the event that the Executive commits any breach of such material obligations, the Company shall be released from its obligations under clauses 16.1 and 16.2 (other than in respect of 7.2, 7.3, 16.1 (B) (ii), (v) or (vii)), and in the event that the Executive commits any such breach following receipt of any payment pursuant to clause 16.1 or 16.2, or the Company becomes aware of any such breach following the Executive having received a payment under clause 16.1 or 16.2, an amount equal to the net payment made under clause 16.1 or 16.2 (other than in respect of amounts under clauses 7.2, 7.3, 16.1 (B) (ii) (v) or (vii)) (plus any tax deducted from such payment that the Executive is able to recover from HMRC) shall be immediately repayable by the Executive to the Company as a debt. Should the Poseidon Merger be completed, this sub-clause shall not apply after 18 months following such completion.
- (i) Grievance and Disciplinary Procedures: Clause 20 is deleted and replaced by:

20. Grievance and Disciplinary Procedure

- 20.1 In the event of the Executive wishing to seek redress of any grievance relating to his employment he should lay his grievance before the Board or the board of directors of the parent company of any group of which the Company is a member from time to time (in this Clause 20, "Ultimate Board") in writing, who will afford the Executive the opportunity of a full hearing before the board or a committee of the board or the Ultimate Board (as appropriate) whose decision on such grievance shall be final and binding.
- 20.2 The Company's usual disciplinary procedures do not apply to the Executive save that a dismissal will not qualify as:
- (i) one for material poor performance or misconduct reasons; or (ii) one under Clause 17.1 where the relevant sub-clause relied on is Clause 17.1(B) or Clause 17.1(L) (and then only where the relevant sub-clause in the Services Memorandum is clause 3.4(d)), for the purposes of Clauses 16.1(B) or 16.2(B) unless the Company carries out in relation to such a dismissal a fair disciplinary procedure in line with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

- 20.3 In the event that any disciplinary action is to be taken against the Executive (including in the circumstances set out in Clause 20.2), any hearing in respect thereof will be conducted by such director of the Company or the parent company of any group of which the Company is a member from time to time as the Board or the Ultimate Board may in its reasonable discretion nominate. If the Executive seeks to appeal against any disciplinary action taken against him he should do so to the Ultimate Board submitting full written grounds for his appeal to the Chairman of the Ultimate Board within 7 days of the action appealed against. The decision of the Ultimate Board or a delegated committee thereof shall be final and binding. For the avoidance of doubt, the Executive has no contractual right to either a disciplinary hearing or appeal save as set out in Clause 20.2.
- 20.4 The Company may in its absolute discretion suspend the Executive from some or all of his duties (and if applicable, from the Board) and/or require him to remain away from work during any investigation conducted into an allegation relating to the Executive's conduct or performance. During such period, the Executive's salary will continue to be paid and he will continue to be entitled to all benefits provided to him, including participating in any relevant bonus or share option schemes subject always to the rules of those schemes.

2 Good Reason

- 2.1 For the avoidance of doubt the parties confirm that the variations to the Service Agreement that will become effective from the Effective Date shall not, and shall not following a Change in Control Transaction, constitute circumstances amounting to Good Reason.

3 Continuation of the Service Agreement

- 3.1 The Service Agreement shall remain in full force and effect except as varied by this Deed with effect from the Effective Date.
- 3.2 Except as specifically varied by this Deed, nothing stated herein is intended to nor shall it affect any of the rights and obligations either conferred upon or imposed on the Company or the Executive by the Service Agreement.

4 Miscellaneous

- 4.1 The Service Agreement, this Deed and any agreement relating to an award under the Stock Incentive Plan (as defined in the Service Agreement) set out the entire agreement between the parties and supersede all prior discussions between them or their advisers and all statements, representations, terms and conditions, warranties, guarantees, proposals, communications and understandings and agreements whenever given and whether orally or in writing relating to the Executive's employment with the Company (and any such prior agreements shall be deemed to have been terminated by mutual consent).
- 4.2 No amendment, modification or waiver of this Deed or any of its provisions shall be binding upon the parties hereto unless made in writing and duly signed by the parties.
- 4.3 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.
- 4.4 This Deed may be executed in any number of counterparts, each of which when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument. Delivery of an executed signature page of a counterpart by facsimile transmission or by electronic mail in Adobe TM Portable Document Format (PDF), shall take effect as delivery of an executed counterpart of this Deed.
- 4.5 This Deed and any non-contractual obligations arising out of it shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim, dispute or other matter arising out or relating to this Deed.

IN WITNESS whereof the Company and the Executive have executed this Deed and it is delivered and takes effect on the date first above written.

SIGNED as a DEED by **GLOBAL SHIP LEASE**)

SERVICES LIMITED) /s/ Thomas Lister

acting by Thomas A Lister, a director,) Director

In the presence of a witness

) /s/ Vivek Puri

)

Witness

Witness Name: Vivek Puri

Witness Address: 25 Drumaline Ridge,
Worcester Park, Surrey KT4 7JT

Witness Occupation: C.T.O

SIGNED as a DEED by

)

Ian J Webber in the presence of a witness

) /s/ Ian J Webber

Witness /s/ Vivek Puri

Witness Name: Vivek Puri

Witness Address: 25 Drumaline Ridge,
Worcester Park, Surrey KT4 7JT

Witness Occupation: C.T.O.

Global Ship Lease Services Limited

and

Thomas A. Lister

AMENDED AND RESTATED SERVICE AGREEMENT

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SERVICE AGREEMENT

DATE

1 June 2018

PARTIES

- (1) GLOBAL SHIP LEASE SERVICES LIMITED (registered no. 06285694) whose registered office is at 150 Aldersgate Street, London EC1A 4AB, United Kingdom (“the Company”); and
- (2) **THOMAS A. LISTER** of 49 Devonshire Road, Chiswick, London, W4 2HU (“the Executive”).

WHEREAS The Company has offered to provide services to Global Ship Lease, Inc. a company incorporated and registered in the Republic of the Marshall Islands (the “Client”) under the Services Memorandum.

WHEREAS The Executive has agreed as an employee of the Company to oversee and participate in the provision of the services and, in particular, to act as Chief Financial Officer and Chief Commercial Officer of the Client on the terms of this Agreement.

WHEREAS The Client is party to the Agreement and Plan of Merger, dated as of March 21, 2008, by and among Marathon Acquisition Corp., GSL Holdings, Inc., CMA CGM S.A. and the Client (the “Merger Agreement”).

WHEREAS

(A) The Executive and the Company entered into a service agreement dated 14 August 2008 which was re-executed as a deed on 1 December 2008 and was further amended by Deeds of Amendment dated 20 November 2013 and 6 March 2017 (“the **Deeds of Amendment**”).

(B) The Executive and the Company have agreed that certain further amendments be made to the Service Agreement and these, together with previous amendments, be consolidated into this Amended and Restated Service Agreement (“the **Agreement**”).

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Agreement the following words and expressions shall have the following meanings:

“**the Board**” means the board of directors of the Company;

“Change in Control Transaction” means the consummation, following the date of the Merger, of any of the following transactions:

a. the acquisition, directly or indirectly, by any individual, partnership, firm, company, association, trust, unincorporated organization or other entity (a “Person”), or any Persons acting as a “group” within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (other than the Client or a person that directly or indirectly controls, is controlled by, or is under common control with, the Client) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities of the Client representing more than 50% of the total combined voting power of the Client’s then outstanding securities entitled to vote in the election of the directors of the Client (the “Voting Shares”);

b. the Client disposing of all or substantially all of its assets;

c. 10% or more of the value of the assets of the Client, or the Voting Shares of the Client are about to be transferred, or have been transferred, because of any taking, seizure, or defeasance as a result of, or in connection with (i) nationalization, expropriation, confiscation, coercion, force or duress, or other similar action under the laws of the Republic of the Marshall Islands, or (ii) the imposition by the Republic of the Marshall Islands of a confiscatory tax, assessment, or other governmental charge or levy;

d. the merger of the Client with or into another corporation in which securities possessing more than 50% of the total combined voting power of the Client are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction; or

e. the Client Board by resolution duly adopted by the affirmative vote of a simple majority of the votes cast by the Client Board determines that for the purposes of this Agreement, a Change in Control Transaction has occurred; or

f. there is a change in boardroom control of the Client. A change in boardroom control for the purpose of this clause shall mean a change in the directors of the board of the Client such that the majority of directors of the Client Board following such change are directors who were not directors at 20 November 2013.

A transaction shall not constitute a Change in Control Transaction if its sole purpose is to change the state of the Client’s incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Client’s securities immediately before such transactions.

“Client” means Global Ship Lease, Inc.

“Client Board” means the board of directors of the Client as from time to time constituted or any duly appointed committee of the Client Board.

“Good Reason” means the assignment to the Executive by the Company (including an assignment requested to be made by the Client pursuant to the Services Memorandum) of any duties or responsibilities inconsistent with the Executive’s position, including but not limited to, any change in title the effect of which results in the Executive having a lesser status than Chief Financial Officer and Chief Commercial Officer, a reduction in the Executive’s base salary or any change in location of the Company’s principal administrative office or the Executive’s normal place of work to be outside of England, Wales or Scotland.

“Group Company” means the Client, any company of which it is a subsidiary (its holding company) and any other subsidiaries of the Client or such holding company, other than the Company (as such expressions are defined in sections 258, 259 and 736 Companies Act 1985, an enactment of the United Kingdoms of England and Wales);

“Material Transaction” means any merger or acquisition (which is not a Change of Control Transaction) which is determined by the Board acting reasonably and in good faith to be a material merger or acquisition having a material impact on the ownership structure of the Group (meaning the Company and the Group Companies);

“Merger” means the consummation of the merger contemplated under the Merger Agreement.

“Relevant Stock Exchange” means the New York Stock Exchange and/or any other stock exchange, recognised investment exchange or automated quotation system on which any Group Company or any of their securities, as applicable, is listed, dealt in or admitted for trading;

“Services Memorandum” means the Memorandum of Agreement for Intra-group Management Services between the Company and the Client.

“Stock Incentive Plan” means the Stock Incentive Plan of the Client.

“Subsidiary Company” means any Group Company other than the Client.

“Termination Date” means the date of the termination of the employment of the Executive hereunder, howsoever caused.

1.2 In this Agreement (unless the context otherwise requires):

- (A) any reference to any statute or statutory provision shall be construed as including a reference to any modification, re-enactment or extension of such statute or statutory provision for the time being in force or to any subordinate legislation made under the same;
- (B) any reference to a clause is to a clause of this Agreement;

(C) the expression “**directly or indirectly**” means (without prejudice to the generality of the expression) either alone or jointly with or on behalf of any other person, firm or body corporate and whether on his own account or in partnership with another or others or as the holder of any interest in or as officer, employee or agent of or consultant to any other person, firm or body corporate.

1.3 The headings contained in this Agreement are for convenience only and do not form part of and shall not affect the construction of this Agreement or any part of it.

2. APPOINTMENT

2.1 The Company hereby appoints the Executive and the Executive agrees to serve the Company as director and Chief Financial Officer and Chief Commercial Officer. Under the terms of the Services Memorandum the Company has agreed to provide Chief Financial Officer and Chief Commercial Officer services to the Client and the Executive has agreed to serve the Company in that capacity.

2.2 The Executive warrants that by virtue of entering into this Agreement he will not be in breach of any express or implied terms of any contract with or of any other obligation to any third party which are binding upon him.

3. TERM AND NOTICE

3.1 The terms of this Agreement and the provision of services to the Company during the course of the Executive’s employment by the Company shall commence on the date of the initial closing of the Merger and, subject to the provisions of clause 17, continue thereafter unless and until terminated by:

(A) the Company giving to the Executive not less than 9 months’ written notice; or

(B) subject to clauses 16.1(A) and 16.1(B), the Executive giving to the Company not less than 6 months’ written notice.

3.2 For the purposes of the Employment Rights Act 1996, the Executive’s period of continuous employment with the Company commenced on 23 January 2008.

3.3 The Company reserves the right at any time, in its absolute discretion, to terminate the Executive’s employment by paying to the Executive a sum equal to his salary and contractual benefits for the relevant period of notice, such sum to be subject to deductions for income tax and National Insurance Contributions as appropriate.

4. DUTIES

4.1 The Executive shall during the continuance of his employment:

- (A) exercise such powers and perform such duties in relation to the business of the Company or of any Subsidiary Company as may from time to time be vested in or assigned to him by the Board;
- (B) well and faithfully serve the Company and any relevant Subsidiary Companies and the Client to the best of his ability and carry out his duties with all due care, skill and ability, and use his best endeavours to promote and maintain their interests and reputation;
- (C) if so requested by the Board, remain or become a director of the Company and remain in such capacity without any additional remuneration; and
- (D) if so requested by the Board, exercise such powers and perform such duties in relation to the business of the Client as shall be exercisable, or required to be performed, by the Company under the terms of the Services Memorandum.

4.2 The Executive will serve the Company and any Subsidiary Company in such capacity as the Board shall determine from time to time. In performance of his duties the Executive shall:

- (A) work normal office hours of 9 am to 5 pm together with such additional hours as are necessary for the proper performance of his duties and the parties acknowledge for the purposes of the Working Time Regulations 1998 that the Executive is a managing executive with autonomous decision making powers;
- (B) perform his duties in London, England or at such other location within England, Wales or Scotland as the position of the Executive shall reasonably require, whether on a permanent or temporary basis;
- (C) devote the whole of his working time, skill, ability and attention to the business of the Company and, as required by sub-clause (G) below, the Client;
- (D) in all respects conform to and comply with lawful directions and regulations given and made by the Board;
- (E) in all respects conform to and comply with all relevant rules and/or codes issued by or on behalf of any Relevant Stock Exchange;
- (F) travel to such places (whether inside or outside the United Kingdom) in such manner and on such occasions and for such periods as the position of the Executive may from time to time reasonably require; and

- (G) unless the Client requires the Company pursuant to the Services Memorandum to cause the Executive to cease to provide services and otherwise for so long as the Board may require, serve the Client as Chief Financial Officer and Chief Commercial Officer pursuant to and subject to the terms of the Services Memorandum and in that capacity the Executive shall in all respects conform to and comply with all and any lawful directions and regulations given and made by the Client Board.
- 4.3 The Executive shall promptly disclose forthwith to the Board any and all information he has or acquires which relates or may relate to the business or any potential business of the Company or any Group Company.
- 4.4 The Executive shall immediately upon the Company's request supply any and all information which the Company or any Group Company may reasonably require in order to be able to comply with any statutory or regulatory provision or stock exchange rule or requirement of any Relevant Stock Exchange.
- 4.5 The Executive shall not undertake or purport to undertake any transactions on behalf of the Client or any Group Company other than in the course of providing services pursuant to and in accordance with the Services Memorandum (or other similar agreement between the Company and any Group Company) and, for the avoidance of doubt, the Executive shall not otherwise, without the prior express written authority of the Board;
 - (A) incur any expenditure in the name of or for the account of the Client or any Group Company;
 - (B) hold himself out as having authority to bind the Client or any Group Company.
- 4.6 The Executive shall comply with the Client's or any Group Company's health and safety procedure from time to time in force.

5. SALARY

- 5.1 The Company shall pay to the Executive by way of remuneration for his services under this Agreement a basic salary of £230,000 per annum (inclusive of any director's fees payable to him by the Company or any Group Company) which shall accrue from day to day and shall be payable in arrears by equal monthly installments on or about the 1st day of every month (or pro rata where the Executive is only employed during part of a month).
- 5.2 Such salary shall be reviewed by (with the outcome of such review being at the absolute discretion of) the Board (or if appropriate the remuneration committee thereof) on or about 1 January in each calendar year with the first such review to take place as at 1 January 2019 without commitment to increase.

5.3 The Company shall be entitled to deduct from any sums payable to the Executive (including salary):

- (A) all sums from time to time owed by the Executive to the Company or to any Group Company howsoever arising;
- (B) all appropriate deductions for income tax, employee national insurance contributions and all other statutory deductions due in respect of his salary and any other benefits provided to him by the Company or any Group Company; and
- (C) such sums as the Executive notifies the Company in writing to pay directly into any personal pension scheme of the Executive.

6. EXPENSES

The Company shall reimburse the Executive all reasonable travelling, hotel, entertainment and other out of pocket expenses properly incurred by him in or about the performance of his duties under this Agreement subject to his compliance with the Company's then current guidelines, if any, relating to expenses and to the production, if required, of receipts, vouchers or other supporting documents.

7. BONUS SCHEME

The Executive will be entitled to participate in any contractual bonus scheme or schemes established from time to time by the Company for executives of equivalent status to the Executive, subject always to the rules of those schemes. The Executive may from time to time receive a bonus payment up to an annual maximum of 40% of the Executive's basic salary as set out in clause 5.1 above based on achievement of objectives to be agreed between the Executive and the Company from time to time. The payment and amount of any payment (within the 40% of basic salary threshold) is at the Company's absolute discretion. A payment at any particular time will not create any entitlement to or expectation of any future payment or the amount of any future payment. Save in the case of any accrued bonus under any bonus scheme in which the Executive is participating, the Executive will not be entitled to receive any such bonus payment if, at the date the bonus payment under the bonus scheme would ordinarily be made, he is not employed by the Company or if the Executive has served notice to terminate his employment without Good Reason (as defined above).

8. SHARE SCHEMES

The Executive will be entitled to participate in such share schemes as the Client may operate upon such terms as the Board may from time to time determine and subject always to the rules and eligibility requirements of the scheme or schemes from time to time in force.

9. HEALTH, LIFE AND MEDICAL INSURANCE

9.1 The Executive shall during his employment be entitled to participate in the Company's:

- (A) permanent health insurance scheme; and
- (B) arrangements for private medical treatment or medical health insurance including spouse or partner or anyone living as such and dependent children under the age of 21 years; and
- (C) life assurance

(together "**Insurance Schemes**") operated from time to time by or for the Company for the benefit of employees of the Company or any Group Company of equivalent status to the Executive, subject to any applicable rules and conditions of the Insurance Schemes. To the extent that there is any disparity between the rules and conditions of the relevant Insurance Scheme and the terms of this Agreement the relevant scheme rules and conditions shall take precedence. The Company shall not have any liability to pay any benefit to the Executive (or any family member) under any Insurance Scheme unless it receives payment of the benefit from the insurer under the scheme and shall not be responsible for providing the Executive (or any family member) with any benefit under an Insurance Scheme in the event that the relevant insurer refuses for whatever reason to pay or provide or to continue to pay or provide that benefit to the Executive (or family member).

9.2 Any Insurance Scheme which is provided for the Executive is also subject to the Company's right to alter the cover provided or any term of that scheme or to cease to provide (without replacement) the scheme at any time if in the opinion of the Board (after the Executive has been examined by a medical practitioner nominated by the insurers or by the Company) the state of health of the Executive is or becomes such that the Company is unable to insure the benefits under the scheme at the normal premiums applicable to a person of the Executive's age.

9.3 No contracting out certificate is in force in relation to this employment.

10. ILLNESS

10.1 In the event of illness or other incapacity beyond his control as a result of which he is unable to perform his duties the Executive shall remain entitled to receive his salary in full for any continuous period of 3 months or an aggregate period of 90 days' absence in any consecutive twelve month period subject to:

- (A) compliance with the Company's procedures relating to sickness notification, statutory sick pay and self-certification to cover absence from work due to sickness or other incapacity and to the provision of medical certificates and/or (at the Company's discretion) undergoing a medical examination by a doctor appointed by the Company. The Executive shall

co-operate in ensuring the prompt delivery of such report to the Company and authorise his own medical practitioner to supply all such information as may be required by that doctor and, if so requested by the Company, authorise his medical practitioner to disclose to the Company his opinion of the Executive's state of health;

- (B) a deduction (at the Company's discretion) from his salary of an amount or amounts equal to any statutory sick pay or social security benefits to which the Executive is entitled; and
- (C) a deduction (at the Company's discretion) from his salary of an amount or amounts equal to any payment made to the Executive under any health insurance arrangements effected from time to time by the Company and/or any Group Company on his behalf.

11. HOLIDAYS

- 11.1 The Executive shall be entitled to 25 working days' holiday (in addition to the normal United Kingdom public holidays) in each calendar year commencing on 1 January in each year (which shall accrue on a monthly basis). Holidays shall be taken at such times as are reasonable and convenient having regard to the requirements of the Company's business.
- 11.2 If at the end of the calendar year the Executive has accrued holiday entitlement which he has not taken he shall be entitled to carry forward an absolute maximum of up to 10 days into the following calendar year.
- 11.3 The Company reserves the right, at its absolute discretion, to require the Executive to take any outstanding holiday during any notice period.
- 11.4 On termination of the Executive's employment (howsoever occasioned), if the Executive has taken more or less than his annual holiday entitlement an appropriate adjustment shall be made to any payment of salary or benefits from the Company to the Executive. In this event the calculation shall be made on the basis that each day of holiday is worth 1/260 of his basic salary as set out in clause 5.1.

12. OTHER BUSINESS INTERESTS

- 12.1 The Executive shall not during the continuance of his employment (whether during or outside working hours) without the prior consent in writing of the Board, be directly or indirectly engaged, concerned or interested in any business, profession or occupation other than the Company or any Group Company in accordance with the terms of this Agreement provided that nothing in this clause 12 shall prohibit the Executive from being the holder of not more than three per cent. of any class of stock, shares or debentures or other securities in any company which is listed, dealt in and/or admitted for trading on any stock exchange, recognised investment exchange or automated quotation system ('Exchange'); or

12.2 The Executive shall not during the continuance of his employment (except with the prior written consent of the Board) introduce to any other person, firm or company business of any kind which could appropriately be dealt with by the Company or any Group Company, nor shall he have any financial interest in or derive any financial benefit from any contracts made by the Company or any Group Company with any third party.

13. CONFIDENTIAL AND BUSINESS INFORMATION

13.1 In addition to and without prejudice to the Executive's common law obligations to keep information secret, the Executive shall not (except for the purpose of performing his duties hereunder or unless ordered to do so by a court of competent jurisdiction) either during his employment or after its termination directly or indirectly use, disclose or communicate Confidential and Business Information and he shall use his best endeavours to prevent the improper use, disclosure or communication of Confidential and Business Information:

- (A) concerning the business of the Company or any Group Company and which comes to the Executive's attention during the course of or in connection with his employment or provision of services to the Company or any Group Company from any source within the Company or any Group Company; or
- (B) concerning the business of any person having dealings with the Company or any Group Company and which is obtained in circumstances in which the Company or any Group Company is subject to a duty of confidentiality in relation to that information.

13.2 For the purposes of clause 13.1, Confidential and Business Information means:

- (A) any information of a confidential nature (whether trade secrets, other private or secret information including secrets and information relating to corporate strategy, business development plans, product designs, intellectual property, business contacts, terms of business with customers and potential customers and/or suppliers, annual budgets, management accounts and other financial information); and/or
- (B) any confidential report or research undertaken by or for the Company or any Group Company before or during the course of the Executive's employment; and/or
- (C) lists or compilations of the names and contact details of the individuals or clients and counterparts with whom the Company or any Group Company transacts business; and/or

- (D) the previous 18 months' financial results of any individual part of the business of the Company or any Group Company; and/or
 - (E) details of all computer systems and/or data processing or analysis software developed by the Company or any Group Company; and/or
 - (F) details of the requirements, financial standing, terms of business and dealings with any Company or Group Company of any client of the Company or any Group Company; and/or
 - (G) contact details of all employees and directors of the Company or any Group Company together with details of their remuneration and benefits; and/or
 - (H) information so designated by the Company or any Group Company or which to the Executive's knowledge has been supplied to the Company or any Group Company subject to any obligation of confidentiality.
- 13.3 The restrictions contained in this clause 13 shall cease to apply with respect to any information which would otherwise have been Confidential and Business Information but which comes into the public domain otherwise than through an unauthorised disclosure by the Executive or a third party.
- 13.4 Notwithstanding the obligations and restrictions contained in this clause 13, nothing in this Agreement shall operate to prevent the Executive making a "protected disclosure" pursuant to the Part IVA of the Employment Rights Act 1996.
- 13.5 The obligations of the Executive under this clause 13 shall continue to apply after the termination of the Executive's employment (howsoever terminated).

14. DATA PROTECTION

14.1 The Executive hereby acknowledges that:

- (A) the Company will collect and process information about the Executive, such as the Executive's name and contact details as well as more sensitive information, for various purposes in connection with the Executive's employment, including to manage benefits and payments, to manage expenses, to manage recruitment and on-boarding, to manage absences, for security purposes, to handle claims and disciplinary actions, to monitor performance and use of the IT systems, to conduct certain background checks and to comply with the Company's legal obligations;
- (B) the Company will collect from the Executive and store personal data about the Executive's next of kin, such as their name and contact details, for use in emergency situations, and the Executive agrees that the Executive has informed such individuals that their details have been provided to the Company;

- (C) the Company may pass the Executive's information to third parties such as the Executive's previous employers, companies for which the Executive provided services, public authorities, law enforcement agencies, fraud prevention agencies and regulators who use it in connection with the purposes set out above. The Company may also pass the Executive's information to third party agents who handle it on behalf of the Company; and
 - (D) depending on the circumstances, the Company's use of personal data may involve a transfer of data outside the UK and the European Economic Area.
- 14.2 The Company's Privacy Notice gives more details of the personal information about the Executive and the Executive's next of kin that the Company collects and processes. The Executive confirms that the Executive has read the notice. The Privacy Notice does not form part of the terms and conditions of the Employment, and the Company reserves the right to amend it from time to time and to update the uses of personal data listed above and in the Privacy Notice.
- 14.3 The Executive shall comply with Company and Group Company policies relating to data privacy when handling personal data in the course of the employment, including personal data relating to any employee, customer, client, supplier or agent of the Company. The Executive will also comply with the Company and Group Company policies from time to time in place relating to IT and communications systems, use of social media and other policies as included from time to time.
- 14.4 Failure to comply with Company and Group Company policies relating to data privacy or any of the policies listed above in clause 14.3 may be dealt with under the Company's disciplinary procedure and, in serious cases, may be treated as gross misconduct leading to summary dismissal.

15. NON COMPETITION

- 15.1 For the purposes of this clause the following expressions shall have the following meanings:
- (A) **"Relevant Employee"** means any senior employee or consultant to the Company or any Group Company who has significant client contacts and with whom the Executive has had significant contact during the course of his employment hereunder;

- (B) **“Relevant Customer”** means a person, firm or company who during the period of twelve months immediately preceding the Termination Date conducted a business relationship (including, without limitation, the provision of services and the negotiation for the same) with the Company or any Group Company and with whom the Executive had significant contact as an employee of the Company;
- (C) **“Relevant Business”** means any business or part thereof howsoever carried on involving the supply of Restricted Goods and/or Services;
- (D) **“Relevant Supplier”** means any person firm or company who is or was at any time during the twelve months preceding the Termination Date a supplier or procurer of goods and/or services to the Company or any Group Company as part of the trading activities within a Relevant Business;
- (E) **“Restricted Goods and/or Services”** means any goods and/or services with the provision and/or supply of which the Executive was materially concerned on behalf of the Company and/or any Group Company during the period of twelve months immediately prior to the Termination Date.

15.2 In order to safeguard the legitimate business interests of the Company and any Group Company and particularly the goodwill of the Company and any Group Company in connection with its clients, suppliers and employees the Executive hereby undertakes with the Company (for itself and as trustee for each Group Company) that, and so that each undertaking below shall constitute an entirely separate, severable and independent obligation of the Executive, he will not (except with the prior written consent of the Company) directly or indirectly:

- (A) during his employment or for a period of 6 months after the Termination Date entice or solicit or endeavour to entice or solicit away from the Company or any Group Company any Relevant Employee;
- (B) during his employment or for a period of 6 months after the Termination Date employ or otherwise engage any Relevant Employee;
- (C) during his employment or for a period of 3 months after the Termination Date in competition with the Company or any Group Company endeavour to supply or solicit the custom of any Relevant Client in respect of Restricted Goods and/or Services;
- (D) during his employment or for a period of 3 months after the Termination Date in competition with the Company or any Group Company supply Restricted Goods and/or Services to any Relevant Customer;

- (E) during his employment or for a period of 3 months after the Termination Date carry on or be concerned in any Relevant Business in competition with the business of the Company or any Group Company;
- (F) during his employment or for a period of 6 months after the Termination Date to the detriment of the Company or any Group Company, persuade or endeavour to persuade any Relevant Supplier to cease doing business or materially reduce its business with the Company or any Group Company.

For the avoidance of doubt, and notwithstanding the foregoing, the periods following the Termination Date during which the restrictions above are expressed to apply shall commence on: (i) the date that any payment in lieu of notice is made under clause 3.3, or (ii) the date that any valid notice is served by the Executive to terminate his employment in the event of a Change in Control Transaction under clause 16 or (iii) the date of summary termination under clause 17.

15.3 For the purposes of clause 15.2 (E) the Executive is concerned in a business if (without limitation):-

- (A) he carries it on as principal or agent; or
- (B) he is a partner, director, employee, secondee, consultant, investor, shareholder or agent in, of or to any person who carries on the business;

disregarding only during the 3 month period after the Termination Date any financial interest of a person in securities which are listed, dealt in and/or admitted for trading on any Relevant Stock Exchange, if that person, the Executive and any person connected with him are interested in securities which amount to less than three per cent. of the issued securities of that class and which, in all circumstances, carry less than three per cent. of the voting rights (if any) attaching to the issued securities of that class.

- 15.4 The Executive shall not (except with the prior written consent of the Company) at any time after the termination of his employment represent himself to be connected with or interested in the business of or employed by the Company or any Group Company or use for any purpose the name of the Company or any Group Company or any name capable of confusion therewith.
- 15.5 The Executive shall not during his employment whether during or outside office hours undertake any steps of any kind to promote or establish (or assist therein) any business which in the reasonable opinion of the Company is or is intended to be or may become in competition with any business operated by the Company or any Group Company.
- 15.6 The Executive shall not at any time (whether during or after the termination of his employment) make whether directly or indirectly any untrue, misleading or derogatory oral or written statement concerning the business, affairs, officers or employees of the Company or any Group Company.

- 15.7 The Executive agrees to enter into the restrictions in this clause 15 in consideration for the Company agreeing to employ him on the terms contained in this Agreement.
- 15.8 While the restrictions in this clause 15 are considered by the Executive and the Company to be reasonable in all the circumstances, it is recognised that such restrictions may fail for reasons unforeseen and, accordingly, it is hereby declared and agreed that if any of the restrictions shall be adjudged to be void as going beyond what is reasonable in all the circumstances for the protection of the interests of the Company but that they would be valid if part of the wording thereof were deleted and/or if the periods (if any) specified therein were reduced and/or the areas dealt with thereby reduced in scope, the said restrictions shall apply with such modifications as may be necessary to make them valid and effective.

16. CHANGE IN CONTROL AND MATERIAL TRANSACTIONS

16.1 Following a Change in Control Transaction, if:

- (A) circumstances amounting to Good Reason come into existence within a period of 2 years from the date of completion of the Change of Control Transaction and the Executive serves written notice on the Company terminating his employment for that Good Reason within 90 days of that Good Reason coming into existence (and in these circumstances the Executive shall be entitled to terminate his employment on 14 days' notice); or
- (B) the Executive's employment is terminated by the Company or notice of termination of employment is served by the Company, in each case within 6 months of the completion of a Change in Control Transaction (save where the Company terminates the Executive's employment pursuant to clause 17.1 or for genuine and material poor-performance or misconduct reasons), the Executive will (subject to clauses 16.3, 16.4 and 16.5), be entitled to receive within 7 days of the Termination Date a severance payment of an amount equal to 12 months' salary and the cost to the Company of the provision of contractual benefits to the Executive for 12 months, bonus in respect of the bonus year completed immediately prior to the bonus year in which the Termination Date falls, calculated on the basis of the Executive's maximum annual bonus percentage unless a lower percentage has already been determined by the Company (less any bonus actually received in respect of that previous bonus year, and this payment will replace any outstanding entitlement to bonus in respect of that previous bonus year), a pro-rated bonus (reflecting the portion of the bonus year that has elapsed as at the Termination Date) in respect of the bonus year which is current at the Termination Date calculated on the basis of the Executive's maximum annual bonus percentage (and this payment will replace any further entitlement to bonus that the Executive may have under clause 7), less any payments on account of the annual bonus, and a

further bonus payment calculated on the basis of the Executive's maximum annual bonus percentage for a full bonus year (without reduction), and the Company shall use reasonable endeavours to procure that (i) the Executive receives the full benefit of any awards under the Stock Incentive Plan (including, without limitation, any acceleration of vesting or extension of the post-termination exercise term of the Executive's awards as provided for in the applicable award agreement) and (ii) he is treated as being a "Good Leaver" (as defined in the relevant scheme(s) and subject always to the rules and provisions of such scheme(s)) for the purposes of any other applicable bonus or incentive scheme (besides the Stock Incentive Plan) which is operated by the Company or any Group Company from time to time and in which the Executive is participating as at the Termination Date.

16.2 Following a Material Transaction which is completed on or before **1 June 2019**, if:

- (A) circumstances amounting to Good Reason come into existence within a period of 2 years from the date of completion of the Material Transaction and the Executive serves written notice on the Company terminating his employment for that Good Reason within 90 days of that Good Reason coming into existence (and in these circumstances the Executive shall be entitled to terminate his employment on 14 days' notice); or
- (B) the Executive's employment is terminated by the Company or notice of termination of employment is served by the Company, in each case within 6 months of the completion of a Material Transaction (save where the Company terminates the Executive's employment pursuant to clause 17.1 or for genuine and material poor performance or misconduct reasons),

the Executive will (subject to clauses 16.3, 16.4 and 16.5) be entitled to receive within 7 days of the Termination Date a severance payment of an amount equal to 12 months' salary and the cost to the Company of the provision of contractual benefits to the Executive for 12 months, bonus in respect of the bonus year completed immediately prior to the bonus year in which the Termination Date falls, calculated on the basis of the Executive's maximum annual bonus percentage unless a lower percentage has already been determined by the Company (less any bonus actually received by the Executive in respect of that previous bonus year, and this payment will replace any outstanding bonus entitlement to bonus in respect of that previous bonus year), a pro-rated bonus (reflecting the portion of the bonus year that has elapsed as at the Termination Date) in respect of the bonus year which is current at the Termination Date calculated on the basis of the Executive's maximum bonus percentage (and this payment will replace any further entitlement to bonus that the Executive may have under clause 7), less any payments on account of the annual bonus, and a further bonus payment calculated on the basis of the Executive's maximum annual bonus for a full bonus year (without reduction), and the Company shall use reasonable endeavours to procure that (i) the Executive receives the full benefit of any awards under the Stock Incentive

Plan (including, without limitation, any acceleration of vesting or extension of the post-termination exercise term of the Executive's awards as provided for in the applicable award agreement) and (ii) he is treated as being a "Good Leaver" (as defined in the relevant scheme(s) and subject always to the rules and provisions of such scheme(s)) for the purposes of any other applicable bonus or incentive scheme (besides the Stock Incentive Plan) which is operated by the Company or any Group Company from time to time and in which the Executive is participating as at the Termination Date.

- 16.3 Any severance payment payable under clause 16.1 and 16.2 shall be in addition to any salary paid to the Executive during any part of his contractual notice period which he is required to work or during which he is placed on garden leave and any cost to the Company of the provision of contractual benefits provided to the Executive during that period, but shall be reduced by an amount equal to any payment in lieu of notice made to the Executive pursuant to clause 3.3.
- 16.4 The Company's obligations under clauses 16.1 and 16.2 are subject to and conditional on:
- (A) the Executive entering into, and complying with the terms of, a statutory settlement agreement with the Company in a form satisfactory to the Company acting reasonably pursuant to which the Executive will waive all claims that he may have against the Company or any Group Company arising from his employment or its termination and any directorships or other offices and their termination; and
 - (B) the Executive's compliance with his material obligations under this Agreement (including, but not limited to, his obligations under clauses 13 (CONFIDENTIAL AND BUSINESS INFORMATION) and 15 (NON COMPETITION)). In the event that the Executive commits any breach of such material obligations, the Company shall be released from its obligations under clauses 16.1 and 16.2, and in the event that the Executive commits any such breach following receipt of any payment pursuant to clause 16.1 or 16.2, or the Company becomes aware of any such breach following the Executive having received a payment under clause 16.1 or 16.2, an amount equal to the net payment made under clause 16.1 or 16.2 (plus any tax deducted from such payment that the Executive is able to recover from HMRC) shall be immediately repayable by the Executive to the Company as a debt.
- 16.5 For the avoidance of doubt, if the Executive has received or is entitled to receive any payment pursuant to clause 16.1 under no circumstances shall he have any entitlement to any payment under clause 16.2, and vice versa. Any amount payable under clause 16.1 or 16.2 shall be subject to deductions for income tax and National Insurance Contributions as appropriate.

17. SUMMARY TERMINATION

17.1 The employment of the Executive may be terminated by the Company without notice or payment in lieu of notice if:

- (A) the Executive is guilty of misconduct or commits any serious breach or non-observance (and in the case of any misconduct, serious breach or non-observance which is capable of being remedied by the Executive, having been given notice in writing and having failed to remedy the same within 7 days of such notice having been served) of any of the provisions of this Agreement or of his obligations to the Company or any Group Company (whether under this Agreement or otherwise) or any lawful acts or directions of the Board or relevant rules and/or codes issued by or on behalf of any Relevant Stock Exchange or (having been given notice in writing and having failed to remedy the same within 7 days of such notice having been served) is guilty of any continued or successive breaches or non-observance of any of such provisions, obligations, acts or directions, rules and/or codes in spite of written warning to the contrary by the Board;
- (B) the Executive is in the reasonable opinion of the Board negligent or incompetent in the performance of his duties;
- (C) the Executive is adjudged bankrupt or enters into any composition or arrangement with or for the benefit of his creditors including a voluntary arrangement under the Insolvency Act of 1986;
- (D) the Executive is guilty of any fraud or dishonesty or acts in any manner which in the reasonable opinion of the Board brings or is likely to bring the Company or any Group Company into disrepute or is materially adverse to the interests of the Company or any Group Company;
- (E) the Executive performs any act or omission which in the reasonable opinion of the Board may seriously damage the interests of the Company or any Group Company or willfully or negligently breaches any legislation or any regulation to which the Company or Group Company may be subject which may result in any penalties being imposed on him or any Directors of the Company or Group Company.
- (F) the Executive becomes prohibited by law or is disqualified from being a director or officer of a company;
- (G) the Executive is convicted of any criminal offence by a court of competent jurisdiction (other than a minor offence for which a fine or other non-custodial penalty is imposed);

- (H) the Executive commits any act of deliberate discrimination or harassment on grounds of race, sex, disability, sexual orientation, religion or belief or age;
- (I) the Executive becomes of unsound mind or a patient for the purpose of any statute relating to mental health;
- (J) the Executive is convicted of an offence under the Criminal Justice Act 1993 (or the Financial Services Authority becomes entitled to impose a penalty on the Executive pursuant to section 123 of the Financial Services and Markets Act 2000) or the Executive is otherwise convicted or found liable under any other present or future statutory enactment or regulation relating to insider dealing and/or market abuse;
- (K) the Executive resigns as a director or officer of the Company other than at the request of the Company;
- (L) the Client requires the Company to cause the Executive to cease providing services to it pursuant to clause 3.4 of the Services Memorandum; or
- (M) the Executive commits any other act warranting summary termination at common law including (but not limited to) any act justifying dismissal without notice in the terms of the Company's generally-applicable Disciplinary Rules in place from time to time.

17.2 Clause not used.

17.3 The termination of the Executive's employment hereunder for whatsoever reason shall not affect those terms of this Agreement which are expressed to have effect after such termination and shall be without prejudice to any accrued rights or remedies of the parties.

17.4 On the termination of the Executive's employment either summarily or otherwise, or at any other time in accordance with instructions given to him by the Board, the Executive will immediately return to the Company all equipment, correspondence, records, specifications, software, models, notes, reports and other documents and any copies thereof and any other property belonging to the Company or any Group Company (including but not limited to credit cards, keys and passes) which are in the Executive's possession or under his control.

17.5 On the termination of the Executive's employment either summarily or otherwise, or at any other time in accordance with instructions given to him by the Board, the Executive will immediately irretrievably delete any information relating to the business of the Company or any Group Company stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Company or any Group Company.

17.6 Upon the request of the Board, the Executive will provide a signed written statement that he has fully complied with his obligations under clauses 17.4 and/or 17.5 and the Company may withhold any sums owing to the Executive on the Termination Date until the obligations in clause 17.4 and/or 17.5 have been complied with.

18. INVENTIONS AND IMPROVEMENTS

18.1 For the purposes of this clause 18 the following words and expressions shall have the following meanings:

“Intellectual Property Rights” means (i) copyright, patents, know-how, confidential information, database rights, and rights in trade marks and designs (whether registered or unregistered), (ii) applications for registration, and the right to apply for registration, for any of the same, and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

“Invention” means any method, idea, concept, experimental work, theme, invention, discovery, process, model, formula, prototype, sketch, drawing, plan, composition, design, configuration, improvement or modification of any kind conceived, developed, discovered, devised or produced by the Executive alone or with one or more others during his employment and which pertains to or is actually or potentially useful to the activities from time to time of the Company (or any Group Company) or any product or service of the Company (or any Group Company) or which pertains to, results from or is suggested by any work which the Executive or any other employee of the Company (or any Group Company) has done or may hereafter during his employment do for the Company (or any Group Company).

18.2 The Executive shall promptly disclose and deliver to the Company in confidence full details of each Invention (whether or not it was made, devised or discovered during normal working hours or using the facilities of the Company, and whether or not the Executive considers that by virtue of section 39 Patents Act 1977 rights to such Invention fail to vest in the Company) to enable the Company to determine whether rights to such Invention vest in the Company, upon the making, devising or discovering of the same and shall at the expense of the Company give all such explanations, demonstrations and instructions as the Company may deem appropriate to enable the full and effectual working, production and use of the same. To the extent that by virtue of section 39 Patents Act 1977 rights to such Invention vest in the Executive the Company shall return to the Executive any documentation provided by the Executive pursuant to this clause 18 and the Company shall keep such details confidential unless or until such time as such details are in or enter the public domain, other than by a breach of this Agreement.

- 18.3 The Executive hereby assigns (in so far as title has not automatically vested in the Company through the Executive's employment) to the Company with full title guarantee by way of future assignment all copyright, database right, design right and other similar rights for the full terms (including any extension or renewals thereof) thereof throughout the world in respect of all works, designs or materials (including, without limitation, source code and object code for software) originated, conceived, written or made by the Executive during the period of his employment (except only those works or designs originated, conceived, written or made by the Executive wholly outside his normal working hours which are wholly unconnected with any business activity undertaken or planned to be undertaken by the Company or any Group Company) to hold unto the Company absolutely. The aforementioned assignment shall include the right to sue for damages and/or other remedies in respect of any infringement (including prior to the date hereof).
- 18.4 The Executive hereby irrevocably and unconditionally waives in favour of the Company any and all moral rights conferred on him by Chapter IV of Part I of the Copyright Designs and Patents Act 1988 for any work in which copyright or design right is vested in the Company whether by this clause 18 or otherwise.
- 18.5 The Executive shall, without additional payment to him (except to the extent provided in section 40 Patents Act 1977, or any similar provision of applicable law) at the request and expense of the Company and whether or not during the continuance of his employment, promptly execute all documents and do all acts, matters and things as may be necessary or desirable to enable the Company or its nominee to obtain, maintain, protect and enforce any Intellectual Property Right vested in the Company (save only to the extent that any Intellectual Property Rights fail to vest in the Company by virtue of section 39 Patents Act 1977) in any or all countries relating to the Intellectual Property Right and to enable the Company to exploit any Intellectual Property Right vested in the Company.
- 18.6 The Executive shall not do anything (whether by omission or commission) during his employment or at any time thereafter to affect or imperil the validity of any Intellectual Property Right obtained, applied for or to be applied for by the Company or its nominee, and in particular the Executive shall not disclose or make use of any Invention which is the property of the Company without the prior written consent of the Company. The Executive shall during or after the termination of his employment with the Company, at the request and expense of the Company, provide all reasonable assistance in obtaining, maintaining and enforcing the Intellectual Property Right or in relation to any proceeding relating to the Company's right, title or interest in any Intellectual Property Right.
- 18.7 Without prejudice to the generality of the above clauses, the Executive hereby irrevocably authorises the Company to appoint a person to be his attorney in his name and on his behalf to execute any documents and do any acts, matters or things as may be necessary for or incidental to grant the Company the full benefit of the provisions of this clause 18.
- 18.8 The obligations of the Executive under this clause 18 shall continue to apply after the termination of his employment (howsoever terminated).

- 18.9 For the avoidance of doubt, nothing in this Agreement shall oblige the Company (or any other Group Company) to seek protection for or exploit any Intellectual Property Right.

19. RESIGNATION OF OFFICES

The Executive shall immediately upon the earlier of termination of his employment or notice of termination being served by either party in accordance with this Agreement give written notice resigning forthwith as a director or trustee or from any other office he may hold from time to time with the Company and/or any Group Company or arising from his engagement by the Company and/or any Group Company without any further compensation.

20. GRIEVANCE AND DISCIPLINARY PROCEDURES

- 20.1 In the event of the Executive wishing to seek redress of any grievance relating to his employment he should lay his grievance before the Board or the board of directors of the parent company of any group of which the Company is a member from time to time (in this Clause 20, "Ultimate Board") in writing, who will afford the Executive the opportunity of a full hearing before the board or a committee of the board or the Ultimate Board (as appropriate) whose decision on such grievance shall be final and binding.
- 20.2 The Company's usual disciplinary procedures do not apply to the Executive. In the event that any disciplinary action is to be taken against the Executive, any hearing in respect thereof will be conducted by such director of the Company or the parent company of any group of which the Company is a member from time to time as the Board or the Ultimate Board may in its reasonable discretion nominate. If the Executive seeks to appeal against any disciplinary action taken against him he should do so to the Ultimate Board submitting full written grounds for his appeal to the Chairman of the Ultimate Board within 7 days of the action appealed against. The decision of the Ultimate Board or a delegated committee thereof shall be final and binding. For the avoidance of doubt, the Executive has no contractual right to either a disciplinary hearing or appeal.
- 20.3 The Company may in its absolute discretion suspend the Executive from some or all of his duties (and if applicable, from the Board) and/or require him to remain away from work during any investigation conducted into an allegation relating to the Executive's conduct or performance. During such period, the Executive's salary will continue to be paid and he will continue to be entitled to all benefits provided to him, including participating in any relevant bonus or share option schemes subject always to the rules of those schemes.

21. GENERAL

- 21.1 No failure or delay by either party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by either party of any right, power or privilege hereunder preclude any further exercise thereof or the exercise of any other right, power or privilege.

- 21.2 The Executive shall have no claim against the Company or any Group Company in respect of the termination of his employment hereunder in relation to any provision in any articles of association, agreement, scheme, plan or arrangement which has the effect of requiring the Executive to sell, transfer or give up any shares, securities, options or rights at any price or which causes any options or other rights granted to him to become prematurely exercisable or to lapse by reason of his termination or because he has given or received notice of termination
- 21.3 The Executive hereby irrevocably and by way of security appoints the Company and each Group Company now or in the future existing to be his attorney and in his name and on his behalf and as his act and deed to sign, execute and do all acts, things and documents which he is obliged to execute and do under the provisions of this Agreement and in particular, but without limitation, clauses 18 and 19 and the Executive hereby agrees forthwith on the request of the Company to ratify and confirm all such acts, things and documents signed, executed or done in pursuance of this power.
- 21.4 There are no collective agreements which affect the terms and conditions of the employment of the Executive hereunder.
- 21.5 For the avoidance of doubt any payments made to or other benefits provided to the Executive or his family which are not expressly referred to in this Agreement shall be regarded as ex gratia payments or benefits provided at the entire discretion of the Company and do not form part of the Executive's contract of employment.
- 21.6 If any clause or provision in this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such clause or provision shall be severed from the remainder of the Agreement or clause and that remainder shall continue to be valid and enforceable to the fullest extent permitted by law. In that case, the parties shall negotiate in good faith to replace any invalid, unlawful or unenforceable clause or provision with a suitable substitute clause or provision which maintains as far as possible the purpose and effect of this Agreement.
- 21.7 This Agreement may be executed in any number of counterparts, each of which when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument. Delivery of an executed signature page of a counterpart by facsimile transmission or by electronic mail in Adobe TM Portable Document Format (PDF), shall take effect as delivery of an executed counterpart of this Agreement.

- 21.8 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- 21.9 No amendment, modification or waiver of this Agreement or any of its provisions shall be binding upon the parties hereto unless made in writing and duly signed by the parties.
- 21.10 The parties confirm that the variations to this Agreement that became effective from 1 April 2017 pursuant to the Deed of Amendment dated 6 March 2017 shall not, and shall not following a Change in Control Transaction, constitute circumstances amounting to Good Reason.

22. NOTICES

- 22.1 Any notice or communication given or required under this Agreement may be served by personal delivery or by leaving the same at or by sending the same through the post addressed in the case of the Company to its registered office from time to time and in the case of the Executive to his aforesaid address or to the address provided from time to time by the Executive to the Company for the purposes of its employment records or by facsimile transmission.
- 22.2 Any notice sent by post shall be deemed to have been served 24 hours after the time of posting by first class mail and service thereof shall be sufficiently proved by proving that the notice was duly despatched through the post in a pre-paid envelope addressed as aforesaid. In the case of facsimile transmission it shall be deemed to have been received when in the ordinary course of such transmission it would be received by the addressee or if transmitted after 5pm or on a day that is not an ordinary business day on the next business day.

23. EXTENT AND SUBSISTENCE OF AGREEMENT

This Agreement supersedes all other agreements other than those expressly referred to in this Agreement (however including the Deeds of Amendment) whether written or oral between the Company and the Executive relating to the employment of the Executive. The Executive acknowledges and warrants to the Company that he is not entering into this Agreement in reliance upon any representation not expressly set out herein.

24. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim, dispute or matter arising out of or relating to this Agreement.

IN WITNESS whereof a duly authorised representative of the Company has executed this Agreement and the Executive has executed this Agreement as his Deed on the date of this Agreement.

EXECUTED as a **DEED** by the Company

acting by Ian J Webber, a Director
in the presence of:

)
) /s/ Ian J Webber

Witness' signature /s/ Susan Cook
Witness' name Susan Cook
Address 15 Tudor Avenue, Hampton, Middlesex TW12 2ND

Occupation Accountant

SIGNED and **DELIVERED** by
the said Thomas A Lister
as his **DEED** in the presence of:

)
) /s/ Thomas Lister
)

Witness' signature /s/ Susan Cook
Witness' name Susan Cook
Address 15 Tudor Avenue, Hampton, Middlesex TW12 2ND

Occupation Accountant

DATED 16 OCTOBER 2018

Global Ship Lease Services Limited

and

Thomas A. Lister

AMENDED AND RESTATED SERVICE AGREEMENT

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SERVICE AGREEMENT

DATE

October 16 2018

PARTIES

- (1) **GLOBAL SHIP LEASE SERVICES LIMITED** (registered no. 06285694) whose registered office is at 150 Aldersgate Street, London EC1A 4AB, United Kingdom (“the **Company**”); and
- (2) **THOMAS A. LISTER** of 49 Devonshire Road, Chiswick, London, W4 2HU (“the **Executive**”).

WHEREAS The Company has offered to provide services to Global Ship Lease, Inc. a company incorporated and registered in the Republic of the Marshall Islands (the “Client”) under the Services Memorandum.

WHEREAS The Executive has agreed as an employee of the Company to oversee and participate in the provision of the services and, in particular, to act as Chief Financial Officer and Chief Commercial Officer of the Client on the terms of this Agreement.

WHEREAS The Client is party to the Agreement and Plan of Merger, dated as of March 21, 2008, by and among Marathon Acquisition Corp., GSL Holdings, Inc., CMA CGM S.A. and the Client (the “**Merger Agreement**”).

WHEREAS

- (A) The Executive and the Company entered into a service agreement dated 14 August 2008 which was re-executed as a deed on 1 December 2008 and was further amended by Deeds of Amendment dated 20 November 2013 and 6 March 2017 (“the **Deeds of Amendment**”). An Amended and Restated Service Agreement was entered into on 1 June 2018.
- (B) The Executive and the Company have agreed that certain further amendments be made to the Service Agreement by way of this Amended and Restated Service Agreement (“the **Agreement**”) with effect from 1 October 2018.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Agreement the following words and expressions shall have the following meanings:

“**the Board**” means the board of directors of the Company;

“**Change in Control Transaction**” means the consummation, following the date of the Merger, of any of the following transactions:

- a. the acquisition, directly or indirectly, by any individual, partnership, firm, company, association, trust, unincorporated organization or other entity (a "Person"), or any Persons acting as a "group" within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (other than the Client or a person that directly or indirectly controls, is controlled by, or is under common control with, the Client) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities of the Client representing more than 50% of the total combined voting power of the Client's then outstanding securities entitled to vote in the election of the directors of the Client (the "**Voting Shares**");
- b. the Client disposing of all or substantially all of its assets;
- c. 10% or more of the value of the assets of the Client, or the Voting Shares of the Client are about to be transferred, or have been transferred, because of any taking, seizure, or defeasance as a result of, or in connection with (i) nationalization, expropriation, confiscation, coercion, force or duress, or other similar action under the laws of the Republic of the Marshall Islands, or (ii) the imposition by the Republic of the Marshall Islands of a confiscatory tax, assessment, or other governmental charge or levy;
- d. the merger of the Client with or into another corporation in which securities possessing more than 50% of the total combined voting power of the Client are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction; or
- e. the Client Board by resolution duly adopted by the affirmative vote of a simple majority of the votes cast by the Client Board determines that for the purposes of this Agreement, a Change in Control Transaction has occurred; or
- f. there is a change in boardroom control of the Client. A change in boardroom control for the purpose of this clause shall mean a change in the directors of the board of the Client such that the majority of directors of the Client Board following such change are directors who were not directors at 20 November 2013.

A transaction shall not constitute a Change in Control Transaction if its sole purpose is to change the state of the Client's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Client's securities immediately before such transactions.

"Client" means Global Ship Lease, Inc.

"Client Board" means the board of directors of the Client as from time to time constituted or any duly appointed committee of the Client Board.

“Completion of the Transition” means, provided that the Poseidon Merger is completed, the date of the substantive completion of the transfer of the accounting, finance and other administrative services performed as of the date of this Agreement by the Company’s employees at the principal administrative office in London to a new jurisdiction with such date being determined, inter alia, by the earliest date on which (i) the employment of the last but one of the five employees, as of the date of this Deed, within the finance department in London terminates or, (ii) the Client’s last quarterly earnings release which contains financial information prepared in London is issued or, (iii) the last monthly management accounts are prepared in London or, (iv) the early termination of the lease of the offices at Portland House, Stag Place, London SW1E 5RS or otherwise a date determined by the Board or the Client Board, acting reasonably, such date to be confirmed in writing by the Company to the Executive.

“Good Reason” means the assignment to the Executive by the Company (including an assignment requested to be made by the Client pursuant to the Services Memorandum) of any duties or responsibilities inconsistent with (i) the Executive’s position, (ii) his actual responsibilities or (iii) the actual content and/or status and/or size of the role (all as at the date of this Agreement), including but not limited to, any change in title the effect of which results in the Executive having a lesser status than Chief Financial Officer and Chief Commercial Officer, a reduction in the Executive’s base salary or any change in location of the Company’s principal administrative office or the Executive’s normal place of work to be outside of England, Wales or Scotland.

“Group Company” means the Client, any company of which it is a subsidiary (its holding company) and any other subsidiaries of the Client or such holding company, other than the Company (as such expressions are defined in sections 258, 259 and 736 Companies Act 1985, an enactment of the United Kingdoms of England and Wales).

“Material Transaction” means any merger or acquisition (which is not a Change of Control Transaction) which is determined by the Board acting reasonably and in good faith to be a material merger or acquisition having a material impact on the ownership structure of the Group (meaning the Company and the Group Companies);

“Merger” means the consummation of the merger contemplated under the Merger Agreement.

“Poseidon Merger” means the mergers contemplated by an Agreement and Plan of Merger, anticipated to be completed by the end of 2018, among Poseidon Containers Holdings LLC, K&T Marine LLC, Global Ship Lease, Inc. and the other parties named therein which, if it completes, will constitute a Change in Control Transaction for the purposes of this Agreement.

“**Relevant Stock Exchange**” means the New York Stock Exchange and/or any other stock exchange, recognised investment exchange or automated quotation system on which any Group Company or any of their securities, as applicable, is listed, dealt in or admitted for trading;

“**Services Memorandum**” means the Memorandum of Agreement for Intra-group Management Services between the Company and the Client.

“**Stock Incentive Plan**” means the Stock Incentive Plan of the Client.

“**Subsidiary Company**” means any Group Company other than the Client.

“**Termination Date**” means the date of the termination of the employment of the Executive hereunder, howsoever caused.

1.2 In this Agreement (unless the context otherwise requires):

- (A) any reference to any statute or statutory provision shall be construed as including a reference to any modification, re-enactment or extension of such statute or statutory provision for the time being in force or to any subordinate legislation made under the same;
- (B) any reference to a clause is to a clause of this Agreement;
- (C) the expression “**directly or indirectly**” means (without prejudice to the generality of the expression) either alone or jointly with or on behalf of any other person, firm or body corporate and whether on his own account or in partnership with another or others or as the holder of any interest in or as officer, employee or agent of or consultant to any other person, firm or body corporate.

1.3 The headings contained in this Agreement are for convenience only and do not form part of and shall not affect the construction of this Agreement or any part of it.

2. APPOINTMENT

- 2.1 The Company hereby appoints the Executive and the Executive agrees to serve the Company as director and Chief Financial Officer and Chief Commercial Officer. Under the terms of the Services Memorandum the Company has agreed to provide Chief Financial Officer and Chief Commercial Officer services to the Client and the Executive has agreed to serve the Company in that capacity.
- 2.2 The Executive warrants that by virtue of entering into this Agreement he will not be in breach of any express or implied terms of any contract with or of any other obligation to any third party which are binding upon him.

3. TERM AND NOTICE

- 3.1 The terms of this Agreement and the provision of services to the Company during the course of the Executive's employment by the Company shall commence on the date of the initial closing of the Merger and, subject to the provisions of clause 17, continue thereafter unless and until terminated by:
- (A) subject to clause 16.1(C)(ii), the Company giving to the Executive not less than 9 months' written notice; or
 - (B) subject to clauses 16.1(A), 16.1 (C)(ii) and 16.2(A), the Executive giving to the Company not less than 6 months' written notice.
- 3.2 For the purposes of the Employment Rights Act 1996, the Executive's period of continuous employment with the Company commenced on 23 January 2008.
- 3.3 The Company reserves the right at any time, in its absolute discretion, to terminate the Executive's employment by paying to the Executive a sum equal to his salary and contractual benefits for the relevant period of notice, such sum to be subject to deductions for income tax and National Insurance Contributions as appropriate.

4. DUTIES

- 4.1 The Executive shall during the continuance of his employment:
- (A) exercise such powers and perform such duties in relation to the business of the Company or of any Subsidiary Company as may from time to time be vested in or assigned to him by the Board;
 - (B) well and faithfully serve the Company and any relevant Subsidiary Companies and the Client to the best of his ability and carry out his duties with all due care, skill and ability, and use his best endeavours to promote and maintain their interests and reputation;
 - (C) if so requested by the Board, remain or become a director of the Company and remain in such capacity without any additional remuneration; and
 - (D) if so requested by the Board, exercise such powers and perform such duties in relation to the business of the Client as shall be exercisable, or required to be performed, by the Company under the terms of the Services Memorandum.
- 4.2 The Executive will serve the Company and any Subsidiary Company in such capacity as the Board shall determine from time to time. In performance of his duties the Executive shall:

- (A) work normal office hours of 9 am to 5 pm together with such additional hours as are necessary for the proper performance of his duties and the parties acknowledge for the purposes of the Working Time Regulations 1998 that the Executive is a managing executive with autonomous decision making powers;
 - (B) perform his duties in London, England or at such other location within England, Wales or Scotland as the position of the Executive shall reasonably require, whether on a permanent or temporary basis;
 - (C) devote the whole of his working time, skill, ability and attention to the business of the Company and, as required by sub-clause (G) below, the Client;
 - (D) in all respects conform to and comply with lawful directions and regulations given and made by the Board;
 - (E) in all respects conform to and comply with all relevant rules and/or codes issued by or on behalf of any Relevant Stock Exchange;
 - (F) travel to such places (whether inside or outside the United Kingdom) in such manner and on such occasions and for such periods as the position of the Executive may from time to time reasonably require; and
 - (G) unless the Client requires the Company pursuant to the Services Memorandum to cause the Executive to cease to provide services and otherwise for so long as the Board may require, serve the Client as Chief Financial Officer and Chief Commercial Officer pursuant to and subject to the terms of the Services Memorandum and in that capacity the Executive shall in all respects conform to and comply with all and any lawful directions and regulations given and made by the Client Board.
- 4.3 The Executive shall promptly disclose forthwith to the Board any and all information he has or acquires which relates or may relate to the business or any potential business of the Company or any Group Company.
- 4.4 The Executive shall immediately upon the Company's request supply any and all information which the Company or any Group Company may reasonably require in order to be able to comply with any statutory or regulatory provision or stock exchange rule or requirement of any Relevant Stock Exchange.
- 4.5 The Executive shall not undertake or purport to undertake any transactions on behalf of the Client or any Group Company other than in the course of providing services pursuant to and in accordance with the Services Memorandum (or other similar agreement between the Company and any Group Company) and, for the avoidance of doubt, the Executive shall not otherwise, without the prior express written authority of the Board;

(A) incur any expenditure in the name of or for the account of the Client or any Group Company;

(B) hold himself out as having authority to bind the Client or any Group Company.

4.6 The Executive shall comply with the Client's or any Group Company's health and safety procedure from time to time in force.

5. SALARY

5.1 The Company shall pay to the Executive by way of remuneration for his services under this Agreement a basic salary of £230,000 per annum (inclusive of any director's fees payable to him by the Company or any Group Company) which shall accrue from day to day and shall be payable in arrears by equal monthly installments on or about the 1st day of every month (or pro rata where the Executive is only employed during part of a month).

5.2 Such salary shall be reviewed by (with the outcome of such review being at the absolute discretion of) the Board (or if appropriate the remuneration committee thereof) on or about 1 January in each calendar year with the first such review to take place as at 1 January 2019 without commitment to increase.

5.3 The Company shall be entitled to deduct from any sums payable to the Executive (including salary):

(A) all sums from time to time owed by the Executive to the Company or to any Group Company howsoever arising;

(B) all appropriate deductions for income tax, employee national insurance contributions and all other statutory deductions due in respect of his salary and any other benefits provided to him by the Company or any Group Company; and

(C) such sums as the Executive notifies the Company in writing to pay directly into any personal pension scheme of the Executive.

6. EXPENSES

The Company shall reimburse the Executive all reasonable travelling, hotel, entertainment and other out of pocket expenses properly incurred by him in or about the performance of his duties under this Agreement subject to his compliance with the Company's then current guidelines, if any, relating to expenses and to the production, if required, of receipts, vouchers or other supporting documents.

7. BONUS SCHEME

- 7.1 The Executive will be entitled to participate in any contractual bonus scheme or schemes established from time to time by the Company for executives of equivalent status to the Executive, subject always to the rules of those schemes. The Executive may from time to time receive a bonus payment up to an annual maximum of 40% of the Executive's basic salary as set out in clause 5.1 above based on achievement of objectives to be agreed between the Executive and the Company from time to time. The payment and amount of any payment (within the 40% of basic salary threshold) is at the Company's absolute discretion. A payment at any particular time will not create any entitlement to or expectation of any future payment or the amount of any future payment. Save in the case of any accrued bonus under any bonus scheme in which the Executive is participating, the Executive will not be entitled to receive any such bonus payment if, at the date the bonus payment under the bonus scheme would ordinarily be made, he is not employed by the Company or if the Executive has served notice to terminate his employment without Good Reason (as defined above).
- 7.2 The Executive shall also be entitled to receive a special transaction bonus equal to six months' bonus at the maximum percentage such amount to be paid in the payroll immediately following the completion of the Poseidon Merger less usual deductions (the **Transaction Bonus**), provided always that on the date for payment the Executive has not given notice to terminate his employment with the Company (whether on notice or with immediate effect) and the Company has not given notice to terminate the Executive's employment pursuant to clause 17.1 (in which case the Executive shall have no entitlement to the same). This bonus is additional to annual bonus and shall not be taken into account for the purpose of calculating pension contributions or any other salary-linked benefits. If the Poseidon Merger does not complete then the Transaction Bonus shall not be payable.
- 7.3 The Company agrees and confirms that in the event that the Poseidon Merger completes and completion is within 2018, the bonus amount payable to the Executive for the first three quarters of 2018 shall be calculated at the maximum percentage, such amount to be paid in the payroll immediately following the completion of the Poseidon Merger less usual deductions, provided always that on the date for payment the Executive has not given notice to terminate his employment with the Company (whether on notice or with immediate effect) and the Company has not given notice to terminate the Executive's employment pursuant to clause 17.1 (in which case the Executive shall have no entitlement to the same). The bonus amount payable for the final quarter of 2018 would be a matter for determination in 2019 by the then Board of the Company.

8. SHARE SCHEMES

The Executive will be entitled to participate in such share schemes as the Client may operate upon such terms as the Board may from time to time determine and subject always to the rules and eligibility requirements of the scheme or schemes from time to time in force.

9. HEALTH, LIFE AND MEDICAL INSURANCE

9.1 The Executive shall during his employment be entitled to participate in the Company's:

- (A) permanent health insurance scheme; and
- (B) arrangements for private medical treatment or medical health insurance including spouse or partner or anyone living as such and dependent children under the age of 21 years; and
- (C) life assurance

(together "**Insurance Schemes**") operated from time to time by or for the Company for the benefit of employees of the Company or any Group Company of equivalent status to the Executive, subject to any applicable rules and conditions of the Insurance Schemes. To the extent that there is any disparity between the rules and conditions of the relevant Insurance Scheme and the terms of this Agreement the relevant scheme rules and conditions shall take precedence. The Company shall not have any liability to pay any benefit to the Executive (or any family member) under any Insurance Scheme unless it receives payment of the benefit from the insurer under the scheme and shall not be responsible for providing the Executive (or any family member) with any benefit under an Insurance Scheme in the event that the relevant insurer refuses for whatever reason to pay or provide or to continue to pay or provide that benefit to the Executive (or family member).

9.2 Any Insurance Scheme which is provided for the Executive is also subject to the Company's right to alter the cover provided or any term of that scheme or to cease to provide (without replacement) the scheme at any time if in the opinion of the Board (after the Executive has been examined by a medical practitioner nominated by the insurers or by the Company) the state of health of the Executive is or becomes such that the Company is unable to insure the benefits under the scheme at the normal premiums applicable to a person of the Executive's age.

9.3 No contracting out certificate is in force in relation to this employment.

10. ILLNESS

10.1 In the event of illness or other incapacity beyond his control as a result of which he is unable to perform his duties the Executive shall remain entitled to receive his salary in full for any continuous period of 3 months or an aggregate period of 90 days' absence in any consecutive twelve month period subject to:

- (A) compliance with the Company's procedures relating to sickness notification, statutory sick pay and self-certification to cover absence from work due to sickness or other incapacity and to the provision of medical certificates and/or (at the Company's discretion) undergoing a medical examination by a doctor appointed by the Company. The Executive shall co-operate in ensuring the prompt delivery of such report to the Company and authorise his own medical practitioner to supply all such information as may be required by that doctor and, if so requested by the Company, authorise his medical practitioner to disclose to the Company his opinion of the Executive's state of health;
- (B) a deduction (at the Company's discretion) from his salary of an amount or amounts equal to any statutory sick pay or social security benefits to which the Executive is entitled; and
- (C) a deduction (at the Company's discretion) from his salary of an amount or amounts equal to any payment made to the Executive under any health insurance arrangements effected from time to time by the Company and/or any Group Company on his behalf.

11. HOLIDAYS

- 11.1 The Executive shall be entitled to 25 working days' holiday (in addition to the normal United Kingdom public holidays) in each calendar year commencing on 1 January in each year (which shall accrue on a monthly basis). Holidays shall be taken at such times as are reasonable and convenient having regard to the requirements of the Company's business.
- 11.2 If at the end of the calendar year the Executive has accrued holiday entitlement which he has not taken he shall be entitled to carry forward an absolute maximum of up to 10 days into the following calendar year.
- 11.3 The Company reserves the right, at its absolute discretion, to require the Executive to take any outstanding holiday during any notice period.
- 11.4 On termination of the Executive's employment (howsoever occasioned), if the Executive has taken more or less than his annual holiday entitlement an appropriate adjustment shall be made to any payment of salary or benefits from the Company to the Executive. In this event the calculation shall be made on the basis that each day of holiday is worth 1/260 of his basic salary as set out in clause 5.1.

12. OTHER BUSINESS INTERESTS

- 12.1 The Executive shall not during the continuance of his employment (whether during or outside working hours) without the prior consent in writing of the Board, be directly or indirectly engaged, concerned or interested in any business, profession or occupation other than the Company or any Group Company in accordance with the terms of this Agreement provided that nothing in this clause 12 shall prohibit the Executive from being the holder of not more than three per cent. of any class of stock, shares or debentures or other securities in any company which is listed, dealt in and/or admitted for trading on any stock exchange, recognised investment exchange or automated quotation system ('Exchange'); or

12.2 The Executive shall not during the continuance of his employment (except with the prior written consent of the Board) introduce to any other person, firm or company business of any kind which could appropriately be dealt with by the Company or any Group Company, nor shall he have any financial interest in or derive any financial benefit from any contracts made by the Company or any Group Company with any third party.

13. CONFIDENTIAL AND BUSINESS INFORMATION

13.1 In addition to and without prejudice to the Executive's common law obligations to keep information secret, the Executive shall not (except for the purpose of performing his duties hereunder or unless ordered to do so by a court of competent jurisdiction) either during his employment or after its termination directly or indirectly use, disclose or communicate Confidential and Business Information and he shall use his best endeavours to prevent the improper use, disclosure or communication of Confidential and Business Information:

- (A) concerning the business of the Company or any Group Company and which comes to the Executive's attention during the course of or in connection with his employment or provision of services to the Company or any Group Company from any source within the Company or any Group Company; or
- (B) concerning the business of any person having dealings with the Company or any Group Company and which is obtained in circumstances in which the Company or any Group Company is subject to a duty of confidentiality in relation to that information.

13.2 For the purposes of clause 13.1, Confidential and Business Information means:

- (A) any information of a confidential nature (whether trade secrets, other private or secret information including secrets and information relating to corporate strategy, business development plans, product designs, intellectual property, business contacts, terms of business with customers and potential customers and/or suppliers, annual budgets, management accounts and other financial information); and/or
- (B) any confidential report or research undertaken by or for the Company or any Group Company before or during the course of the Executive's employment; and/or

- (C) lists or compilations of the names and contact details of the individuals or clients and counterparts with whom the Company or any Group Company transacts business; and/or
 - (D) the previous 18 months' financial results of any individual part of the business of the Company or any Group Company; and/or
 - (E) details of all computer systems and/or data processing or analysis software developed by the Company or any Group Company; and/or
 - (F) details of the requirements, financial standing, terms of business and dealings with any Company or Group Company of any client of the Company or any Group Company; and/or
 - (G) contact details of all employees and directors of the Company or any Group Company together with details of their remuneration and benefits; and/or
 - (H) information so designated by the Company or any Group Company or which to the Executive's knowledge has been supplied to the Company or any Group Company subject to any obligation of confidentiality.
- 13.3 The restrictions contained in this clause 13 shall cease to apply with respect to any information which would otherwise have been Confidential and Business Information but which comes into the public domain otherwise than through an unauthorised disclosure by the Executive or a third party.
- 13.4 Notwithstanding the obligations and restrictions contained in this clause 13, nothing in this Agreement shall operate to prevent the Executive making a "protected disclosure" pursuant to the Part IVA of the Employment Rights Act 1996.
- 13.5 The obligations of the Executive under this clause 13 shall continue to apply after the termination of the Executive's employment (howsoever terminated).

14. DATA PROTECTION

14.1 The Executive hereby acknowledges that:

- (A) the Company will collect and process information about the Executive, such as the Executive's name and contact details as well as more sensitive information, for various purposes in connection with the Executive's employment, including to manage benefits and payments, to manage expenses, to manage recruitment and on-boarding, to manage absences, for security purposes, to handle claims and disciplinary actions, to monitor performance and use of the IT systems, to conduct certain background checks and to comply with the Company's legal obligations;

- (B) the Company will collect from the Executive and store personal data about the Executive's next of kin, such as their name and contact details, for use in emergency situations, and the Executive agrees that the Executive has informed such individuals that their details have been provided to the Company;
 - (C) the Company may pass the Executive's information to third parties such as the Executive's previous employers, companies for which the Executive provided services, public authorities, law enforcement agencies, fraud prevention agencies and regulators who use it in connection with the purposes set out above. The Company may also pass the Executive's information to third party agents who handle it on behalf of the Company; and
 - (D) depending on the circumstances, the Company's use of personal data may involve a transfer of data outside the UK and the European Economic Area.
- 14.2 The Company's Privacy Notice gives more details of the personal information about the Executive and the Executive's next of kin that the Company collects and processes. The Executive confirms that the Executive has read the notice. The Privacy Notice does not form part of the terms and conditions of the Employment, and the Company reserves the right to amend it from time to time and to update the uses of personal data listed above and in the Privacy Notice.
- 14.3 The Executive shall comply with Company and Group Company policies relating to data privacy when handling personal data in the course of the employment, including personal data relating to any employee, customer, client, supplier or agent of the Company. The Executive will also comply with the Company and Group Company policies from time to time in place relating to IT and communications systems, use of social media and other policies as included from time to time.
- 14.4 Failure to comply with Company and Group Company policies relating to data privacy or any of the policies listed above in clause 14.3 may be dealt with under the Company's disciplinary procedure and, in serious cases, may be treated as gross misconduct leading to summary dismissal.

15. NON COMPETITION

15.1 For the purposes of this clause the following expressions shall have the following meanings:

- (A) **"Relevant Employee"** means any senior employee or consultant to the Company or any Group Company who has significant client contacts and with whom the Executive has had significant contact during the course of his employment hereunder;

- (B) **“Relevant Customer”** means a person, firm or company who during the period of twelve months immediately preceding the Termination Date conducted a business relationship (including, without limitation, the provision of services and the negotiation for the same) with the Company or any Group Company and with whom the Executive had significant contact as an employee of the Company;
- (C) **“Relevant Business”** means any business or part thereof howsoever carried on involving the supply of Restricted Goods and/or Services;
- (D) **“Relevant Supplier”** means any person firm or company who is or was at any time during the twelve months preceding the Termination Date a supplier or procurer of goods and/or services to the Company or any Group Company as part of the trading activities within a Relevant Business;
- (E) **“Restricted Goods and/or Services”** means any goods and/or services with the provision and/or supply of which the Executive was materially concerned on behalf of the Company and/or any Group Company during the period of twelve months immediately prior to the Termination Date.

15.2 In order to safeguard the legitimate business interests of the Company and any Group Company and particularly the goodwill of the Company and any Group Company in connection with its clients, suppliers and employees the Executive hereby undertakes with the Company (for itself and as trustee for each Group Company) that, and so that each undertaking below shall constitute an entirely separate, severable and independent obligation of the Executive, he will not (except with the prior written consent of the Company) directly or indirectly:

- (A) during his employment or for a period of 6 months after the Termination Date entice or solicit or endeavour to entice or solicit away from the Company or any Group Company any Relevant Employee;
- (B) during his employment or for a period of 6 months after the Termination Date employ or otherwise engage any Relevant Employee;
- (C) during his employment or for a period of 3 months after the Termination Date in competition with the Company or any Group Company endeavour to supply or solicit the custom of any Relevant Client in respect of Restricted Goods and/or Services;
- (D) during his employment or for a period of 3 months after the Termination Date in competition with the Company or any Group Company supply Restricted Goods and/or Services to any Relevant Customer;

- (E) during his employment or for a period of 3 months after the Termination Date carry on or be concerned in any Relevant Business in competition with the business of the Company or any Group Company;
- (F) during his employment or for a period of 6 months after the Termination Date to the detriment of the Company or any Group Company, persuade or endeavour to persuade any Relevant Supplier to cease doing business or materially reduce its business with the Company or any Group Company.

For the avoidance of doubt, and notwithstanding the foregoing, the periods following the Termination Date during which the restrictions above are expressed to apply shall commence on: (i) the date that any payment in lieu of notice is made under clause 3.3, or (ii) the date that any valid notice is served by the Executive to terminate his employment in the event of a Change in Control Transaction under clause 16 or (iii) the date of summary termination under clause 17.

15.3 For the purposes of clause 15.2 (E) the Executive is concerned in a business if (without limitation):-

- (A) he carries it on as principal or agent; or
- (B) he is a partner, director, employee, secondee, consultant, investor, shareholder or agent in, of or to any person who carries on the business;

disregarding only during the 3 month period after the Termination Date any financial interest of a person in securities which are listed, dealt in and/or admitted for trading on any Relevant Stock Exchange, if that person, the Executive and any person connected with him are interested in securities which amount to less than three per cent. of the issued securities of that class and which, in all circumstances, carry less than three per cent. of the voting rights (if any) attaching to the issued securities of that class.

- 15.4 The Executive shall not (except with the prior written consent of the Company) at any time after the termination of his employment represent himself to be connected with or interested in the business of or employed by the Company or any Group Company or use for any purpose the name of the Company or any Group Company or any name capable of confusion therewith.
- 15.5 The Executive shall not during his employment whether during or outside office hours undertake any steps of any kind to promote or establish (or assist therein) any business which in the reasonable opinion of the Company is or is intended to be or may become in competition with any business operated by the Company or any Group Company.
- 15.6 The Executive shall not at any time (whether during or after the termination of his employment) make whether directly or indirectly any untrue, misleading or derogatory oral or written statement concerning the business, affairs, officers or employees of the Company or any Group Company.

15.7 The Executive agrees to enter into the restrictions in this clause 15 in consideration for the Company agreeing to employ him on the terms contained in this Agreement.

15.8 While the restrictions in this clause 15 are considered by the Executive and the Company to be reasonable in all the circumstances, it is recognised that such restrictions may fail for reasons unforeseen and, accordingly, it is hereby declared and agreed that if any of the restrictions shall be adjudged to be void as going beyond what is reasonable in all the circumstances for the protection of the interests of the Company but that they would be valid if part of the wording thereof were deleted and/or if the periods (if any) specified therein were reduced and/or the areas dealt with thereby reduced in scope, the said restrictions shall apply with such modifications as may be necessary to make them valid and effective.

16. CHANGE IN CONTROL AND MATERIAL TRANSACTIONS

16.1 Following a Change in Control Transaction, if:

- (A) circumstances amounting to Good Reason come into existence within a period of 2 years from the date of completion of a Change of Control Transaction (other than completion of the Poseidon Merger) and the Executive serves 14 days' written notice on the Company terminating his employment for that Good Reason within 90 days of that Good Reason coming into existence (for the avoidance of doubt, the Executive shall have no rights under this clause 16.1(A) in connection with the Poseidon Merger including its completion); or
- (B) the Executive's employment is terminated by the Company or notice of termination of employment is served by the Company either (i) within 6 months of the completion of a Change in Control Transaction (unless the Change in Control is the Poseidon Merger, in which case only limb (ii) shall apply) or (ii) if the Poseidon Merger is completed, at any time up to the end of 90 days following the date falling on the earlier of (i) the Completion of the Transition and (ii) 12 months after the completion of the Poseidon Merger (save in either case where the Company terminates the Executive's employment pursuant to clause 17.1 or, subject to Clauses 20.2 and 20.3, for genuine and material poor-performance or misconduct reasons),

the Executive will (subject to clauses 16.3, 16.4 and 16.5), be entitled to receive within 7 days of the Termination Date:

- (i) severance payment of an amount equal to 12 months' salary and the cost to the Company of the provision of contractual benefits to the Executive for 12 months; and
- (ii) bonus in respect of the bonus year completed immediately prior to the bonus year in which the Termination Date falls, calculated on the basis of the Executive's maximum annual bonus percentage (unless a lower percentage has already been determined by the Company although in the event that the Poseidon Merger completes the provision of clause 7.3 shall apply to the exclusion of this clause 16.1(B)(ii)) less any payments on account of the bonus for that previous year which have been paid to the Executive (and this payment will replace any outstanding entitlement to bonus in respect of that previous bonus year); and
- (iii) a pro-rated bonus (reflecting the portion of the bonus year that has elapsed as at the Termination Date) in respect of the bonus year which is current at the Termination Date calculated on the basis of the Executive's maximum annual bonus percentage (and this payment will replace any further entitlement to bonus for that current year that the Executive may have under clause 7.1 of the Service Agreement), less any payments on account of the bonus for that current year which have been paid to the Executive; and
- (iv) a further bonus payment calculated on the basis of the Executive's maximum annual bonus percentage for a full bonus year; and
- (v) the Transaction Bonus, less any payments on account of the Transaction Bonus which have been paid to the Executive; **however**
(should the Poseidon Merger be completed, the amounts provided for in sub-clauses (i) through (v) (inclusive) together comprise the "**Retention Amount**" and shall be payable to the Executive subject to and in accordance with clause 16.1.C)
- (vi) **less** an amount equal to the sum of any Poseidon Payments on Account already paid to the Executive as provided for in subclause 16.1(C)(i); and
- (vii) the Company shall use reasonable endeavours to procure that (i) the Executive receives the full benefit of any awards under the Stock Incentive Plan (including, without limitation, any acceleration of vesting or extension of the post-termination exercise term of the Executive's awards as provided for in the applicable award agreement) and (ii) he is treated as being a "Good Leaver" (as defined in the relevant scheme(s) and subject always to

the rules and provisions of such scheme(s)) for the purposes of any other applicable bonus or incentive scheme (besides the Stock Incentive Plan) which is operated by the Company or any Group Company from time to time and in which the Executive is participating as at the Termination Date and, for the avoidance of doubt, the provision of this Clause 16.1 (B) shall also apply in the event that the Poseidon Merger is completed as provided for in Clause 16.1 (C).

(C) If the Poseidon Merger is completed:

- (i) subject to Clause 16.4, the Executive shall receive a total gross amount of £375,660, in nine equal monthly instalments of £41,740 payable in each payroll subsequent to the completion of the Poseidon Merger, less usual deductions, such gross amount being the “**Poseidon Payments on Account**”, **provided always** that on the date for payment of each of the Poseidon Payments on Account the Executive has not resigned from the employment and has not lawfully been given notice of termination by the Company pursuant to Clause 17.1 or, subject to Clauses 20.2 and 20.3, for genuine and material poor-performance or misconduct reasons; and
- (ii) without prejudice to the Company’s ability at any time to terminate the Executive’s employment pursuant to Clause 17.1 or, subject to Clauses 20.2 and 20.3, for genuine and material poor-performance or misconduct reasons, the Executive and the Company may elect to terminate the employment by serving one month’s written notice on the other (save where the employment is terminated by the Company pursuant to clause 17.1) at any time within the 90 days following the date falling on the earlier of (a) the Completion of the Transition and (b) 12 months after the completion of the Poseidon Merger; and
- (iii) where the employment is terminated pursuant to Clause 16.1(C)(ii) and the Executive is not required to work out the one month’s notice period then, subject to Clause 16.4, the Executive shall receive a payment in lieu of the one month notice period which shall be paid in addition to the Retention Amount payable in accordance with Clause 16.1.(B) above; and
- (iv) where the employment is terminated by the Company in accordance with Clause 16.1(B) but where the Executive has already received some or all of the Poseidon Payments on Account then the amounts due to the Executive in accordance with Clause 16.1 shall be reduced by an amount equal to the sum of any Poseidon Payments on Account already paid to the Executive.

For the avoidance of doubt, it is confirmed that the Poseidon Payments on Account shall be paid in addition to the Executive's normal contractual salary and benefits.

16.2 Following a Material Transaction which is completed on or before **1 June 2019**, if:

- (A) circumstances amounting to Good Reason come into existence within a period of 2 years from the date of completion of the Material Transaction and the Executive serves written notice on the Company terminating his employment for that Good Reason within 90 days of that Good Reason coming into existence (and in these circumstances the Executive shall be entitled to terminate his employment on 14 days' notice); or
- (B) the Executive's employment is terminated by the Company or notice of termination of employment is served by the Company, in each case within 6 months of the completion of a Material Transaction (save where the Company terminates the Executive's employment pursuant to clause 17.1 or for genuine and material poor performance or misconduct reasons), the Executive will (subject to clauses 16.3, 16.4 and 16.5) be entitled to receive within 7 days of the Termination Date a severance payment of an amount equal to 12 months' salary and the cost to the Company of the provision of contractual benefits to the Executive for 12 months, bonus in respect of the bonus year completed immediately prior to the bonus year in which the Termination Date falls, calculated on the basis of the Executive's maximum annual bonus percentage unless a lower percentage has already been determined by the Company (less any bonus actually received by the Executive in respect of that previous bonus year, and this payment will replace any outstanding bonus entitlement to bonus in respect of that previous bonus year), a pro-rated bonus (reflecting the portion of the bonus year that has elapsed as at the Termination Date) in respect of the bonus year which is current at the Termination Date calculated on the basis of the Executive's maximum bonus percentage (and this payment will replace any further entitlement to bonus that the Executive may have under clause 7), less any payments on account of the annual bonus, and a further bonus payment calculated on the basis of the Executive's maximum annual bonus for a full bonus year (without reduction), and the Company shall use reasonable endeavours to procure that (i) the Executive receives the full benefit of any awards under the Stock Incentive Plan (including, without limitation, any acceleration of vesting or extension of the post-termination exercise term of the Executive's awards as provided for in the applicable award agreement) and (ii) he is treated as being a "Good Leaver" (as defined in the relevant scheme(s) and subject always to the rules and provisions of such scheme(s)) for the purposes of any other applicable bonus or incentive scheme (besides the Stock Incentive Plan) which is operated by the Company or any Group Company from time to time and in which the Executive is participating as at the Termination Date.

16.3 Any severance payment payable under clause 16.1 and 16.2 shall be in addition to any salary paid to the Executive during any part of his contractual notice period which he is required to work or during which he is placed on garden leave and any cost to the Company of the provision of contractual benefits provided to the Executive during that period, but shall be reduced by an amount equal to any payment in lieu of notice made to the Executive pursuant to clause 3.3 (however for the avoidance of doubt, not pursuant to Clause 16.1(C)(iii)).

16.4 The Company's obligations under clauses 16.1 and 16.2 are subject to and conditional on:

- (A) where the Executive's employment terminates or is to terminate, the Executive entering into, and complying with the terms of, a statutory settlement agreement, together with a ACAS COT3 Form ("**COT3**") waiving any residual claims not covered by the settlement agreement. Such agreements will be in a form satisfactory to the Company (acting reasonably), which is expected to be similar to that annexed to this Deed (without prejudice to the Company's right (acting reasonably) to require the Executive to enter into agreements in a different form but in the expectation that it remains similar in content), pursuant to which the Executive will waive all claims that he may have against the Company or any Group Company, and any of its or their officers, trustees, directors, shareholders, employees or agents, including any claims arising from his employment or its termination and any directorships or other offices and their termination. In circumstances where the Executive has received any Poseidon Payments on Account the Company will retain a right to require the repayment of the same as a debt in the event that either: (i) the Executive fails to enter into the settlement agreement and COT3 in accordance with this Clause 16.4(A); and/or (ii) brings any claim against the Company or any Group Company or Technomar Shipping Inc. ("**Technomar**") or any of its or their officers, trustees, directors, shareholders, employees or agents, including any claims arising from his employment or its termination and any directorships or other offices and their termination; and/or (iii) at any time prior to the payment of the final Poseidon Payment on Account, the Executive resigns from the employment or the Company lawfully determines that it is or has been entitled to give notice to terminate the employment in accordance with Clause 17.1 or, subject to Clauses 20.2 and 20.3, for genuine and material poor-performance or misconduct reasons, and the Executive hereby authorises the Company to deduct from any outstanding amounts due to the Executive (other than in respect of clauses 7.2, 7.3 or 16.1 (B) (ii) (v) and (vii)) an amount equal to any amount the Executive is required to

repay under this clause, and no further instalments of the Poseidon Payments on Account and no Retention Amount shall be payable to the Executive. Further, in the event that the Executive fails to enter into the settlement agreement and COT3 in accordance with this Clause 16.4(A) and brings any claim against the Company or any Group Company or Technomar or any of its or their officers, trustees, directors, shareholders, employees or agents, including any claims arising from his employment or its termination and any directorships or other offices and their termination, the Executive hereby agrees that the relevant court or tribunal should reduce any sum(s) which it would otherwise award to the Executive by £1 for each £1 received by the Executive by way of the Poseidon Payments on Account; and

- (B) the Executive's compliance with his material obligations under this Agreement (including, but not limited to, his obligations under clauses 13 (CONFIDENTIAL AND BUSINESS INFORMATION) and 15 (NON COMPETITION)). In the event that the Executive commits any breach of such material obligations, the Company shall be released from its obligations under clauses 16.1 and 16.2 (other than in respect of clauses 7.2, 7.3, 16.1 (B) (ii), (v) or (vii)), and in the event that the Executive commits any such breach following receipt of any payment pursuant to clause 16.1 or 16.2, or the Company becomes aware of any such breach following the Executive having received a payment under clause 16.1 or 16.2, an amount equal to the net payment made under clause 16.1 or 16.2 (other than in respect of amounts under clauses 7.2, 7.3, 16.1 (B) (ii) (v) or (vii)) (plus any tax deducted from such payment that the Executive is able to recover from HMRC) shall be immediately repayable by the Executive to the Company as a debt. Should the Poseidon Merger be completed, this sub-clause shall not apply after 18 months following such completion.

16.5 For the avoidance of doubt, if the Executive has received or is entitled to receive any payment pursuant to clause 16.1 under no circumstances shall he have any entitlement to any payment under clause 16.2, and vice versa. Any amount payable under clause 16.1 or 16.2 shall be subject to deductions for income tax and National Insurance Contributions as appropriate.

17. SUMMARY TERMINATION

17.1 The employment of the Executive may be terminated by the Company without notice or payment in lieu of notice if:

- (A) the Executive is guilty of misconduct or commits any serious breach or non-observance (and in the case of any misconduct, serious breach or non-observance which is capable of being remedied by the Executive, having been given notice in writing and having failed to remedy the same within 7 days of such notice having been served) of any of the provisions of this Agreement or of his obligations to the Company or any Group Company

(whether under this Agreement or otherwise) or any lawful acts or directions of the Board or relevant rules and/or codes issued by or on behalf of any Relevant Stock Exchange or (having been given notice in writing and having failed to remedy the same within 7 days of such notice having been served) is guilty of any continued or successive breaches or non-observance of any of such provisions, obligations, acts or directions, rules and/or codes in spite of written warning to the contrary by the Board;

- (B) the Executive is in the reasonable opinion of the Board negligent or incompetent in the performance of his duties;
- (C) the Executive is adjudged bankrupt or enters into any composition or arrangement with or for the benefit of his creditors including a voluntary arrangement under the Insolvency Act of 1986;
- (D) the Executive is guilty of any fraud or dishonesty or acts in any manner which in the reasonable opinion of the Board brings or is likely to bring the Company or any Group Company into disrepute or is materially adverse to the interests of the Company or any Group Company;
- (E) the Executive performs any act or omission which in the reasonable opinion of the Board may seriously damage the interests of the Company or any Group Company or willfully or negligently breaches any legislation or any regulation to which the Company or Group Company may be subject which may result in any penalties being imposed on him or any Directors of the Company or Group Company.
- (F) the Executive becomes prohibited by law or is disqualified from being a director or officer of a company;
- (G) the Executive is convicted of any criminal offence by a court of competent jurisdiction (other than a minor offence for which a fine or other non-custodial penalty is imposed);
- (H) the Executive commits any act of deliberate discrimination or harassment on grounds of race, sex, disability, sexual orientation, religion or belief or age;
- (I) the Executive becomes of unsound mind or a patient for the purpose of any statute relating to mental health;
- (J) the Executive is convicted of an offence under the Criminal Justice Act 1993 (or the Financial Services Authority becomes entitled to impose a penalty on the Executive pursuant to section 123 of the Financial Services and Markets Act 2000) or the Executive is otherwise convicted or found liable under any other present or future statutory enactment or regulation relating to insider dealing and/or market abuse;

- (K) the Executive resigns as a director or officer of the Company other than at the request of the Company;
- (L) the Client requires the Company to cause the Executive to cease providing services to it pursuant to clause 3.4 of the Services Memorandum; or
- (M) the Executive commits any other act warranting summary termination at common law including (but not limited to) any act justifying dismissal without notice in the terms of the Company's generally-applicable Disciplinary Rules in place from time to time.

17.2 Clause not used.

17.3 The termination of the Executive's employment hereunder for whatsoever reason shall not affect those terms of this Agreement which are expressed to have effect after such termination and shall be without prejudice to any accrued rights or remedies of the parties.

17.4 On the termination of the Executive's employment either summarily or otherwise, or at any other time in accordance with instructions given to him by the Board, the Executive will immediately return to the Company all equipment, correspondence, records, specifications, software, models, notes, reports and other documents and any copies thereof and any other property belonging to the Company or any Group Company (including but not limited to credit cards, keys and passes) which are in the Executive's possession or under his control.

17.5 On the termination of the Executive's employment either summarily or otherwise, or at any other time in accordance with instructions given to him by the Board, the Executive will immediately irretrievably delete any information relating to the business of the Company or any Group Company stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Company or any Group Company.

17.6 Upon the request of the Board, the Executive will provide a signed written statement that he has fully complied with his obligations under clauses 17.4 and/or 17.5 and the Company may withhold any sums owing to the Executive on the Termination Date until the obligations in clause 17.4 and/or 17.5 have been complied with.

18. INVENTIONS AND IMPROVEMENTS

18.1 For the purposes of this clause 18 the following words and expressions shall have the following meanings:

“Intellectual Property Rights” means (i) copyright, patents, know-how, confidential information, database rights, and rights in trade marks and designs (whether registered or unregistered), (ii) applications for registration, and the right to apply for registration, for any of the same, and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

“Invention” means any method, idea, concept, experimental work, theme, invention, discovery, process, model, formula, prototype, sketch, drawing, plan, composition, design, configuration, improvement or modification of any kind conceived, developed, discovered, devised or produced by the Executive alone or with one or more others during his employment and which pertains to or is actually or potentially useful to the activities from time to time of the Company (or any Group Company) or any product or service of the Company (or any Group Company) or which pertains to, results from or is suggested by any work which the Executive or any other employee of the Company (or any Group Company) has done or may hereafter during his employment do for the Company (or any Group Company).

- 18.2 The Executive shall promptly disclose and deliver to the Company in confidence full details of each Invention (whether or not it was made, devised or discovered during normal working hours or using the facilities of the Company, and whether or not the Executive considers that by virtue of section 39 Patents Act 1977 rights to such Invention fail to vest in the Company) to enable the Company to determine whether rights to such Invention vest in the Company, upon the making, devising or discovering of the same and shall at the expense of the Company give all such explanations, demonstrations and instructions as the Company may deem appropriate to enable the full and effectual working, production and use of the same. To the extent that by virtue of section 39 Patents Act 1977 rights to such Invention vest in the Executive the Company shall return to the Executive any documentation provided by the Executive pursuant to this clause 18 and the Company shall keep such details confidential unless or until such time as such details are in or enter the public domain, other than by a breach of this Agreement.
- 18.3 The Executive hereby assigns (in so far as title has not automatically vested in the Company through the Executive’s employment) to the Company with full title guarantee by way of future assignment all copyright, database right, design right and other similar rights for the full terms (including any extension or renewals thereof) thereof throughout the world in respect of all works, designs or materials (including, without limitation, source code and object code for software) originated, conceived, written or made by the Executive during the period of his employment (except only those works or designs originated, conceived, written or made by the Executive wholly outside his normal working hours which are wholly unconnected with any business activity undertaken or planned to be undertaken by the Company or any Group Company) to hold unto the Company absolutely. The aforementioned assignment shall include the right to sue for damages and/or other remedies in respect of any infringement (including prior to the date hereof).

- 18.4 The Executive hereby irrevocably and unconditionally waives in favour of the Company any and all moral rights conferred on him by Chapter IV of Part I of the Copyright Designs and Patents Act 1988 for any work in which copyright or design right is vested in the Company whether by this clause 18 or otherwise.
- 18.5 The Executive shall, without additional payment to him (except to the extent provided in section 40 Patents Act 1977, or any similar provision of applicable law) at the request and expense of the Company and whether or not during the continuance of his employment, promptly execute all documents and do all acts, matters and things as may be necessary or desirable to enable the Company or its nominee to obtain, maintain, protect and enforce any Intellectual Property Right vested in the Company (save only to the extent that any Intellectual Property Rights fail to vest in the Company by virtue of section 39 Patents Act 1977) in any or all countries relating to the Intellectual Property Right and to enable the Company to exploit any Intellectual Property Right vested in the Company.
- 18.6 The Executive shall not do anything (whether by omission or commission) during his employment or at any time thereafter to affect or imperil the validity of any Intellectual Property Right obtained, applied for or to be applied for by the Company or its nominee, and in particular the Executive shall not disclose or make use of any Invention which is the property of the Company without the prior written consent of the Company. The Executive shall during or after the termination of his employment with the Company, at the request and expense of the Company, provide all reasonable assistance in obtaining, maintaining and enforcing the Intellectual Property Right or in relation to any proceeding relating to the Company's right, title or interest in any Intellectual Property Right.
- 18.7 Without prejudice to the generality of the above clauses, the Executive hereby irrevocably authorises the Company to appoint a person to be his attorney in his name and on his behalf to execute any documents and do any acts, matters or things as may be necessary for or incidental to grant the Company the full benefit of the provisions of this clause 18.
- 18.8 The obligations of the Executive under this clause 18 shall continue to apply after the termination of his employment (howsoever terminated).
- 18.9 For the avoidance of doubt, nothing in this Agreement shall oblige the Company (or any other Group Company) to seek protection for or exploit any Intellectual Property Right.

19. RESIGNATION OF OFFICES

The Executive shall immediately upon the earlier of termination of his employment or notice of termination being served by either party in accordance with this Agreement give written notice resigning forthwith as a director or trustee or from any other office he may hold from time to time with the Company and/or any Group Company or arising from his engagement by the Company and/or any Group Company without any further compensation.

20. GRIEVANCE AND DISCIPLINARY PROCEDURE

- 20.1 In the event of the Executive wishing to seek redress of any grievance relating to his employment he should lay his grievance before the Board or the board of directors of the parent company of any group of which the Company is a member from time to time (in this Clause 20, "Ultimate Board") in writing, who will afford the Executive the opportunity of a full hearing before the board or a committee of the board or the Ultimate Board (as appropriate) whose decision on such grievance shall be final and binding.
- 20.2 The Company's usual disciplinary procedures do not apply to the Executive save that a dismissal will not qualify as: (i) one for material poor performance or misconduct reasons; or (ii) one under Clause 17.1 where the relevant sub-clause relied on is Clause 17.1(B) or Clause 17.1(L) (and then only where the relevant sub-clause in the Services Memorandum is clause 3.4(d)), for the purposes of Clauses 16.1(B) or 16.2(B) unless the Company carries out in relation to such a dismissal a fair disciplinary procedure in line with the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 20.3 In the event that any disciplinary action is to be taken against the Executive (including in the circumstances set out in Clause 20.2), any hearing in respect thereof will be conducted by such director of the Company or the parent company of any group of which the Company is a member from time to time as the Board or the Ultimate Board may in its reasonable discretion nominate. If the Executive seeks to appeal against any disciplinary action taken against him he should do so to the Ultimate Board submitting full written grounds for his appeal to the Chairman of the Ultimate Board within 7 days of the action appealed against. The decision of the Ultimate Board or a delegated committee thereof shall be final and binding. For the avoidance of doubt, the Executive has no contractual right to either a disciplinary hearing or appeal save as set out in Clause 20.2.
- 20.4 The Company may in its absolute discretion suspend the Executive from some or all of his duties (and if applicable, from the Board) and/or require him to remain away from work during any investigation conducted into an allegation relating to the Executive's conduct or performance. During such period, the Executive's salary will continue to be paid and he will continue to be entitled to all benefits provided to him, including participating in any relevant bonus or share option schemes subject always to the rules of those schemes.

21. GENERAL

- 21.1 No failure or delay by either party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by either party of any right, power or privilege hereunder preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 21.2 The Executive shall have no claim against the Company or any Group Company in respect of the termination of his employment hereunder in relation to any provision in any articles of association, agreement, scheme, plan or arrangement which has the effect of requiring the Executive to sell, transfer or give up any shares, securities, options or rights at any price or which causes any options or other rights granted to him to become prematurely exercisable or to lapse by reason of his termination or because he has given or received notice of termination
- 21.3 The Executive hereby irrevocably and by way of security appoints the Company and each Group Company now or in the future existing to be his attorney and in his name and on his behalf and as his act and deed to sign, execute and do all acts, things and documents which he is obliged to execute and do under the provisions of this Agreement and in particular, but without limitation, clauses 18 and 19 and the Executive hereby agrees forthwith on the request of the Company to ratify and confirm all such acts, things and documents signed, executed or done in pursuance of this power.
- 21.4 There are no collective agreements which affect the terms and conditions of the employment of the Executive hereunder.
- 21.5 For the avoidance of doubt any payments made to or other benefits provided to the Executive or his family which are not expressly referred to in this Agreement shall be regarded as ex gratia payments or benefits provided at the entire discretion of the Company and do not form part of the Executive's contract of employment.
- 21.6 If any clause or provision in this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such clause or provision shall be severed from the remainder of the Agreement or clause and that remainder shall continue to be valid and enforceable to the fullest extent permitted by law. In that case, the parties shall negotiate in good faith to replace any invalid, unlawful or unenforceable clause or provision with a suitable substitute clause or provision which maintains as far as possible the purpose and effect of this Agreement.
- 21.7 This Agreement may be executed in any number of counterparts, each of which when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument. Delivery of an executed signature page of a counterpart by facsimile transmission or by electronic mail in Adobe TM Portable Document Format (PDF), shall take effect as delivery of an executed counterpart of this Agreement.

- 21.8 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- 21.9 No amendment, modification or waiver of this Agreement or any of its provisions shall be binding upon the parties hereto unless made in writing and duly signed by the parties.
- 21.10 The parties confirm that the variations to this Agreement that became effective from 1 April 2017 pursuant to the Deed of Amendment dated 6 March 2017 shall not, and shall not following a Change in Control Transaction, constitute circumstances amounting to Good Reason.

22. NOTICES

- 22.1 Any notice or communication given or required under this Agreement may be served by personal delivery or by leaving the same at or by sending the same through the post addressed in the case of the Company to its registered office from time to time and in the case of the Executive to his aforesaid address or to the address provided from time to time by the Executive to the Company for the purposes of its employment records or by facsimile transmission.
- 22.2 Any notice sent by post shall be deemed to have been served 24 hours after the time of posting by first class mail and service thereof shall be sufficiently proved by proving that the notice was duly despatched through the post in a pre-paid envelope addressed as aforesaid. In the case of facsimile transmission it shall be deemed to have been received when in the ordinary course of such transmission it would be received by the addressee or if transmitted after 5pm or on a day that is not an ordinary business day on the next business day.

23. EXTENT AND SUBSISTENCE OF AGREEMENT

This Agreement supersedes all other agreements other than those expressly referred to in this Agreement (however including the Deeds of Amendment) whether written or oral between the Company and the Executive relating to the employment of the Executive. The Executive acknowledges and warrants to the Company that he is not entering into this Agreement in reliance upon any representation not expressly set out herein.

24. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim, dispute or matter arising out of or relating to this Agreement.

IN WITNESS whereof a duly authorised representative of the Company has executed this Agreement and the Executive has executed this Agreement as his Deed on the date of this Agreement.

EXECUTED as a **DEED** by the Company)
acting by Ian J Webber, a Director) /s/ Ian J Webber
in the presence of:)

Witness' signature /s/ Vivek Puri
Witness' name Vivek Puri
Address 25 Drumaline Ridge, Worcester Park, Surrey KT4 7JT

Occupation C.T.O.

SIGNED and **DELIVERED** by)
the said Thomas A Lister) /s/ Thomas A Lister
as his **DEED** in the presence of:)

Witness' signature /s/ Vivek Puri
Witness' name Vivek Puri
Address 25 Drumaline Ridge, Worcester Park, Surrey KT4 7JT

Occupation C.T.O.



BIMCO

<p>1. Place and date of Agreement date to be inserted 29 October 2018</p>	<p>2. Date of commencement of Agreement (Cls. 2,12, 21 and 25) date to be inserted. In respect of the Vessels owned by Poseidon Containers Holdings LLC or its Subsidiaries, this Agreement shall become effective on the closing of the transactions contemplated by that certain Agreement and Plan of Merger, dated as of the date hereof, by and among Poseidon Containers Holdings LLC, K&T Marine LLC, Global Ship Lease, Inc., and the other parties named therein (the "Closing"); provided, however, that if the Closing does not occur this Agreement will be of no force and effect.</p>
<p>3. Owners (name, place of registered office and law of registry) (Cl. 1)</p> <p>(i) Name: Poseidon Containers Holdings LLC</p> <p>(ii) Place of registered office: Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960</p> <p>(iii) Law of registry: Marshall Islands</p>	<p>4. Managers (name, place of registered office and law of registry) (Cl. 1)</p> <p>(I) Name: CONCHART COMMERCIAL INC.</p> <p>(II) Place of registered office: Marshall Islands</p> <p>(III) Law of registry: Marshall Islands</p>
<p>5. The Company (with reference to the ISM/ISPS Code) (state name and IMO Unique Company identification number. If the Company is a third party then also state registered office and principal place of business (Cls. 1 and 9(c)(i))</p> <p>(i) Name: N/A</p> <p>(ii) IMO Unique Company Identification number: N/A</p> <p>(iii) Place of registered office: N/A</p> <p>(iv) Principal place of business: N/A</p>	<p>6. Technical Management (state "yes" or "no" as agreed) (Cl. 4)</p> <p style="text-align: center;">NO</p>
	<p>7. Crew Management (state "yes or no" as agreed (Cl. 5(a))</p> <p style="text-align: center;">NO</p>
	<p>8. Commercial Management (state "yes or no" as agreed) (Cl. 6)</p> <p style="text-align: center;">YES</p>
<p>9. Chartering Services period (only to be filed in if "yes" stated in Box 8) (Cl. 6(a))</p> <p style="text-align: center;">YES (as amended)</p>	<p>10. Crew Insurance arrangements (state "yes" or "no" as agreed) - NO</p> <p>(i) Crew Insurances' (Cl. 5(b))</p> <p>(ii) Insurance for persons proceeding to see onboard (Cl 5(b)(i)): "only to apply if Crew Management (Cl.5(a)) agreed (see Box 7)</p>
<p>11. Insurance arrangements (state "yes" or "no" as agreed) (Cl. 7)</p> <p style="text-align: center;">NO</p>	<p>12. Optional insurances (state optional insurance(s) as agreed, such as piracy, kidnap and ransom, loss of hire and FD & D) (Cl. 10(a) (iv))</p> <p style="text-align: center;">N/A</p>
<p>13. Interest (state rate of interest to apply after the due date to outstanding sums) (Cl.9(a))</p> <p style="text-align: center;">N/A</p>	<p>14. Annual management fee (Cl. 12(a))</p> <p style="text-align: center;">SEE CLAUSE 12(A)</p>

<p>15. Managers' nominated account (Cl. 12(a))</p> <p>USD Current Account: 05-25533-006 IBAN: DE07 2012 0000 0525 5330 06</p> <p>Address: Berenberg Neuer Jungfernstieg 20 20354 Hamburg / Germany</p> <p>Fax numbers: +49 - 40 - 350 60 900 (General line) +49 - 40 - 350 60 905 (Internal. Shipping Department)</p> <p>S.W.I.F.T. address: BEGODEHH</p> <p>Routing of USD payments into your account with us:</p> <p>In order to avoid any delay and any additional charges USD payments into your account with us should be routed as follows:</p> <p>Beneficiary: Conchart Commercial Inc Account: 05-25533-006 Payment by: direct S.W.I.F.T. MT103 without inter1nediaty of another bank in Germany</p> <p>To Beneficiary's Bank: Berenberg, Hamburg, S.W.I.F.T. address BEGODEHH</p> <p>Cover Payment: by S.W.I.F.T. MT202COV with same day value to the account of Berenberg, Hamburg, with JPMorgan Chase Bank, New York, S.W.I.F.T. address CHASUS33</p>	<p>16. Daily rate (state rate for days in excess of those agreed in budget) (Cl 12(c)) N/A</p> <p>17. Lay-up period/number of months (Cl. 12(d)) N/A</p>
<p>18. Minimum Contract Period (state number of months) (Cl. 21) 36 calendar months</p>	<p>19. Management fee on termination (state number of months to apply) Cl. 22</p>
<p>20. Severance Code (state maximum amount) (Cl 22(g)(ii)) N/A</p>	<p>21. Dispute Resolution (state alternative Cl 23(a), 23(b) or 23(c), if Cl. 23(c) place of arbitration must be stated) (Cl. 23) 23(a)</p>
<p>22. Notices (state full contact details for serving notice and communication to the Owners)(Cl 24) c/o TECHNOMAR SHIPPING INC. 3-5 MENANDROU STREET 14561, KIFISSIA ATHENS - GREECE</p>	<p>23. Notices (state full contact details for serving notice and communication to the Managers) c/o TECHNOMAR SHIPPING INC. 3-5 MENANDROU STREET 14561, KIFISSIA ATHENS - GREECE</p>

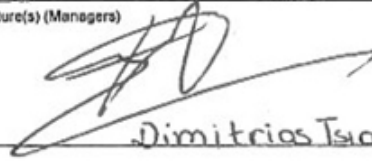
It is mutually agreed between the party stated in Box 3 and the party stated in Box 4 that this Agreement consisting of PART I and PART II as well as Annex "A" (Details of Vessel) attached hereto, shall be performed subject to the conditions contained herein. In the event of a conflict of conditions, the provisions of PART I and Annex "A" shall prevail over those of PART II to the extent of such conflict but no further.

Signature(s) (Owners)



GEORGIOS GIOROUKOS

Signature(s) (Managers)



Dimitrios Tsioufagnanis

PART II
SHIPMAN 2009
Standard ship management agreement

SECTION 1 – Basis of the Agreement

1. Definitions

In this Agreement save where the context otherwise requires, the following words and expressions shall have the meanings hereby assigned to them:

“Affiliate” means, with respect to a specified Person, any Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with the specified Person.

“Change in Majority Interests or Control” means (i) a transaction or series of transactions involving the sale, transfer or other disposition of equity interests in the Owners or in any of its direct or indirect parent companies (including, without limitation, any transfer by the current owners of equity interests in the Parent), to one or more Persons that are not, immediately prior to such sale, Affiliates of the Parent, of more than 50% of the beneficial equity or voting interests in the Owners or in any such parent companies; (ii) a transaction or series of transactions involving the sale, transfer or other disposition of all or substantially all of the assets of the Owners or any of its direct or indirect parent companies (including, without limitation, the Parent) to one or more Persons that are not, immediately prior to such sale, transfer, or other disposition, Affiliates of the Parent; (iii) any merger, consolidation or other business combination of the Owners or any of its direct or indirect parent companies (including, without limitation, the Parent) in which the current owners of equity interests in the Parent immediately after such transaction cease to own more than 50% of the equity or voting interests in the Parent (or equity or voting interests of its successors) or the Parent ceases to directly or indirectly own more than 50% of the equity or voting interests in the Owners or its parent companies (or equity or voting interests of their successors) as a result of such transaction; or (iv) George Giouroukos’s employment as Executive Chairman of the Parent is terminated by the Parent.

“CMA CGM” means CMA CGM S.A., a French company.

“CMA CGM Charter” means a charter of the Vessel between the Owners and CMA CGM or any of its Affiliates.

“CMA CGM Charter Brokerage Fee” means the fee payable by Owners to the Managers in respect of any new charter for the Vessel entered into by CMA CGM or any of its Affiliates and set out in clause 12 (c) below.

“Commission” means the commission payable by the Owners to the Managers as set out in clause 12 (a) below.

“Confidential Information” means all information (of whatever nature and however recorded or preserved) which:

- (a) was disclosed by the Owners to the Managers, whether before or after the date of this Agreement, as a result of the discussions leading up to this Agreement, entering into this Agreement or the performance of this Agreement and is designated as “confidential information” by the Owners at the time of disclosure; or
- (b) is information which relates to existing or proposed operations, business plans, market opportunities and business affairs of the Owners or their Affiliates and is clearly confidential from its nature and/or the circumstances in which it was imparted would be regarded as being confidential by a reasonable business person; or
- (c) is clearly confidential from its nature and/or the circumstances in which it was imparted, and including information which relates to the commercial affairs, business (including but not limited to any information considered to be price sensitive information by the Owners), finances, infrastructure, products, services, developments, inventions, trade secrets, know-how, personnel, or contracts of, and any other information relating to, the Owners or their Affiliates (or its or their customers); or
- (d) any information referred to in (a) to (c) above disclosed on the Owners’ behalf by their Affiliates; and
- (e) information extracted, copied or derived from information referred to in (a) to (d) above.

“Control” or “Controlling” or “Controlled by” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Crew” means the master, officers and ratings of a Vessel.

“Dollars and US\$” means the lawful currency of the United States of America.

“Governmental Entity” means and includes (whether having a distinct legal personality or not) any national or local government

authority, board, commission, department, division, organ, instrumentality, court or agency and any association, organisation or institution of which any of the foregoing is a member or to whose jurisdiction any of the foregoing is subject or in whose activities any of the foregoing is a participant.

“Managers” means the party identified in **Box 4**.

“Management Services” means the services specified in SECTION 2—Services (Clauses 4 through 7) as indicated affirmatively in **Boxes 6** through **8, 10 and 11**, and all other functions performed by the Managers under the terms of this Agreement.

“Manager Change of Control” means (i) a transaction or series of transactions involving the sale, transfer or other disposition by George Giouroukos to one or more Persons that are not, immediately prior to such sale, Affiliates of George Giouroukos, of more than 50% of the equity interests in the Managers; or (ii) any merger, consolidation or other business combination of the Managers in which George Giouroukos immediately after such transaction ceases to own more than 50% of the equity interests in the Managers (or equity interests of their successors) as a result of such transaction.

“Owners” means the party identified in **Box 3**.

“Parent” means Global Ship Lease, Inc., a Marshall Islands corporation.

“Parties” means the parties to this Agreement.

“Person” means any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization.

“Subsidiary(ies)” means, with respect to any Person, (a) a corporation of which more than 50% of the voting power of shares entitled (without regard to the occurrence of any contingency) to vote in the election of directors or other governing body of such corporation is owned, directly or indirectly, at the date of determination by such Person, by one or more Persons Controlled by such Person or a combination thereof, (b) a partnership (whether general or limited) in which such Person or a Person Controlled by such Person is, at the date of determination, a general or limited partner of such partnership, but only if more than 50% of the partnership interests of such partnership (considering all of the partnership interests of the partnership as a single class) is owned, directly or indirectly, at the date of determination, by such Person, one or more Persons Controlled by such Person, or a combination thereof, or (c) any other Person (other than a corporation or a partnership) in which such Person, one or more Persons Controlled by such Person, or a combination thereof, directly or indirectly, at the date of determination, has (i) at least a majority ownership interest or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such Person.

“TCMC” means Technomar Crew Management Corporation, a crew manning company affiliated to the Technical Managers with registered offices in Manila, Philippines.

“Technical Managers” means Technomar Shipping Inc., a Liberian corporation.

“Technical Management Agreement” means, with respect to the Vessel, the agreement with respect to technical management services between the Owners and the Technical Managers; and

“Vessel” means the vessels, details of which are set out in Annex “A” attached hereto, now or hereinafter owned by the Owners.

2. Commencement and Appointment

With effect from the date stated in **Box 2** for the commencement of the Management Services and continuing unless and until terminated as provided herein, the Owners hereby appoint the Managers and the Managers hereby agree to act as the Managers of the Vessel in respect of the Management Services.

3. Authority of the Managers

Subject to the terms and conditions herein provided, during the period of this Agreement the Managers shall carry out the Management Services in respect of the Vessel as agents for and on behalf of the Owners. The Managers shall have authority to take such actions as they may from time to time in their absolute discretion consider to be necessary to enable them to perform the Management Services in accordance with sound ship management practice, including but not limited to compliance with all relevant rules and regulations.

SECTION 2 – Services

4. Technical Management N/A

*(only applicable if agreed according to **Box 6**).*

5. Crew Management and Crew Insurances N/A

(a) Crew Management

*(only applicable if agreed according to **Box 7**)*

6. Commercial Management

*(applicable as agreed according to **Box 8**).*

The Managers shall provide the following services for the Vessel in accordance with the Owners' instructions, which shall include but not be limited to:

- (a) Marketing the Vessel for sale and providing evaluations of possible future earnings and period of employment arranged for the Vessel that will become available for further employment and for ships that are considered/negotiated to be purchased by the Owners;
- (b) Seek and negotiate employment for the Vessel including the negotiations and execution of charter parties or other contracts related to the employment of the Vessel. Prior to conclusion of negotiations, the Managers will seek Owners approval for the range of Freight or Hire rate, the period of employment and approval of possible charterers. Managers will also provide the Owners with any obtained references for the potential charterers' reputation and their past performances;
- (c) Monitor the developments of the market and keep Owners advised regularly of developments in the market, including fixture reports;
- (d) Monitor and keep Owners advised regularly of developments related to new rules and regulations with respect to trading and cargo restrictions, including but not limited to those issued by the United States and any such regulations issued by the United Nations, and including recommendations from recognised shipping entities such as the IMO, Bimco and the National Shipbrokers Association;
- (e) Participate in and follow up on international events organized by various national and international bodies, shipping forums, workshops and conferences, where charterers, brokers and/or various agents meet to exchange information and discuss market developments;
- (f) Co-ordinating with charterers and Technical Managers of the Vessel, for arranging the provision of bunker fuels quantity as required for the Vessel's trade and relevant charter party;
- (g) Voyage estimation and assistance in the calculation of hire, freights, demurrage and/or despatch monies due from or due to the charterers of the Vessel. Assist in the collection of any sums due to the Owners related to the commercial operation of the Vessel;
- (h) Conveying voyage instruction issued by charterers to Technical Managers and follow up compliance with the provisions of the relevant charter party;
- (I) Communicate with agents, whenever is deemed necessary, to collect information related to ship's position and cost related issues or other information needed for any commercial evaluation or estimation;
- (j) Negotiate M.O.A. details as per Owners' authority and follow up the sale & purchase transactions until the completion of transfer of title to the Vessel under M.O.A. provisions or M.O.A. termination;
- (k) In accordance with the Owners' instructions, arranging the pre-purchase inspections of vessels, arranging the pre-purchase class records inspections of vessels, arranging the preparation of the pre-purchase reports; provided, however, the Managers may subcontract the services described in this Clause 6(k) to the Technical Managers;
- (l) Coordinate with the Technical Managers with respect to (i) the obligations of the Owners, always in compliance with the terms and conditions applicable to it under the Technical Management Agreement, (ii) consolidation of accounts, budgets and other materials as may be requested by the Owners with respect to the Vessel for which the Technical Managers provide management services under the Technical Management Agreement, and (iii) the scope of management services required of the Technical Managers under the Technical Management Agreement in relation to any charterparty for the Vessel;
- (m) Prepare accounts as may be reasonably requested by the Owners incorporating and consolidating individual accounts for the Vessel prepared by the Technical Managers; provided, however, the Managers may subcontract the services described in this Clause 6(m) to the Technical Managers; and

Deliver to the Technical Managers a copy of each charterparty for the Vessel.

The Owners shall not appoint any Person to perform the foregoing services on its behalf other than the Manager.

7. Insurance Arrangements N/A

*(only applicable if agreed according to **Box 11**).*

SECTION 3 – Obligations

8. Managers' Obligations

(a) The Managers undertake to use their best endeavours to provide the Management Services as agents for and on behalf of the Owners in accordance with sound ship brokerage and ship management practice and to protect and promote the interests of the Owners in all matters relating to the provision of services hereunder. In performing and discharging its obligations, duties and liabilities under this Agreement, the Managers shall act in accordance with all instructions communicated to it by the Owners and the Managers shall at all times serve the Owners faithfully and diligently.

Notwithstanding anything herein to the contrary and for the avoidance of doubt, the parties acknowledge that the Managers shall continue to act as a commercial manager (including performing brokerage functions) with respect to vessels owned or operated by persons or entities other than the Owners, the Parent, or their respective Subsidiaries. In addition, and notwithstanding clause 8(a), in the performance of their management responsibilities under this Agreement, the Managers shall be entitled to have regard to their overall responsibility in relation to all other vessels as may from time to time be entrusted to their management and in particular, but without prejudice to the generality of the foregoing, the Managers shall be entitled to allocate available supplies, manpower and services in such manner as in the prevailing circumstances they consider in their discretion (reasonably exercised) to be fair and reasonable, but in no circumstances shall the Vessel be managed in a manner which is less favourable to the interests of the Owners.

In the performance and discharge of its obligations, duties and liabilities under this Agreement, the Managers shall take care not to exceed the authority given by the Owners under the terms of this Agreement and shall act at all times in accordance with the Owner's instructions.

In the performance and discharge of its obligations, duties and liabilities under this Agreement, the Managers shall act with reasonable care and skill in accordance with good industry practices and in compliance with all laws and regulations, and shall provide the Management Services hereunder and maintain the Vessel at a standard at least equivalent to the standards followed by it with respect to the other vessel(s) for which the Managers provide management services.

Notwithstanding anything contained herein to the contrary, the Managers shall at all times devote a sufficient amount of its time, resources and personnel to provide the Management Services contemplated by this Agreement.

(b) The Managers in providing the Management Services will at all times comply with, without limitation, the U.S. Foreign Corrupt Practices Act, any applicable country legislation implementing the OECD Convention on combating Bribery of Foreign Public Officials in International Business Transactions, and the UK Bribery Act 2010, and any other laws or regulations relating to applicable anti-bribery, anti-terrorism, economic sanctions and anti-money laundering, to the extent applicable. The Managers shall not engage in any activity, practice or conduct which constitutes a breach of any of the foregoing; in addition, the Managers shall not employ any Person, nor subcontract with any person or entity, to perform or discharge any of its obligations under this Agreement if that person or entity is designated or identified as a Specially Designated National, a Person subject to sanctions that prohibit all dealings with such Person, a foreign terrorist organisation or an organization that provides support to a foreign terrorist organization by the United States Government or any branch or department thereof (including, but not limited to, the Office of Foreign Asset Control).

9. Owners' Obligations

(a) The Owners shall pay all sums due to the Managers punctually in accordance with the terms of this Agreement.

(b) Deleted. N/A

(c) Deleted. N/A

(d) Deleted. N/A

(e) Deleted N/A

SECTION 4 – Insurance, Budgets, Income, Expenses and Fees

10. Insurance Policies Deleted. N/A

11. Expenses Paid on Behalf of Owners

(a) Deleted N/A

(b) All expenses incurred by the Managers under the terms of this Agreement on behalf of the Owners (including expenses as provided in Clause 12(c)) will be arranged to be paid to the Managers by the Technical Managers by using amounts standing to the credit of the bank account referred to in Clause 11(a) of the Technical Management Agreement.

(c) Deleted. N/A.

12. Management Fee and Expenses

(a) The Owners shall pay to the Managers, who shall be named (i) broker in each charterparty (or equivalent agreement) providing for the charter fixture of a vessel, or (ii) broker in each memorandum of agreement (or equivalent agreement) providing for the sale and purchase of a Vessel, a commission of (i) one and one quarter percent (1.25%) on all monies earned by the relevant Owners on each charter fixture of a Vessel and (ii) one percent (1.00%) based on the sale and purchase price for any sale and purchase of a Vessel (directly or via sale of a Controlling interest in the relevant Vessel owners) (the **Commission**), which shall be payable:

- a. on receipt of the sales proceeds, freights, demurrage or hire by the Technical Managers or the Owners (as the case may be); and
- b. on the delivery date of any vessel purchased,

to the Managers' nominated account stated in **Box 15**;

(b) The Owners shall not pay the Commission to the Managers for any CMA CGM Charter in effect as at the date of this Agreement and neither shall the Commission be paid to the Managers if any such CMA CGM Charter is extended or amended.

(c) The Owners shall pay to the Managers a commission at 0.75% if CMA CGM or any of its Affiliates enters into a new charter for the Vessel (the "CMA CGM Charter Brokerage Fee"). However, no CMA CGM Charter Brokerage Fee will be payable by the Owners to the Managers if CMA CGM or its Affiliate waives their own address commission in such charter;

(d) The Managers shall, at no extra cost to the Owners, provide their own office accommodation, office staff, facilities and stationery. Without limiting the generality of this Clause 12 (Management Fee and Expenses) the Owners shall reimburse the Managers for, reasonable postage, communication, travelling and accommodation expenses, and other reasonable out of pocket expenses properly incurred by the Managers in pursuance of the Management Services, including travelling in order to assist in settlements of disputes and outstanding accounts as requested by Owners, it being understood that the Managers shall not make any expenditure in the aggregate in excess of US\$20,000 in any given calendar month without the prior written consent of the Owners.

(e) Deleted. N/A

(f) Deleted. N/A

13. Budgets and Management of Funds

(a) The Managers shall assist the Owner to prepare a budget with forecast gross and net revenues for the Vessel.

(b) Notwithstanding anything contained herein, the Managers shall in no circumstances be required to use or commit their own funds to finance the provision of the Management Services.

14. Trading Restrictions

The Managers shall coordinate with the Owners and the Technical Managers with respect to any trading restrictions to the Vessel.

15. Replacement. Deleted. N/A

16. Managers' Right to Sub-Contract

Except as expressly permitted by Clauses 6(k) and (m) and Clause 18(f) and except to its Affiliates, the Managers shall not subcontract any of their obligations hereunder without the prior written consent of the Owners. In the event of such a sub-contract the Managers shall remain fully liable for the due performance of their obligations under this Agreement. For sake of clarity it is agreed that the involvement of brokers for concluding/fixing any charter is not to be considered as subcontracting.

17. Responsibilities

(a) *Force Majeure* - Neither party shall be liable for any loss, damage or delay due to any of the following force majeure events and/or conditions to the extent that the party invoking force majeure is prevented or hindered from performing any or all of their obligations under this Agreement, provided they have made all reasonable efforts to avoid, minimise or prevent the effect of such events and/or conditions:

- (i) acts of God;
- (ii) any requisition, control, intervention, requirement or interference by a Government Entity;
- (iii) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
- (iv) riots, civil commotion, blockades or embargoes;
- (v) epidemics;
- (vi) earthquakes, landslides, floods or other extraordinary weather conditions;
- (vii) strikes, lockouts or other industrial action, unless limited to the employees (which shall not include the Crew) of the party seeking to invoke force majeure;
- (viii) fire, accident, explosion except where caused by negligence of the party seeking to invoke force majeure; and
- (ix) any other similar cause beyond the reasonable control of either party.

(b) *Liability to Owners*

Without prejudice to Sub-Clause 17(a), the Managers shall be under no liability whatsoever to the Owners for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect (including but not limited to loss of profit arising out of or in connection with detention of or delay to the Vessel), and howsoever arising in the course of performance of the Management Services UNLESS the same is proved to have resulted solely from:

- (i) the persistent and/or continuing negligence of the Managers which causes material losses and/or material additional expense to the Owners for a period of 3 (three) calendar months or more following a written notice from the Owners that it is dissatisfied with the performance of the Managers due to such negligence and stating the deficiencies to be remedied, provided however, that the Managers shall not be deemed to have acted negligently if the deficiencies arise or are continuing due to circumstances beyond the control of the Managers, the Technical Managers and TCMC, or if the Managers are taking reasonable steps to remedy such deficiencies; or
- (ii) the gross negligence or wilful default of the Managers or its employees or agents, or sub-contractors employed by them in connection with a Vessel,
- (iii) in which case (save where loss, damage, delay or expense has resulted from the Managers' personal act or omission committed with the intent to cause the same or recklessly and with knowledge that such loss, damage, delay or expense would probably result) the Managers' liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a total of (A) three (3) times the average monthly Commission payable under clause 12(a) for the twelve (12) months preceding such incident(s) for claims made in respect of the circumstances described in (i) above or ten (10) times the average monthly Commission payable under clause 12(a) for the twelve (12) months preceding such incident(s) for claims made in respect of the circumstances described in (ii) above.

(iv) *Acts or omissions of the Crew – Deleted. N/A*

(c) *Indemnity* - Except to the extent and solely for the amount therein set out that the Managers would be liable under Sub-clause 17(b), the Owners hereby undertake to keep the Managers and their employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of this Agreement, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Managers may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.

(d) *"Himalaya"* - It is hereby expressly agreed that no employee or agent of the Managers (including every sub-contractor from time to time employed by the Managers) shall in any circumstances whatsoever be under any liability whatsoever to the

Owners for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his, her or its part while acting in the course of or in connection with his, her or its employment and, without prejudice to the generality of the foregoing provisions in this Clause 17 (Responsibilities), every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Managers or to which the Managers are entitled hereunder shall also be available and shall extend to protect every such employee or agent of the Managers acting as aforesaid and for the purpose of all the foregoing provisions of this Clause 17 (Responsibilities) the Managers are or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be their servants or agents from time to time (including sub-contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to this Agreement.

18. General Administration

- (a) The Managers shall keep the Owners informed in a timely manner of any incident of which the Managers become aware which gives or may give rise to a material delay to the Vessel or material claims or disputes involving third parties.
- (b) The Managers shall handle and settle all claims and disputes arising out of the Management Services hereunder, unless the Owners instruct the Managers otherwise.
- (c) The Owners may request the Managers to bring or defend other actions, suits or proceedings related to the Management Services, on terms to be agreed.
- (d) At the Owners' cost, the Managers shall have power to obtain appropriate legal or technical or other outside expert advice in relation to the handling and settlement of claims in relation to Sub-clauses 18(b) and 18(c) and disputes and any other matters affecting the interests of the Owners in respect of the Vessel, including the appointment of auditors or other outside experts as may be necessary in the ordinary course of business.
- (e) On giving reasonable notice with respect to proposed dates and the scope of inquiry, the Owners may request, and the Managers shall in a timely manner make available, all documentation, information and records in respect of the matters covered by this Agreement and the Managers shall permit the Owners during regular business hours to inspect the Managers' premises, audit records and accounts and meet with executive personnel.
- (f) The Managers shall provide monthly financial reports, or other necessary reports reasonably required, to enable the Owners and the Parent to fulfil on a timely basis any applicable reporting requirement that is or may become applicable to it or its successors, provided that the Owners have given the Managers advance written notice of which reports are so required, the form and content required for such reports and reasonably sufficient time to hire or retain additional personnel to prepare such reports; and provided further that the Managers and the Owners have agreed on the additional costs and expenses to be borne by the Owners and paid to the Managers for performing such services. If the Owners determine in their sole discretion that the Parent will likely be unable to, or be unable to without an unreasonable effort or expense, timely file any reports or believe the Parent is likely to receive a "material weakness" qualification from their auditors with respect to their internal controls, in either case due to the Managers' failure or probable failure to provide necessary information with the required timeframe, then the Managers hereby agree to give authorized employees of the Owners, their accountants or other designated personnel or advisors access to such documents, books, records, data other information and staff of the Managers and their Affiliates (for the avoidance of doubt only being the Technical Managers and TCMC), and related to the matters covered by, or services provided by the Managers under, this Agreement as is reasonably required to permit the Parent to timely meet any reporting obligations to which it is at any time obligated, or chooses to comply, or to remedy the deficiency with respect to its internal controls as required, or as may be required, by Section 404 of the U.S. Sarbanes Oxley Act. The Managers further agree to cause their Affiliates (the Technical Managers and TCMC) and their employees to cooperate with the designated representatives and the designated representatives shall be entitled to meet with such employees and/or request information from such affiliates (being limited to the Technical Managers and TCMC) or the employees in order to obtain information in respect of the matters covered by this Agreement that is reasonably necessary to permit the Parent to timely meet any reporting obligations to which they are at any time obligated, or choose to comply, or to remedy the deficiency with respect to their internal controls as required, or as may be required, by Section 404 of the U.S. Sarbanes Oxley Act. Notwithstanding anything to the contrary, neither the Managers nor their Affiliates (being limited to the Technical Managers and TCMC) or their respective employees shall be required to provide any information that is not in respect of the matters covered by, or services provided by the Managers under, this Agreement. The Owners shall bear all costs and expenses associated with the designated representatives services. Notwithstanding anything to the contrary contained herein, the Managers shall not be liable for any failure to timely provide the reports required hereunder so long as the Managers have otherwise complied with the provisions under this Clause 18(f); provided, however, the Managers may subcontract the services described in this Clause 18(f) to the Technical Managers.
- (g) On giving reasonable notice, the Managers may request, and the Owners shall in a timely manner make available, all documentation, information and records reasonably required by the Managers to enable them to perform the Management Services.
- (h) Any reasonable costs incurred by the Managers in carrying out their obligations according to this Clause 18 (General Administration) shall be reimbursed by the Owners.

19. Inspection of Vessel. Deleted N/A

20. Compliance with Laws and Regulations

- (a) The Parties will not do or permit to be done anything which might to cause any breach or infringement of the laws and regulations of the flag state of the Vessel, or of the places where the Vessel trades, nor shall either of the parties act in any manner which is prohibited under United States laws or regulations related to foreign trade controls.
- (b) In performing its obligations under this Agreement, the Managers shall and shall use all reasonable endeavours to procure that their Affiliates and sub-contractors shall comply in all material respects with the Parent's written policies that are directly applicable to the Managers' provision of the Management Services and are made known to the Managers in advance in writing, which shall include, but not be limited to, the Parent's Anti-slavery and Human Trafficking Policy, Corporate and Social Responsibility Policy, Anti-bribery and Anti-corruption Policy, Business Ethics Policy, Data and Privacy Policy and Business Conduct Policy and any other policies of the Parent that are so applicable from time to time.

21. Duration of the Agreement

- (a) This Agreement shall come into effect at the date stated in **Box 2** and shall continue for a minimum period of three (3) calendar years (the "Minimum Contract Period"). Either party may give not less than six (6) months' written notice to the other during the Minimum Contract Period that this Agreement is to be terminated at the expiry of the Minimum Contract Period.
- (b) Following the expiry of the Minimum Contract Period, and provided that neither party has issued a termination notice pursuant to clause 21(a) to terminate this Agreement at the end of the Minimum Contract Period, this Agreement may be terminated by either party by giving no less than six (6) months' written notice to the other.
- (c) Notwithstanding clause 21(a) and 21(b), this Agreement may be terminated by either party at any time in accordance with clause 22 (Termination).

22. Termination

Owners' or Managers' default

- (a) If either party fails to meet their obligations under this Agreement, the other party may give notice to the defaulting party requiring them to remedy it. In the event that the defaulting party fails to remedy within a reasonable time to the reasonable satisfaction of the other party, that other party shall be entitled to terminate this Agreement with immediate effect by giving notice to the defaulting party.
- (b) Notwithstanding Clause 22 (a):
 - (i) The Managers shall be entitled to terminate this Agreement with immediate effect by giving notice to the Owners if any monies payable by the Owners under the terms of this Agreement shall not have been received in the Managers nominated account within thirty (30) days of receipt by the Owners of the Managers written request, or if the Vessel is repossessed by a mortgagee.
 - (ii) Unless caused by the act or omission of the Managers, if the Owners proceed with the employment of or continue to employ the Vessel in the carriage of contraband, blockade running, or in an unlawful trade, or on a voyage which in the reasonable opinion of the Managers is unduly hazardous or improper, the Managers may give notice of the default to the Owners, requiring them to remedy it as soon as practically possible. In the event that the Owners fail to remedy it within a reasonable time to the satisfaction of the Managers, the Managers shall be entitled to terminate the Agreement with immediate effect by notice.
- (c) Managers' default
 - (i) The Owners may terminate this Agreement for Cause (as hereinafter defined), but only after the Owners have provided the Managers with notice of such Cause and such Cause has not been cured within twenty (20) days of such notice; provided, however, that if any Cause is incapable of being cured, then no notice and cure period shall be required.

(ii) **Cause** means any of the following:

The Managers:

- (A) persist and/or continue to be negligent in their performance of the Management Services which causes material losses and/or material additional expense to the Owners for a period of 3 (three) calendar months or more following a written notice from the Owners that they are dissatisfied with the performance of the Managers due to such negligence and stating the deficiencies to be remedied, provided however, that the Managers shall not be deemed to have acted negligently if the deficiencies arise or are continuing due to circumstances beyond the control of the Managers, the Technical Managers and TCMC or if the Managers are taking reasonable steps to remedy such deficiencies; and/or
 - (B) was or have been grossly negligent in its performance of the Management Services; and/or
 - (C) have engaged in wilful misconduct and/or bad faith and/or fraud;
- (iii) The Managers wilfully fail to cooperate in any government, agency, regulatory or external self-governing body investigation that could have a material adverse effect on the Owners;
 - (iv) The Managers or any of their directors, officers or employees are convicted or plead nolo contendere to a felony or a misdemeanour involving moral turpitude that is reasonably likely to have a material adverse effect on the Owners;
 - (v) The Managers or any of their directors, officers or employees commit any material violation of any U.S. federal law regulating securities or the business of the Owners or the Parent without having relied on the legal advice of the Owners or the Parent's counsel to perform or omit to perform the act resulting in such violation or the Managers are the subject of any final order, judicial or administrative, obtained or issued by the United States Securities and Exchange Commission, for any securities violation involving fraud that in each case is reasonably likely to have a material adverse effect on the Owners or the Parent; and
 - (vi) a material breach of the obligations of the Managers under this Agreement that is reasonably likely to have a material adverse effect on the Parent.
- (d) The Managers shall be entitled to terminate this Agreement with immediate effect by giving notice to the Owners within a six (6) month period following a Change in Majority Interests or Control.
 - (e) The Owners shall be entitled to terminate this Agreement with immediate effect by giving notice to the Managers within a six (6) month period following a Manager Change of Control.
 - (f) This Agreement shall terminate automatically in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver or administrator is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors (any such event, an "Insolvency").
 - (g) On the termination, for whatever reason, of this Agreement, the Managers shall arrange to deliver to the Owners, if so requested, and upon reasonable notice, the originals where possible, or otherwise certified copies, of all contracts, charter-parties and all documents specifically relating the Vessel and the Management Services provided under this Agreement. The Managers will ensure that such documents will be available for a period of two (2) years following the termination of this Agreement.
 - (h) The termination of this Agreement shall be without prejudice to all rights accrued between the parties prior to the date of termination, including specifically the right of the Managers to receive the Commission or CMA CGM Charter Brokerage Fee, with respect to any charter of the Vessel delivered thereunder for the period during which such charter continues beyond the date of such termination or any consummated/completed sale and purchase transaction of the Vessel (directly or via sale of a Controlling interest in the Owners) prior to the date of such termination; provided that, in the event of termination of this Agreement for "Cause" by the Owners pursuant to Clause 22(c) (i), no Commission or CMA CGM Charter Brokerage Fee shall be due or payable to the Managers hereunder for any period after the date of such termination.
 - (i) In addition to any other payments contemplated herein, if this Agreement is terminated by the Managers pursuant to (i) any of clauses 21(a), 21(b), 22(a), 22(b)(i), 22(b)(ii), or 22(d) or (ii) if this Agreement terminates automatically pursuant to clause 22(f) because of the Insolvency of the Owners, upon such termination the Managers shall be entitled to a lump sum payment in the amount set forth opposite such clause reference in the following table:

	<u>Applicable Clause Reference</u>	<u>Termination Payment</u>
	clause 21(a)	Six (6) times the average monthly Commission paid or accrued to the Managers for the six (6) month period preceding such termination
	clause 21(b)	Six (6) times the average monthly Commission paid or accrued to the Managers for the six (6) month period preceding such termination

clause 22(a)	Twelve (12) times the average monthly Commission paid or accrued to the Managers for the twelve (12) month period preceding such termination (or if this Agreement has been in effect for a lesser period, such lesser period)
clause 22(b)(i)	Twelve (12) times the average monthly Commission paid or accrued to the Managers for the twelve (12) month period preceding such termination
clause 22(b)(ii)	Twelve (12) times the average monthly Commission paid or accrued to the Managers for the twelve (12) month period preceding such termination (or if this Agreement has been in effect for a lesser period, such lesser period)
clause 22(d)	Six (6) times the average monthly Commission paid or accrued to the Managers for the six (6) month period preceding such termination (or if this Agreement has been in effect for a lesser period, such lesser period)
clause 22(f)	Twelve (12) times the average monthly Brokerage Fee paid or accrued to the Managers for the twelve (12) times month period preceding such termination (or if this Agreement has been in effect for a lesser period, such lesser period)

- (j) In addition to any other payments contemplated herein, if this Agreement is terminated by the Owners pursuant to (i) any of clauses 21(a), 21(b), 22(a), 22(c)(i), or 22(e) or (ii) if this Agreement terminates automatically pursuant to clause 22(f) because of the Insolvency of the Managers, upon such termination the Managers shall be entitled to a lump sum payment in the amount set forth opposite such clause reference in the following table:

	<u>Applicable clause Reference</u>	<u>Termination Payment</u>
clause 21(a)		Twelve (12) times the average monthly Commission paid or accrued to the Managers for the twelve (12) month period preceding such termination
clause 21(b)		Twelve (12) times the average monthly Commission paid or accrued to the Managers for the twelve (12) month period preceding such termination
clause 22(a)		Three (3) times the average monthly Commission or accrued to the Managers for the three (3) month period preceding such termination (or if this Agreement has been in effect for a lesser period, such lesser period)
clause 22(c)(i)		None
clause 22(e)		Twelve (12) times the average monthly Commission paid or accrued to the Managers for the twelve (12) month period preceding such termination (or if this Agreement has been in effect for a lesser period, such lesser period)
clause 22(f)		Three (3) times the average monthly Commission paid or accrued to the Managers for the three (3) month period preceding such termination (or if this Agreement has been in effect for a lesser period, such lesser period)

- (k) This Agreement shall be deemed to be terminated (i) in the case of the sale of the last Vessel (directly or via sale of a Controlling interest in the relevant Vessel owner) subject to the terms of this Agreement, (ii) if the last Vessel subject to the terms of this Agreement becomes a total loss or is declared as a constructive or compromised or arranged total loss or is requisitioned or has been declared missing or (iii) if the last Vessel is bareboat chartered, unless otherwise agreed, when the bareboat charter comes to an end; provided, however, that the foregoing shall not apply to (A) the sale of the last Vessel pursuant to a sale/leaseback transaction or (B) any termination or expiration of the bareboat charter of such last Vessel by the Owners if such last Vessel is purchased (or re-purchased) by the relevant Vessel owner. In the event that this Agreement is terminated pursuant to the preceding sentence, the Managers shall be entitled to a lump sum payment in the amount of three (3) times the average monthly Commission paid or accrued to the Managers for the three (3) month period preceding such termination.
- (l) For the purpose of Clause 22(k) hereof:
1. the date upon which the last Vessel is to be treated as having been sold or otherwise disposed of shall be the date on which the relevant Owner ceases to be the registered owner of such Vessel;
 2. the last Vessel shall be deemed to be lost either when it has become an actual total loss or agreement has been reached with such Vessel's underwriters in respect of its constructive total loss or if such agreement with such Vessel's underwriters is not reached it is adjudged by a component tribunal that a constructive loss of such Vessel has occurred; and
 3. the date upon which such Vessel is to be treated as declared missing shall be ten (10) days after such Vessel was last reported or when such Vessel is recorded as missing by such Vessel's underwriters, whichever occurs first. A missing Vessel shall be deemed lost in accordance with the provisions of paragraph (ii) of Clause 22(j).

23. BIMCO Dispute Resolution Clause

(a) This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and gives notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

(b) Notwithstanding Sub-clause 23(a) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.

- (i) In the case of a dispute in respect of which arbitration has been commenced under Sub-clause 23(a) above, the following shall apply:
- (ii) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation;
- (iii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator;
- (iv) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties;

- (v) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest;
 - (vi) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration;
 - (vii) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses; and
 - (viii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.
- (c) If **Box 21** in Part I is not appropriately filled in, Sub-clause 23(a) of this Clause shall apply.

24. Notices

- (a) A notice or other communication given under this Agreement (a Notice) shall be:
 - (i) in writing;
 - (ii) in the English language; and
 - (iii) sent by the Permitted Method to the Notified Address.
- (b) The Permitted Method means any of the methods set out in the first column below, the second column setting out the date on which a Notice given by such Permitted Method shall be deemed to be given provided the Notice is properly addressed and sent in full to the Notified Address:

⁽¹⁾ <u>Permitted Method</u>	⁽²⁾ <u>Date on which Notice deemed given</u>
Personal delivery	When left at the Notified Address
Courier delivery	When left at the Notified Address
E-mail	When actually received by the recipient (or made available to the recipient) in readable form

- (c) The "Notified Address" (including fax number) of each of the Parties is the address set out below, or as subsequently notified to all Parties in writing:
 - (i) to the Owners at:
 c/o Technomar Shipping Inc.
 3-5 Menandrou Str.
 14561, Kifissia,
 Athens, Greece

 E-mail address: tbaltatzis@technomar.gr

 With a copy to: legalconfidential@technomar.gr

 Attention: Mr Theodore Baltatzis

(ii) to Managers at:
c/o Technomar Shipping Inc.
3-5 Menandrou Str.
14561, Kifissia,
Athens, Greece

E-mail address: popig@echart.gr

With a copy to: chartering@echart.gr

Attention: Mrs Popi Giannopoulou

or to such other address as is notified by one Party to the other Party under this Agreement.

25. Entire Agreement

This Agreement constitutes the entire agreement between the parties and no promise, undertaking, representation, warranty or statement by either party prior to the date stated in **Box 2** shall affect this Agreement. Any modification of this Agreement shall not be of any effect unless in writing signed by or on behalf of the parties.

26. Third Party Rights

Except to the extent provided in Sub-clauses 17(c) (Indemnity) and 17(d) (Himalaya), no third parties may enforce any term of this Agreement.

27. Partial Validity

If any provision of this Agreement is or becomes or is held by any arbitrator or other competent body to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible, the provision shall be deemed to be deleted from this Agreement to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

28. Confidentiality

The Managers shall keep confidential the Confidential Information disclosed to it by or on behalf of the Owners or howsoever otherwise obtained, developed or created by the Managers.

The Managers shall:

- (a) use the Confidential Information solely in connection with the performance of its obligations under this Agreement; and
- (b) take all action reasonably necessary to secure the Confidential Information against theft, loss or unauthorised disclosure.

The restrictions on use or disclosure of Confidential Information in this clause 28 do not apply to information which is:

- (a) generally available in the public domain, other than as a result of the Managers' breach of any obligation under this clause 28; or
- (b) lawfully acquired from a third party who owes no obligation of confidentiality in respect of the information; or
- (c) independently developed by the Managers, or was in the Managers' lawful possession prior to receipt from the Owners.

The Managers may disclose the Confidential Information without the prior written consent of the Owners:

- (a) to its Affiliates and subcontractors, to whom disclosure is required for the performance of its obligations under this Agreement, but only to the extent necessary to perform such obligations (together the **Permitted Disclosees**); or
- (b) if, and to the extent that, such information is required to be disclosed (including by way of an announcement) by the rules of any stock exchange or by any governmental, regulatory or supervisory body (including, without limitation, any taxation authority) or court of competent jurisdiction (**Relevant Authority**) to which the Owners or Managers are subject, provided that the Managers shall, if they are not so prohibited by law, provide the Owners with prompt notice of any such requirement or request.

The Managers shall:

- (a) before disclosing Confidential Information to a Permitted Disclosee, to the extent reasonably practicable, notify the Owners in writing of the intended disclosure and the identity of the intended Permitted Disclosee;
- (b) ensure that such Permitted Disclosee is aware of and complies with the Managers' obligations under this clause 28 as if it were the Managers; and

(c) be responsible for the acts and omissions of any Permitted Disclosee in relation to the Confidential Information as if they were the acts or omissions of the Managers.

The parties agree that damages may not be an adequate remedy for the Managers' breach of this clause 28 and (to the extent permitted by the court) the Owners shall be entitled to seek an injunction or specific performance in respect of such breach.

29. Interpretation

In this Agreement:

(a) Singular/Plural

The singular includes the plural and vice versa as the context admits or requires.

(b) Headings

The index and heading to the clauses and appendices to this Agreement are for convenience only and shall not affect its construction or interpretation.

(c) Day

"Day" means a calendar day unless expressly stated to the contrary.

30. Acts of the Technical Managers

Notwithstanding anything contained in this Agreement to the contrary, the Owners shall have no liability, through indemnification or otherwise, for any damages, losses, or claims of any kind whatsoever of the Managers arising from or in any way related to the acts or omissions of the Technical Managers, nor shall the Managers have any right to terminate this Agreement for any circumstance or event arising out of or in any way related to any acts or omissions of the Technical Managers.

31. Assignment and transfer

- (a) The Owners may assign all of their rights under this Agreement to any mortgagee of the Vessel provided that such assignment shall not otherwise prejudice the rights of the Managers under this Agreement, including its rights to terminate this Agreement pursuant to the terms hereof. Upon satisfaction of the condition set forth in the first sentence of this Clause 31(a), the Managers hereby agree to enter into an acknowledgment of such assignment in such form as the mortgagee may reasonably request.
- (b) The Managers may not assign all or any of their rights under this Agreement without the prior written consent of the Owners;
- (c) Neither party shall be entitled to transfer all or any of its obligations, duties or liabilities under this Agreement unless:
 - (i) the same is expressly permitted under the terms of this Agreement; or
 - (ii) it has received the prior written consent of the other party.

Annex A – Details of Vessel

M/V AGIOS DIMITRIOS

IMO NUMBER 9349605

GLSS CELLULAR CONTAINER VSL

BLT 2011 - B.V - LIBERIA FLAG

DWAT 85.700 MT ON 14.52 M DRAFT

LOA/BEAM 299.20 / 40.00 M

NOM 6572 TEUS / 5002 AT 14 T

REEFER: 500 PLUGS

SP/CONS ABT 21/109, OR 19/87, OR 16/58, OR 13/32

M/V ALEXANDRA

IMO NUMBER 9635676

GLSS CELLULAR CONTAINER VSL

BLT 2013 - RINA - MARSHALL ISLANDS FLAG

DWAT 80.274 MT ON 14.52 M DRAFT

LOA/BEAM 270.07 / 42.80 M

NOM 6927 TEUS / 5120 AT 14 T

REEFER: 1200 PLUGS

SP/CONS ABT 23/128, OR 21/91, OR 19/67.5, OR 17/49, OR 11/15

AIR DRAFT: 57.50 M WITH TILTED MAST

M/V ANTHEA Y

IMO NUMBER 9710244

GLSS CELLULAR CONTAINER VSL

BLT 2015 -RINA/G.L - MARSHALL ISLANDS FLAG

DWAT 110.903 MT ON 14.50 M DRAFT

LOA/BEAM 299.99 / 48.20 M

NOM 9115 TEUS / 7578 AT 14 T

REEFER: 1500 PLUGS

SP/CONS ABT 22/127, OR 18/68, OR 16/50, OR 14/36

M/V ARGOS

IMO NUMBER 9477787

GLSS CELLULAR CONTAINER VSL

BLT 2012 -BV - LIBERIA

DWAT 49.891 MT ON 12.60 M DRAFT

LOA/BEAM 261.06 / 32.20 M

NOM 4253 TEUS / 2781 AT 14 T

REEFER: 698 PLUGS

SP/CONS ABT 21/87.5, OR 18/59, OR 16/48, OR 14/38.5

M/V ATHENA

IMO NUMBER 9275361

GLSS CELLULAR CONTAINER VSL

BLT 2003 - NK - PANAMA FLAG

DWAT 43.093 MT ON 12.52 M DRAFT

LOA/BEAM 234.62 / 32.20 M

NOM 2762 TEUS / 2330 AT 14 T

REEFER: 300 PLUGS

SP/CONS ABT 20/73 OR 17/45 OR 15/35 OR 13/23

M/V DIMITRIS Y

IMO NUMBER 9189354

GLSS CELLULAR CONTAINER VSL

BLT 2000 - B.V - LIBERIA FLAG

DWAT 67.624 MT ON 14.00 M DRAFT

LOA/BEAM 278.01 / 40.00 M

NOM **5936** TEUS / 4312 AT 14 T

REEFER: 500 PLUGS

SP/CONS ABT 21/108, OR 19/85, OR 17/64, OR 14/40

M/V DOLPHIN II

IMO NUMBER 9318125

GLSS CELLULAR CONTAINER VSL

BLT 2007 - BV - PANAMA FLAG

DWAT 65.892 MT ON 13.50 M DRAFT

LOA/BEAM 294.11 / 32.20 M

NOM **5095** TEUS / 3306 AT 14 T

REEFER: 330 PLUGS

SP/CONS ABT 21/102, OR 19/80 OR 17/61 OR 14/35

M/V IAN H

IMO NUMBER 9189500

GLSS CELLULAR CONTAINER VSL

BLT 2000 - B.V - LIBERIA FLAG

DWAT 67.785 MT ON 14.00 M DRAFT

LOA/BEAM 278.01 / 40.00 M

NOM **5936** TEUS / 4312 AT 14 T

REEFER: 500 PLUGS

SP/CONS ABT 21/108, OR 19/85, OR 17/64, OR 14/40

M/V KATHERINE

IMO NUMBER 9641235

GLSS CELLULAR CONTAINER VSL

BLT 2013 - RINA - MARSHALL ISLANDS FLAG

DWAT 80.295 MT ON 14.52 M DRAFT

LOA/BEAM 270.07 / 42.80 M

NOM **6927** TEUS / 5120 AT 14 T

REEFER: 1200 PLUGS

SP/CONS ABT 23/128, OR 21/91, OR 19/67.5, OR 17/49, OR 11/15

M/V KRISTINA

IMO NUMBER 9641223

GLSS CELLULAR CONTAINER VSL

BLT 2013 - RINA - MARSHALL ISLANDS FLAG

DWAT 80.274 MT ON 14.52 M DRAFT

LOA/BEAM 270.07 / 42.80 M

NOM **6927** TEUS / 5120 AT 14 T

REEFER: 1200 PLUGS

SP/CONS ABT 23/128, OR 21/91, OR 19/67.5, OR 17/49, OR 11/15

M/V MAIRA XL

IMO NUMBER 9710232

GLSS CELLULAR CONTAINER VSL

BLT 2015 - RINA/G.L - MARSHALL ISLANDS FLAG

DWAT 110.972 MT ON 14.50 M DRAFT

LOA/BEAM 299.99 / 48.20 M

NOM **9115** TEUS / 7578 AT 14 T

REEFER: 1500 PLUGS

SP/CONS ABT 22/127, OR 18/68, OR 16/50, OR 14/36

M/V MAIRA

IMO NUMBER 9203502

GRD CONTAINER VSL

BLT 2000 - RINA - PANAMA FLAG

DWAT 32.391 MT ON 11.42 M DRAFT

LOA/BEAM 207.16 / 29.80 M

NOM **2506** TEUS / 1805 AT 14 T

REEFER: 420 PLUGS

SP/CONS ABT 21/73, OR 19/57 OR 15/32 OR 12/18

M/V MARY

IMO NUMBER 9635664

GLSS CELLULAR CONTAINER VSL

BLT 2013 - RINA - MARSHALL ISLANDS FLAG

DWAT 80.274 MT ON 14.52 M DRAFT

LOA/BEAM 270.07 / 42.80 M

NOM **6927** TEUS / 5120 AT 14 T

REEFER: 1200 PLUGS

SP/CONS ABT 23/128, OR 21/91, OR 19/67.5, OR 17/49, OR 11/15

AIR DRAFT: 55.90 M WITH TILTED MAST

M/V NEWYORKER

IMO NUMBER 9209104

GRD CONTAINER VSL

BLT 2001 - RINA - PANAMA FLAG

DWAT 32.391 MT ON 11.42 M DRAFT

LOA/BEAM 207.16 / 29.80 M

NOM **2506** TEUS / 1805 AT 14 T

REEFER: 420 PLUGS

SP/CONS ABT 21/73, OR 19/57 OR 15/32 OR 12/18

M/V NIKOLAS

IMO NUMBER 9203526

GRD CONTAINER VSL

BLT 2000 - RINA - PANAMA FLAG

DWAT 32.391 MT ON 11.42 M DRAFT

LOA/BEAM 207.16 / 29.80 M

NOM **2506** TEUS / 1805 AT 14 T

REEFER: 420 PLUGS

SP/CONS ABT 21/73, OR 19/57 OR 15/33 OR 12/18

M/V ORCA I

IMO NUMBER 9318113

GLSS CELLULAR CONTAINER VSL
BLT 2006 - BV - PANAMA FLAG
DWAT 65.955 MT ON 13.50 M DRAFT
LOA/BEAM 294.11 / 32.20 M
NOM **5095** TEUS / 3306 AT 14 T
REEFER: 330 PLUGS
SP/CONS ABT 21/102, OR 19/80 OR 17/61 OR 14/35

M/V TASMAN

IMO NUMBER 9189342

GLSS CELLULAR CONTAINER VSL
BLT 2000 - B.V - MARSHALL ISLANDS FLAG
DWAT 67.902 MT ON 14.00 M DRAFT
LOA/BEAM 278.01 / 40.00 M
NOM **5936** TEUS / 4312 AT 14 T
REEFER: 500 PLUGS
SP/CONS ABT 21/108, OR 19/85, OR 17/64, OR 14/40

M/V UASC AL KHOR

IMO NUMBER 9710220

GLSS CELLULAR CONTAINER VSL
BLT 2015 -RINA/G.L - MARSHALL ISLANDS FLAG
DWAT 111.029 MT ON 14.50 M DRAFT
LOA/BEAM 299.99 / 48.20 M
NOM **9115** TEUS / 7558 AT 14 T
REEFER: 1500 PLUGS
SP/CONS ABT 22/126.5, OR 18/68, OR 16/49.5, OR 14/35.5

M/V UASC BUBIYAN

IMO NUMBER 9686900

GLSS CELLULAR CONTAINER VSL
BLT 2015 - G.L/RINA - MARSHALL ISLANDS FLAG
DWAT 79.274 MT ON 14.55 M DRAFT
LOA/BEAM 270.90 / 42.80 M
NOM **6882** TEUS / 5105 AT 14 T
REEFER: 1200 PLUGS
SP/CONS ABT 23/125, OR 19/65, OR 16/39.5, OR 13/21.5

M/V UASC YAS

IMO NUMBER 9686912

GLSS CELLULAR CONTAINER VSL
BLT 2015 - G.L/RINA - MARSHALL ISLANDS FLAG
DWAT 79.329 MT ON 14.55 M DRAFT
LOA/BEAM 270.90 / 42.80 M
NOM **6882** TEUS / 5105 AT 14 T
REEFER: 1200 PLUGS
SP/CONS ABT 23/125, OR 19/65, OR 16/39.5, OR 13/21.5

*** ALL ABOVE FIGURES ABOUT WOG AND GIVEN IN GOOD FAITH ***

LIST OF SUBSIDIARIES OF GLOBAL SHIP LEASE, INC.

Name	Business	Jurisdiction of Incorporation
GSL Rome LLC	Sub-holding	Republic of the Marshall Islands
Poseidon Containers Holdings LLC	Sub-holding	Republic of the Marshall Islands
K&T Marine LLC	Sub-holding	Republic of the Marshall Islands
Global Ship Lease Services Limited	Service company	United Kingdom
GSL Enterprises Ltd.	Service company	Republic of the Marshall Islands
Global Ship Lease 1 Limited	Inactive	Cyprus
Global Ship Lease 2 Limited	Inactive	Cyprus
Global Ship Lease 3 Limited	Owens CMA CGM Matisse	Cyprus
Global Ship Lease 4 Limited	Owens CMA CGM Utrillo	Cyprus
Global Ship Lease 5 Limited	Owens GSL Keta	Cyprus
Global Ship Lease 6 Limited	Owens GSL Julie	Cyprus
Global Ship Lease 7 Limited	Owens Kumasi	Cyprus
Global Ship Lease 8 Limited	Owens Marie Delmas	Cyprus
Global Ship Lease 9 Limited	Owens CMG CGM La Tour	Cyprus
Global Ship Lease 10 Limited	Owens CMA CGM Manet	Cyprus
Global Ship Lease 11 Limited	Inactive	Cyprus
Global Ship Lease 12 Limited	Owens CMA CGM Chateau d'If	Cyprus
Global Ship Lease 13 Limited	Owens CMA CGM Thalassa	Cyprus
Global Ship Lease 14 Limited	Owens CMA CGM Jamaica	Cyprus
Global Ship Lease 15 Limited	Owens CMA CGM Sambhar	Cyprus
Global Ship Lease 16 Limited	Owens CMA CGM America	Cyprus
Global Ship Lease 17 Limited	Inactive	Cyprus
Global Ship Lease 19 Limited	Inactive	Republic of the Marshall Islands
Global Ship Lease 20 Limited	Owens GSL Tianjin	Hong Kong
Global Ship Lease 21 Limited	Owens OOCL Qingdao	Hong Kong
Global Ship Lease 22 Limited	Owens GSL Ningbo	Hong Kong
Global Ship Lease 23 Limited	Owens CMA CGM Berlioz	Hong Kong
Global Ship Lease 24 Limited	Inactive	Hong Kong
Global Ship Lease 25 Limited	Inactive	Hong Kong
Global Ship Lease 26 Limited	Owens GSL Valerie	Hong Kong
Global Ship Lease 27 Limited	Inactive	Hong Kong
Global Ship Lease 28 Limited	Inactive	Hong Kong
Global Ship Lease 29 Limited	Inactive	Hong Kong
GSL Alcazar Inc.	Owens CMA CGM Alcazar	Republic of the Marshall Islands
GSL Holdings, Inc.	Sub-holding	Republic of the Marshall Islands
Global Ship Lease Investments, Inc.	Sub-holding	Republic of the Marshall Islands
Aris Marine LLC	Owens Maira	Republic of the Marshall Islands
Aphrodite Marine LLC	Owens Nikolas	Republic of the Marshall Islands
Athena Marine LLC	Owens Newyorker	Republic of the Marshall Islands
Hephaestus Marine LLC	Owens Dolphin II	Republic of the Marshall Islands
Pericles Marine LLC	Owens Athena	Republic of the Marshall Islands
Zeus One Marine LLC	Owens Orca I	Republic of the Marshall Islands

Name	Business	Jurisdiction of Incorporation
Leonidas Marine LLC	Owens Agios Dimitrios	Republic of the Marshall Islands
Odysseus Marine LLC	Sub-holding	Republic of the Marshall Islands
Alexander Marine LLC	Owens Mary	Republic of the Marshall Islands
Hector Marine LLC	Owens Kristina	Republic of the Marshall Islands
Ikaros Marine LLC	Owens Katherine	Republic of the Marshall Islands
THD Maritime Co, Limited	Sub-holding	Cyprus
Tasman Marine LLC	Owens Tasman	Republic of the Marshall Islands
Hudson Marine LLC	Owens Dimitris Y	Republic of the Marshall Islands
Drake Marine LLC	Owens Ian H	Republic of the Marshall Islands
Marine Treasurer LLC	Treasury	Republic of the Marshall Islands
Hercules Marine LLC	Inactive	Republic of the Marshall Islands
Achilleas Marine LLC	Inactive	Republic of the Marshall Islands
Dimitra Marine LLC	Inactive	Republic of the Marshall Islands
Artemis Marine LLC	Inactive	Republic of the Marshall Islands
Hermes Marine LLC	Inactive	Republic of the Marshall Islands
Hera Marine LLC	Inactive	Republic of the Marshall Islands
Apollon Marine LLC	Inactive	Republic of the Marshall Islands
Callisto Marine LLC	Inactive	Republic of the Marshall Islands
Cassiope Marine LLC	Inactive	Republic of the Marshall Islands
Orion Marine LLC	Inactive	Republic of the Marshall Islands
Perseus Marine LLC	Inactive	Republic of the Marshall Islands
Rea Marine LLC	Inactive	Republic of the Marshall Islands
Kronos Marine LLC	Inactive	Republic of the Marshall Islands
Platon Marine LLC	Inactive	Republic of the Marshall Islands
Socrates Marine LLC	Inactive	Republic of the Marshall Islands
Pisti Shipping LLC	Inactive	Republic of the Marshall Islands
Barentsz Marine LLC	Inactive	Republic of the Marshall Islands
Mercator Marine LLC	Inactive	Republic of the Marshall Islands
Poseidon Fleet Holdings LLC	Inactive	Republic of the Marshall Islands
Poseidon Containers Holdings Corp.	Inactive	Republic of the Marshall Islands
Triton Containers Holdings LLC	Sub-holding	Republic of the Marshall Islands
Triton NB LLC	Sub-holding	Republic of the Marshall Islands
Phillipos Marine LLC	Owens Alexandra	Republic of the Marshall Islands
Aristoteles Marine LLC	Owens UASC Bubiyan	Republic of the Marshall Islands
Menelaos Marine LLC	Owens UASC Yas	Republic of the Marshall Islands
Odyssia Containers Holdings LLC	Sub-holding	Republic of the Marshall Islands
Odyssia NB LLC	Sub-holding	Republic of the Marshall Islands
Argos Marine LLC	Inactive	Republic of the Marshall Islands
Laertis Marine LLC	Owens UASC Al Khor	Republic of the Marshall Islands
Penelope Marine LLC	Owens Maira XL	Republic of the Marshall Islands
Telemachus Marine LLC	Owens Anthea Y	Republic of the Marshall Islands

CERTIFICATION

I, Ian J. Webber, Chief Executive Officer of the Company, certify that:

1. I have reviewed this Annual Report on Form 20-F of Global Ship Lease, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Dated: March 29, 2019

By: /s/ Ian J. Webber

Ian J. Webber
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Anastasios Psaropoulos, Chief Financial Officer of the Company, certify that:

1. I have reviewed this Annual Report on Form 20-F of Global Ship Lease, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Dated: March 29, 2019

By: /s/ Anastasios Psaropoulos
Anastasios Psaropoulos
Chief Financial Officer
(Principal Financial Officer)

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Global Ship Lease, Inc. (the "Company") on Form 20-F for the year ended December 31, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Form 20-F"), I, Ian J. Webber, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Form 20-F fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) The information contained in the Form 20-F fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 29, 2019

By: /s/ Ian J. Webber

Ian J. Webber
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Global Ship Lease, Inc. (the "Company") on Form 20-F for the year ended December 31, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Form 20-F"), I, Anastasios Psaropoulos, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Form 20-F fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) The information contained in the Form 20-F fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 29, 2019

By: /s/ Anastasios Psaropoulos

Anastasios Psaropoulos
Chief Financial Officer
(Principal Financial Officer)

March 29, 2019

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Commissioners:

We have read the statements made by Global Ship Lease, Inc. (copy attached), which we understand will be filed with the Securities and Exchange Commission, pursuant to Item 16F of Form 20-F, as part of the Form 20-F of Global Ship Lease, Inc. dated March 29, 2019. We agree with the statements concerning our Firm contained therein.

Very truly yours,

PricewaterhouseCoopers Audit
/s/ PricewaterhouseCoopers

PricewaterhouseCoopers is represented by PricewaterhouseCoopers Audit, 63 rue de Villiers – 92200 Neuilly-sur-Seine, France

March 29, 2019

Attachment:

On November 16, 2018, the Audit Committee of the Board of Directors of Global Ship Lease, Inc. replaced PricewaterhouseCoopers Audit (“PwC Audit”) with PricewaterhouseCoopers S.A. (“PwC S.A.”) as our new independent registered public accounting firm.

The reports of PwC Audit on Global Ship Lease’s consolidated financial statements for the fiscal years ended December 31, 2017 and 2016 did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principle.

During the fiscal years ended December 31, 2016 and 2017, and the subsequent interim period from January 1, 2018 through November 15, 2018, (i) Global Ship Lease had no disagreements with PwC Audit on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of PwC Audit, would have caused PwC Audit to make reference to the subject matter of the disagreements in connection with its reports on the combined and consolidated financial statements for such years, and (ii) there were no “reportable events” as defined in Item 16F(a)(1)(v) of Form 20-F.

Global Ship Lease provided PwC Audit with a copy of this Form 20-F prior to its filing with the Securities and Exchange Commission and requested that PwC Audit furnish it with a letter addressed to the Securities and Exchange Commission stating whether it agrees with the above statements. A copy of PwC Audit’s letter is attached as Exhibit 16.1 to this Form 20-F.

In connection with the audits of the Company’s financial statements for each of the fiscal years ended December 31, 2016 and 2017 and from January 1, 2018 through November 15, 2018 neither Global Ship Lease nor anyone on its behalf has consulted with PwC S.A. on the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on Global Ship Lease’s financial statements, or any matter that was the subject of a disagreement, as that term is defined in Item 16F(a)(1)(iv) of Form 20-F and the related instructions to Item 16F of Form 20-F, or a reportable event, as that term is defined in Item 16F(a)(1)(v) of Form 20-F.