
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 6-K

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

Dated: October 27, 2010

Commission File No. 001-33311

NAVIOS MARITIME HOLDINGS INC.

85 Akti Miaouli Street, Piraeus, Greece 185 38

(Address of Principal Executive Offices)

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

Form 20-F Form 40-F

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

Yes No

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

Yes No

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

Yes No

On November 8, 2010, in connection with the expected acquisition of two newbuild vessels, Navios Maritime Holdings Inc. (“Navios Holdings”) filed a Certificate of Designations, Preferences and Rights of Navios Holdings (the “Certificate of Designation”) with the Registrar of Corporations in the Republic of the Marshall Islands designating a series of preferred stock as the Series E Convertible Preferred Stock (“Preferred Stock”). It is expected that on or about November 17, 2010 and November 29, 2010, upon execution of the applicable subscription agreements, the 1,960 shares of designated Preferred Stock will be issued. The Preferred Stock contains a 2% per annum dividend payable quarterly, accruing from the date of issuance. Accrued but unpaid dividends may be paid upon conversion in accordance with the mandatory conversion terms of the Preferred Stock. The Preferred Stock, plus any accrued but unpaid dividends, will mandatorily convert into shares of common stock as follows: 30% of the outstanding amount will convert on August 19, 2015 and the remaining outstanding amounts will convert on August 19, 2020 at a price per share of common stock of not less than \$10.00. The holder of the Preferred Stock shall have the right to convert the shares of Preferred Stock into common stock prior to the scheduled maturity dates at a price of \$14.00 per share of common stock. The Preferred Stock does not have any voting rights. The Certificate of Designation, as filed, is attached hereto as Exhibit 1.1 to this Report and is incorporated herein by reference.

In February 2009 (amended and restated in May 2009), Navios Holdings entered into a loan facility of up to \$120.0 million with Dekabank Deutsche Girozentrale to finance the acquisition of two Capesize vessels. The loan is repayable upon delivery of the Capesize vessels in 20 semi-annual installments and bears an interest rate based on a margin of 190 bps. The loan facility requires compliance with the covenants contained in the senior notes of Navios Holdings. The loan also requires compliance with certain financial covenants. As of December 31, 2009, the full amount was drawn. As of September 30, 2010, \$91.0 million was outstanding under this facility. Following the sale of the Navios Pollux to Navios Maritime Partners L.P. in May 2010, an amount of \$39.0 million was kept in a pledged account pending the delivery of a substitute vessel as collateral to this loan facility. The substitute vessel, Navios Buena Ventura, was delivered to Navios Holdings, and upon delivery was mortgaged to Dekabank. In connection with the Navios Buena Ventura becoming collateral to the loan facility, Navios Holdings and Dekabank entered into an Amended and Restated Loan Agreement, dated October 27, 2010. The Amended and Restated Loan Agreement is attached hereto as Exhibit 10.1 to this Report and is incorporated herein by reference.

This information contained in this Report is hereby incorporated by reference into the Company’s Registration Statements on Form F-3, File Nos. 333-136936, 333-129382 and 333-165754 and on Form S-8, File No. 333-147186.

SIGNATURES

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

NAVIOS MARITIME HOLDINGS INC.

By: /s/ Angeliki Frangou

Angeliki Frangou

Chief Executive Officer

Date: November 15, 2010

EXHIBIT INDEX

| <u>Exhibit No.</u> | <u>Exhibit</u> |
|--------------------|--|
| 1.1 | Certificate of Designation of the Series E Convertible Preferred Stock, as filed with the Registrar of Companies of the Republic of the Marshall Islands on November 8, 2010 |
| 10.1 | Amended and Restated Loan Agreement for \$120.0 million with Navios Maritime Holdings Inc., dated October 27, 2010 |

**CERTIFICATE OF DESIGNATION, PREFERENCES AND RIGHTS OF
SERIES E CONVERTIBLE PREFERRED STOCK
OF
NAVIOS MARITIME HOLDINGS INC.**

**(Pursuant to Section 35(2) of the
Business Corporations Act of the Associations Law of
the Republic of the Marshall Islands)**

The undersigned, Ms. Angeliki Frangou and Ms. Vasiliki Papaefthymiou, do hereby certify:

1. That they are the duly elected and acting Chief Executive Officer and Corporate Secretary, respectively, of Navios Maritime Holdings Inc., a Marshall Islands corporation.

2. That, pursuant to the authority conferred by the Company's Amended and Restated Articles of Incorporation, the Company's Board of Directors, as of November 2, 2010, by a unanimous written consent in lieu of a meeting in accordance with Section 55 of the Business Corporation Act of the Associations Law of the Republic of the Marshall Islands, adopted the following resolutions:

RESOLVED, that, pursuant to the authority expressly granted to and vested in the Board of Directors (the "Board of Directors") of Navios Maritime Holdings Inc. (the "Company") by the provisions of the Amended and Restated Articles of Incorporation (the "Articles of Incorporation") of the Company and its Bylaws, and in accordance with Section 35(2) of the Business Corporation Act of the Associations Law of the Republic of the Marshall Islands (the "BCA"), there is hereby created, out of the 877,771 shares of preferred stock, par value \$0.0001 per share (the "Preferred Stock"), of the Company's remaining authorized, unissued and undesignated, a series of the Preferred Stock, which series shall have the following powers, designations, preferences and relative, optional or other rights, and the following qualifications, limitations and restrictions (in addition to any powers, designations, preferences and relative, optional or other rights, and any qualifications, limitations and restrictions, set forth in the Articles of Incorporation which are applicable to the Preferred Stock):

Section 1. Designation of Amount.

The shares of such series of Preferred Stock created hereby shall be designated the "Series E Convertible Preferred Stock" (the "Series E Convertible Preferred Stock"), par value \$0.0001 per share. The number of shares of Series E Convertible Preferred Stock shall initially be 1,960, which number the Board of Directors may from time to time increase or decrease (but not below the number then-outstanding). Series E Convertible Preferred Stock shall rank pari passu with the Company's convertible preferred stock as shall have been previously designated on the date of issuance of this Series E Convertible Preferred Stock.

Section 2. Liquidation.

(a) Liquidation Preference. In the event of a liquidation, dissolution or winding up of the Company, whether voluntary or involuntary (a "Liquidation Event"), (i) after any payment shall be made or any assets distributed out of the assets of the Company then-available for distribution (whether such assets are stated capital, surplus or earnings) to the holders of (x) any of the Company's secured and unsecured debt

obligations, or (y) any other security or obligation issued subsequent to the Original Issuance Date (as defined below) that expressly states that it ranks senior to the Series E Convertible Preferred Stock (such holders in subclauses (x) and (y) collectively, the “Senior Holders”), but (ii) before any payment shall be made or any assets distributed to the holders of any class or series of the common stock, par value \$0.0001 per share of the Company (the “Common Stock”), the holders of the Series E Convertible Preferred Stock then-outstanding shall be entitled to receive \$10,000 per share of Series E Convertible Preferred Stock plus the amount of any accumulated and unpaid dividends thereon, whether or not declared (the “Liquidation Preference”), up to and including the date full payment shall be tendered to the holders of the Series E Convertible Preferred Stock with respect to such Liquidation Event. If, upon any Liquidation Event and after payment or distribution to the Senior Holders, the assets of the Company available for distribution to the holders of the Series E Convertible Preferred Stock are insufficient to permit the payment in full to the holders of the Series E Convertible Preferred Stock of the full Liquidation Preference, then all of the remaining assets of the Company available for such distribution shall be distributed among the holders of the then-outstanding Series E Convertible Preferred Stock pro rata according to the number of then-outstanding shares of Series E Convertible Preferred Stock held by each holder thereof.

(b) Distribution of Remaining Assets. Following payment to the holders of the Series E Convertible Preferred Stock of the full preferential amounts described in Section 2(a) above, the holders of the Series E Convertible Preferred Stock shall have no further right to participate in any assets of the Company available for distribution.

Section 3. Dividends; Withholding on Payments; Taxes.

(a) The holders of Series E Convertible Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of legally available funds, cumulative dividends at the rate of 2.0% of the Liquidation Preference per share of Series E Convertible Preferred Stock per annum. With respect to each share of Series E Convertible Preferred Stock, such dividends shall accrue daily from and after the date such shares of Series E Convertible Preferred Stock are initially issued (the “Original Issuance Date”) through the earlier of the conversion or redemption of such share or a Liquidation Event and shall be payable quarterly in arrears on June 30, September 30, December 31, March 31 of each year or, if not a Business Day, the next succeeding Business Day (and without any interest or other payment in respect of such delay), commencing with the first dividend payment date following the date such shares of Series E Convertible Preferred Stock are issued (each, a “Dividend Payment Date”). Any dividend payable on the Series E Convertible Preferred Stock for any partial dividend period shall be prorated and computed on the basis of a 365- or 366-day year and the actual number of days elapsed. Dividends shall be payable to holders of record as they appear in the stock records of the Company at the close of business on the applicable dividend record date, which shall be a date designated by the Board of Directors for the payment of dividends that is not more than 60 nor less than 10 calendar days immediately preceding such Dividend Payment Date.

(b) Notwithstanding anything to the contrary contained herein, dividends on the Series E Convertible Preferred Stock shall accrue and cumulate whether or not the Company has earnings or surplus, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared by the Board of Directors. Accumulated but unpaid dividends on the Series E Convertible Preferred Stock shall cumulate as of the Dividend Payment Date on which they first become payable, on the date of conversion pursuant to Section 5 hereof and on the date of any Liquidation Event.

(c) The Company shall be authorized to deduct and withhold any withholding or similar taxes imposed with respect to any payments made (or deemed made) on or with respect to the Series E Convertible Preferred Stock under the U.S. Internal Revenue Code of 1986, as amended, or any

applicable provision of state, local or foreign tax law, and any amounts so deducted and withheld shall be treated as distributed by the Company to the holders of the Series E Convertible Preferred Stock in accordance with the terms hereof. If payment is made through the distribution of property (other than money), any holder of the Series E Convertible Preferred Stock that is subject to withholding or similar taxes shall deliver to the Company (or, as directed by the Company, to its paying agent), by wire transfer of immediately available funds in United States dollars, amounts sufficient to satisfy any withholding obligations imposed on the Company (or its paying agent) with respect to any such distribution to or for the benefit of such holder. As security for its obligations under this Section 3(c), such holder hereby grants the Company a security interest in any and all amounts payable or distributable to (or for the benefit of) such holder in respect of the Series E Convertible Preferred Stock.

(d) The Company will pay any and all original issuance, transfer, stamp and other similar taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Series E Convertible Preferred Stock pursuant hereto. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the holder of the share(s) of Series E Convertible Preferred Stock to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Company the amount of any such tax, or has established to the reasonable satisfaction of the Company that such tax has been or will be paid.

Section 4. Voting Rights.

Except as may be provided in the BCA, a holder of Series E Convertible Preferred Stock shall not have any voting rights.

Section 5. Conversion Rights.

(a) Automatic Conversion.

(1) On August 19, 2015 (the “Initial Conversion Date”), 30% of the then-outstanding shares of Series E Convertible Preferred Stock shall automatically convert pro rata, without any action on the part of the Company, any stockholder or any other person, into a number of fully paid and non-assessable shares of Common Stock determined by dividing the amount of the then-Liquidation Preference of such Series E Convertible Preferred Stock being converted by a conversion price equal to \$10.00 per share of Common Stock, subject to adjustment pursuant to Section 5(f) below.

(2) On August 19, 2020 (the “Final Conversion Date”), the remaining balance of the then-outstanding shares of Series E Convertible Preferred Stock shall automatically convert pro rata, without any action on the part of the Company, any stockholder or any other person, into a number of fully paid and non-assessable shares of Common Stock determined by dividing the amount of the then-Liquidation Preference of such Series E Convertible Preferred Stock being converted by a conversion price equal to \$10.00 per share of Common Stock, subject to adjustment pursuant to Section 5(f) below.

(b) Optional Conversion. Subject to and upon compliance with the provisions of this Section 5, the holders of shares of Series E Convertible Preferred Stock shall be entitled, at their option, at any time following the Original Issuance Date and prior to the Final Conversion Date, to convert all or any such then-outstanding shares of Series E Convertible Preferred Stock into a number of fully paid and non-assessable shares of Common Stock determined by dividing the amount of the then-Liquidation Preference of such Series E Convertible Preferred Stock being converted by a conversion price equal to \$14.00 per share of Common Stock, subject to adjustment pursuant to Section 5(f) below.

(c) Automatic Conversion Based on Price. At any time following June 30, 2012, if the closing price of the Common Stock on the New York Stock Exchange (or, if that is not then the principal market for the Company's Common Stock, the then-principal market) has been at least \$20.00 per share, as adjusted for stock splits, stock dividends or similar events, for 10 consecutive Business Days (such 10th day, the "Automatic Conversion Date"), the remaining balance of the then-outstanding shares of Series E Convertible Preferred Stock shall automatically convert pro rata, without any action on the part of the Company, any stockholder or any other person, into a number of fully paid and non-assessable shares of Common Stock determined by dividing the amount of the then-Liquidation Preference of such Series E Convertible Preferred Stock being converted by a conversion price equal to \$14.00 per share of Common Stock, subject to adjustment pursuant to Section 5(f) below.

(d) Conversion Price. The applicable conversion price (the "Conversion Price") shall be subject to adjustment from time to time in accordance with Section 5(f) hereof.

(e) No Fractional Shares. The number of full shares of Common Stock issuable upon conversion shall be computed on the basis of the aggregate number of shares of Series E Convertible Preferred Stock surrendered. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any shares of Series E Convertible Preferred Stock, the number of shares of Common Stock issued shall be rounded, up or down, to the nearest whole number of shares of Common Stock (with one half being rounded up).

(f) Adjustments to Conversion Price. The Conversion Price shall be subject to adjustment from time to time as follows:

(1) Upon Stock Dividends, Subdivisions or Splits. If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split up of shares of Common Stock, then, following the record date for the determination of holders of Common Stock entitled to receive such stock dividend, or to be affected by such subdivision or split up, the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of Series E Convertible Preferred Stock shall be increased in proportion to such increase in outstanding shares.

(2) Upon Combinations or Reverse Stock Splits. If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is decreased by a combination or reverse stock split of the outstanding shares of Common Stock into a smaller number of shares of Common Stock, then, following the record date to determine shares affected by such combination or reverse stock split, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series E Convertible Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(3) Upon Capital Reorganization or Reclassification. If the Common Stock issuable upon the conversion of the Series E Convertible Preferred Stock shall be changed into the same or different number of shares of any class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination or shares of stock dividend provided for elsewhere in this Section 5(f), or the sale of all or substantially all of the Company's properties and assets to any other person), then and in each such event the holder of each share of Series E Convertible Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Series E Convertible Preferred Stock might have been converted, as the case may be, immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

(4) Upon Reclassification, Merger or Sale of Assets . If, at any time or from time to time, there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification, or exchange of shares provided for elsewhere in this Section 5(f)) or a merger or consolidation of the Company with or into another corporation, or the sale of all or substantially all of the Company's properties and assets to any other person, then, as a part of such reorganization, merger, or consolidation or sale, provision shall be made so that holders of Series E Convertible Preferred Stock, as the case may be, shall thereafter be entitled to receive upon conversion of the Series E Convertible Preferred Stock, the number of shares of stock or other securities or property of the Company, or of the successor corporation resulting from such merger, consolidation or sale, to which such holder would have been entitled if such holder had converted its shares of Series Convertible A Preferred Stock immediately prior to such capital reorganization, merger, consolidation or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5(f) with respect to the rights of the holders of the Series E Convertible Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this Section 5(f), including adjustment of the Conversion Price then in effect for the Series E Convertible Preferred Stock and the number of shares issuable upon conversion of the Series E Convertible Preferred Stock shall be applicable after that event in as nearly equivalent a manner as may be practicable.

(g) Exercise of Conversion Privilege.

(1) Except in the case of an automatic conversion pursuant to (x) Section 5(a) hereof, or (y) Section 5(c) hereof, as the case may be, in order to convert shares of Series E Convertible Preferred Stock, a holder must (A) surrender the certificate or certificates evidencing such holder's shares of Series E Convertible Preferred Stock (to the extent they were issued in certificated form) to be converted and duly endorsed in a form satisfactory to the Company, at the office of the Company, and (B) notify the Company at such office that such holder elects to convert Series E Convertible Preferred Stock and the number of shares such holder wishes to convert. Such notice referred to in clause (B) above shall be delivered substantially in the form set forth in Annex A hereto.

(2) Except in the case of an automatic conversion pursuant to (x) Section 5(a) hereof, or (y) Section 5(c) hereof, as the case may be, Series E Convertible Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the day (the "Conversion Date") of surrender of such shares of Series E Convertible Preferred Stock for conversion in accordance with the foregoing provisions. In the case of (A) an automatic conversion pursuant to Section 5(a) hereof, such conversion shall occur automatically on the Initial Conversion Date or the Final Conversion Date, as the case may be, or (B) an automatic conversion pursuant to Section 5(c) hereof, such conversion shall occur automatically on the Automatic Conversion Date, and without any further action by the holders of such shares and whether or not the certificates representing such shares, if any, are surrendered to the Company or its transfer agent. Upon the Conversion Date, the Initial Conversion Date, the Final Conversion Date or the Automatic Conversion Date, as the case may be, the rights of the holders of such shares of Series E Convertible Preferred Stock as holder shall cease, and the person or persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock as and after such time. Upon the automatic conversion of the Series E Convertible Preferred Stock pursuant to (I) Section 5(a) hereof, or (II) Section 5(c) hereof, as the case may be, the Company shall promptly send written notice thereof, by registered or certified mail, return receipt requested and postage prepaid, by hand delivery or by overnight delivery, to each holder of record of Series E Convertible Preferred Stock at their address then-shown on the records of the Company, which notice shall state that certificates evidencing shares of Series E Convertible Preferred Stock, if any, must be surrendered at the office of the Company (or of its transfer agent for the Common Stock, if applicable). Upon the occurrence of the automatic conversion of the Series E Convertible Preferred Stock, whether pursuant to Section 5(a) or Section 5(c) hereof, the holders of Series E Convertible

Preferred Stock shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series E Convertible Preferred Stock. Upon the conversion of the Series E Convertible Preferred Stock, the shares of Series E Convertible Preferred Stock so converted shall not be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever and shall constitute only the right to receive such number of shares of Common Stock as may be issuable upon such conversion. As promptly as practicable on or after the Conversion Date, the Initial Conversion Date (subject to Section 5(a)(1)), the Final Conversion Date (subject to Section 5(a)(2)), or the Automatic Conversion Date (subject to Section 5(c)), as the case may be, the Company shall issue and shall deliver at any office or agency of the Company maintained for the surrender of Series E Convertible Preferred Stock a certificate or certificates for the number of full shares of Common Stock issuable upon conversion or such shares shall be issued in book-entry form and deposited at an account in the name of the holder of record maintained at the Company's transfer agent.

(3) In the case of any certificate evidencing shares of Series E Convertible Preferred Stock which is converted in part only, upon such conversion the Company shall execute and deliver a new certificate representing an aggregate number of shares of Series E Convertible Preferred Stock equal to the unconverted portion of such certificate.

(4) Notwithstanding anything to the contrary contained herein, if any Common Stock underlying the Series E Convertible Preferred Stock is issued prior to one year after the Original Issuance Date for such Series E Convertible Preferred Stock, such Common Stock shall be issued in certificated form with an appropriate legend to the effect that it can only be sold in a transaction registered under the Securities Act of 1933, as amended, or in a transaction exempt from such registration.

(h) Cancellation of Converted Series E Convertible Preferred Stock. All Series E Convertible Preferred Stock delivered for conversion shall be delivered to the Company to be cancelled.

Section 6. Certain Definitions. The following terms shall have the following respective meanings herein:

“Business Day” means any day that is not a Saturday or Sunday or a day on which banks are required or permitted to be closed in the State of New York.

“Designated Office” means the office or agency maintained by the Company for the presentation of certificates evidencing shares of Series E Convertible Preferred Stock.

RESOLVED FURTHER, that the President, Chief Executive Officer, Chief Financial Officer or any Vice President and the Secretary or any Assistant Secretary of this Company be, and they hereby are, authorized and directed to prepare and file a Certificate of Designation of Rights, Preferences and Privileges in accordance with the foregoing resolution and the provisions of Marshall Islands law and to take such actions as they may deem necessary or appropriate to carry out the intent of the foregoing resolution.

[Remainder of page intentionally left blank. Signature page to follow.]

We further declare under penalty of perjury that the matters set forth in the foregoing Certificate of Designation, Preferences and Rights are true and correct of our own knowledge.

Executed in Piraeus, Greece on November 4, 2010.

/s/ George Achniotis

George Achniotis
Chief Financial Officer

/s/ Vasiliki Papaefthymiou

Vasiliki Papaefthymiou
Corporate Secretary

NOTICE TO EXERCISE CONVERSION RIGHT

The undersigned, being a holder of the Series E Convertible Preferred Stock of Navios Maritime Holdings Inc. (the “Convertible Preferred Stock”) irrevocably exercises the right to convert _____ outstanding shares of Convertible Preferred Stock on _____, _____, into shares of Common Stock of Navios Maritime Holdings Inc. in accordance with the terms of the shares of Convertible Preferred Stock, and directs that the shares issuable and deliverable upon the conversion be issued and delivered in the denominations indicated below to the registered holder hereof unless a different name has been indicated below.

Dated: [At least three Business Days prior to the date fixed for conversion]

Fill in for registration of shares of Common Stock if to be issued otherwise than to the registered holder:

Name

Address

Please print name and address, including postal code number

(Signature)

Denominations: _____

Date 27 October 2010

**PORTOROSA MARINE CORP. and
FLORAL MARITIME LTD.**
as joint and several Borrowers

- and -

**THE BANKS AND FINANCIAL INSTITUTIONS
listed in Schedule 1**
as Lenders

- and -

DEKABANK DEUTSCHE GIROZENTRALE
as Bookrunner and Arranger

- and -

DEKABANK DEUTSCHE GIROZENTRALE
as Agent and Security Trustee

**AMENDED AND RESTATED
LOAN AGREEMENT**

relating to a facility of up to US\$120,000,000 to part-finance
the acquisition of two capesize newbuilding dry bulk carriers

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THIS AGREEMENT is made on 27 October 2010 as amended and restated by a second deed of Accession, Amendment and Restatement (as defined below)

BETWEEN:

- (1) **PORTOROSA MARINE CORP.** and **FLORAL MARINE LTD.** as joint and several **Borrowers**;
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**;
- (3) **DEKABANK DEUTSCHE GIROZENTRALE**, as **Bookrunner**;
- (4) **DEKABANK DEUTSCHE GIROZENTRALE**, as **Arranger**;
- (5) **DEKABANK DEUTSCHE GIROZENTRALE**, as **Agent**; and
- (6) **DEKABANK DEUTSCHE GIROZENTRALE**, as **Security Trustee**.

BACKGROUND

- (A) By a loan agreement (the "**Original Loan Agreement**") dated 16 February 2009 and made between (i) Pueblo Holdings Ltd. ("**Pueblo**") and Surf Maritime Co. ("**Surf**") and together with Pueblo, the "**Original Borrowers**") as joint and several borrowers, (ii) the Lenders, (iii) the Bookrunner, (iv) the Arranger, (v) the Agent and (vi) the Security Trustee, it was agreed that the Lenders would make available to the Original Borrowers a facility of up to \$120,000,000 under the terms and conditions set forth therein.
- (B) By a deed of accession, amendment, restatement and release dated 25 May 2009 and made between (i) the Original Borrowers and Borrower A as borrowers, (ii) the Lenders, (iii) the Bookrunner, (iv) the Arranger, (v) the Agent and (vi) the Security Trustee, it was (inter alia) agreed that Borrower A would become a party to the Original Loan Agreement as joint and several borrower with Surf and Pueblo will be released from all its obligations and liabilities under the Original Loan Agreement.
- (C) By an amended and restated loan agreement (the "**Amended Loan Agreement**") dated 25 May 2009 and made between (i) Portorosa and Surf as joint and several borrowers, (ii) the Lenders, (iii) the Bookrunner, (iv) the Arranger, (v) the Agent and (vi) the Security Trustee, it was agreed that the Lenders made available to Portorosa and Surf the facility of US\$120,000,000 out of which the principal amount of United States Dollars Fifty Two Million (US\$52,000,000) in respect of Advance A (as hereunder defined) and United States Dollars Thirty Nine Million (US\$39,000,000) in respect of Advance B remains outstanding.
- (D) By a supplemental agreement (the "**Supplemental Agreement**") dated 16 July 2009 and made between (i) Portorosa and Surf as joint and several borrowers, (ii) the Lenders, (iii) the Bookrunner, (iv) the Arranger, (v) the Agent and (vi) the Security Trustee, the Lenders have given their consent to the transfer of ownership of the Ship A (as hereinafter defined at the time registered in the ownership of Borrower A to the New Owner under the terms and conditions set forth therein.
- (E) By a side letter dated 20 May 2010 further amending and supplementing further the terms of the Amended Loan Agreement (the "**Side Letter**" and together with the Amended Loan Agreement and the Supplemental Agreement the "**Loan Agreement**") is was agreed, inter alia, to release Surf from its obligations under the Amended Loan Agreement as supplemented by the Supplemental Agreement following the sale of the M.V. "NAVIOS POLLUX" at the time registered under Panamanian flag in the ownership of Surf ("**NAVIOS POLLUX**"). Pursuant to the terms of the Side Letter, part of the sale proceeds of NAVIOS POLLUX in the amount of United States Dollars Fifty

Eight million Six hundred thousand (US\$58,600,000) has been deposited to a certain Cash Collateral Account opened in the name of Borrower A which account was charged in favour of the Lenders, the Bookrunner, the Arranger, the Agent and the Security Trustee out of which account certain amounts were released pursuant to the terms of the Side Letter and the New Deed of Accession, Amendment, Restatement and Release (as hereinafter defined).

(F) This Agreement sets out the terms and conditions of the Loan Agreement as amended and re-stated by this Agreement.

IT IS AGREED as follows:

1 INTERPRETATION

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

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

“Advances” means, together, the Ship A Advance and the Ship B Advance and in the singular means either of them;

“Accounts Pledge” means in relation to each Earnings Account, a deed creating security in respect of the Earnings Account executed by the New Owner or to be executed by Borrower B, as the case may be, in favour of all of the Creditor Parties in the Agreed Form and in the plural means both of them;

“Affected Lender” has the meaning given in Clause 5.7;

“Agency and Trust Agreement” means the agency and trust agreement executed or to be executed between the Borrowers, the Lenders, the Bookrunner, the Arranger, the Agent and the Security Trustee in the Agreed Form;

“Agent” means DekaBank Deutsche Girozentrale, acting in such capacity through its office at Mainzer Landstraße 16, 60329 Frankfurt am Main, Germany, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

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

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

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

“Approved Flag State” means any country in which the Agent may with the authorisation of the Majority Lenders, approve that a Ship be registered;

“Approved Charter” means:

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

and, in the plural, means all of them;

“Approved Charterer” means:

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

and, in the plural, means all of them;

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

“Arranger” means DekaBank Deutsche Girozentrale, acting in such capacity through its office at Mainzer Landstraße 16, 60329 Frankfurt am Main, Germany;

“Assignment of Warranty Claims” means, in relation to each Ship, a deed of assignment in respect of the rights and benefits under any Warranty Claims executed by the New Owner or to be executed by Borrower B in favour of the Security Trustee, in the Agreed Form, and, in the plural, means both of them;

“Availability Period” means the period which commenced on the date of this Original Loan Agreement and ended on:

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

“Bookrunner” means DekaBank Deutsche Girozentrale, acting in such capacity through its office at Mainzer Landstraße 16, 60329 Frankfurt am Main, Germany;

“**Borrower A**” means Portorosa Marine Corp., a corporation incorporated under the laws of the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands, MH 96960 (and includes its respective successors);

“**Borrower B**” means Floral Marine Ltd., a corporation incorporated under the laws of the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands, MH 96960 (and includes its respective successors);

“**Borrowers**” means together Borrower A and Borrower B and, in the singular, means either of them;

“**Builder**” means, for each Ship, the company referred to in the first column of Part B of Schedule 2 and, in the plural, means both of them;

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

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

“**Charter Assignment**” means, in relation to each Approved Charter, a deed of assignment of the rights of Borrower B or, as the case may be, the New Owner in respect of that Approved Charter and any guarantee of such Approved Charter (if such a guarantee is provided to Borrower B or, as the case may be, the New Owner) in favour of the Security Trustee, in the Agreed Form and, in the plural, means all of them;

“**Charter Insurer**” means the company listed as insurer in Part D of Schedule 2;

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

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

“**Compliance Certificate**” means a certificate in the form set out in Schedule 6 (or in any other form which the Agent, acting with the authorisation of all the Lenders, approves or requires);

“**Contractual Currency**” has the meaning given in Clause 21.5;

“**Contribution**” means, in relation to a Lender, the part of the Loan which is owing to that Lender;

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

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

“**Credit Default Insurance**” means in relation to each Initial Charter, the insurance policy dated 10 October 2007 and entered into between the Corporate Guarantor and the Charter Insurer as the same may be amended or supplemented from time to time;

“**Credit Default Insurance Assignment**” means in respect to both Ships an assignment of the rights and benefits of the Corporate Guarantor under the Credit Default Insurance related to the Ships in favour of the Security Trustee in the Agreed Form;

“**Creditor Party**” means the Agent, the Bookrunner, the Arranger, the Security Trustee or any Lender, whether as at the date of this Agreement or at any later time;

“**Drawdown Date**” means, in relation to an Advance, the date on which that Advance has been actually drawn by the Original Borrowers;

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

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

“**Drawdown Date**” means, in relation to an Advance, the date requested by the Borrowers for such Advance to be made, or (as the context requires) the date on which that Advance is actually made;

“**Drawdown Notice**” means a notice in the form set out in Schedule 3 (or in any other form which the Agent, acting with the authorisation of all the Lenders, approves or reasonably requires);

“**Earnings**” means in relation to a Ship, all moneys whatsoever which are now, or later become, payable (actually or contingently) to Borrower B or, as the case may be, the New Owner or the Security Trustee and which arise out of the use or operation of such Ship, including (but not limited to):

- (a) all freight, hire and passage moneys, compensation payable to the Borrower owning that Ship or the Security Trustee in the event of requisition of such Ship for hire, remuneration for salvage and towage services, demurrage and detention

moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of such Ship;

- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings including, without limitation, Credit Default Insurances in respect of Initial Charter; and
- (c) if and whenever a Ship is employed on terms whereby any moneys falling within paragraphs (a) or (b) above are pooled or shared with any other person, that proportion of the net receipts of the relevant pooling or sharing arrangement which is attributable to such Ship;

“**Earnings Account**” means in relation to each Ship, an account in the name of Borrower B or the New Owner, as the case may be, with the Account Bank in Piraeus, Greece designated “name of the Borrower B or, as the case may be, the New Owner- Earnings Account” or any other account (with that or another office of the Account Bank) which is designated by the Agent as the Earnings Account in relation to each Ship for the purposes of this Agreement and, in the plural, means both of them;

“**Environmental Claim**” means:

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

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

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

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

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

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

“Event of Default” means any of the events or circumstances described in Clause 19.1;

“First Deed of Accession, Amendment, Restatement and Release” means the deed of accession, amendment, restatement and release dated 25 May 2009 and made between, inter alios, (i) Portorosa and surf, (ii) the Lenders, (iii) the Bookrunner, (iv) the Arranger, (v) the Agent and (vi) the Security Trustee;

“Final Availability Date” means in relation to:

- (a) the Ship A Advance, the Delivery Date of Ship A which occurred on 23 July 2009;
- (b) the Ship B Advance, the delivery date of NAVIOS POLLUX which occurred on October 2010;

“Final Maturity Date” means in relation each Advance 20 July 2019;

“Finance Documents” means:

- (a) this Agreement;
- (b) the Agency and Trust Agreement;
- (c) the Corporate Guarantee;
- (d) the General Assignments;
- (e) the Assignments of Warranty Claims;
- (f) the Accounts Pledges;
- (g) the Mortgages;
- (h) the Charter Assignments;
- (i) the Managers’ Undertakings;
- (j) the Credit Default Insurance Assignment;
- (k) the New Guarantee; and
- (l) any other document (whether creating a Security Interest or not) which is executed at any time by any Borrower, the Corporate Guarantor or any other person as security for, or to establish any form of subordination or priorities arrangement in relation to, any amount payable to the Lenders under this Agreement or any of the other documents referred to in this definition;

“Financial Indebtedness” means, in relation to a person (the **“debtor”**), a liability of the debtor (in the case of the Corporate Guarantor, a liability in excess of \$7,000,000):

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

- (b) under any loan stock, bond, note or other security issued by the debtor;
- (c) under any acceptance credit, guarantee or letter of credit facility made available to the debtor;
- (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
- (e) under any interest or currency swap or any other kind of derivative transaction entered into by the debtor or, if the agreement under which any such transaction is entered into requires netting of mutual liabilities, the liability of the debtor for the net amount; or
- (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 paragraphs (a) to (e) if the references to the debtor referred to the other person;

“**Financial Year**” means, in relation to the Corporate Guarantor, each period of 1 year commencing on 1 January in respect of which its audited accounts are or ought to be prepared;

“**First Ship A MOA**” means the relevant memorandum of agreement in respect of Ship A described in Part B of Schedule 2, as the same has been supplemented and/or amended;

“**General Assignment**” means, in relation to each Ship, a general assignment of the Earnings, the Insurances and any Requisition Compensation of such Ship executed by the New Owner or to be executed by Borrower B, as the case may be, in favour of the Security Trustee in the Agreed Form and, in the plural, means both of them;

“**Group**” means the Corporate Guarantor and its subsidiaries (whether direct or indirect and including, but not limited to, each Borrower, the New Owner and the Approved Manager) from time to time during the Security Period but excluding any publicly listed companies and “**member of the Group**” shall be construed accordingly;

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

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

“**Indenture Excerpt**” means the excerpt from the Indenture set out in Schedule 7;

“**Initial Charter**” means, in relation to:

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

“**Initial Market Value**” means, in relation to each Ship, the Market Value thereof as at the Drawdown Date of the Advance related to such Ship, or at the date of the relevant Mortgage on such Ship has been granted in favour of the Security Trustee, determined in accordance with the valuations referred to in paragraph 6 of Part B of Schedule 4;

“**Insurances**” means in relation to each Ship:

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

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

“**ISM Code**” means, in relation to its application to the relevant Approved Manager, Borrower B or the New Owner and its Ship and its operation:

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

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

“**ISM Code Documentation**” includes:

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

“**ISM SMS**” means, in relation to each Ship, the safety management system for such Ship which is required to be developed, implemented and maintained by Borrower B or, as the case may be, the New Owner under the ISM Code;

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

“ISPS Code Documentation” includes:

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

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

“Lender” means, subject to Clause 27.6:

- (a) a bank or financial institution listed in Schedule 1 and acting through its branch indicated in Schedule 1 (or through another branch notified to the Agent under Clause 27.14) unless it has delivered a Transfer Certificate or Certificates covering the entire amounts of its Commitment and its Contribution; and
 - (b) the holder for the time being of a Transfer Certificate;
- (and includes their respective successors);

“LIBOR” means, for an Interest Period:

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

“Loan” means the principal amount for the time being outstanding under this Agreement;

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

“Majority Lenders” means:

- (a) before the Loan has been made, Lenders whose Commitments total at least 66.66 per cent. of the Total Commitments; and
- (b) after the Loan has been made, Lenders whose Contributions total at least 66.66 per cent. of the Loan;

“**Management Agreement**” means, in relation to each Ship, an agreement made or to be made between (i) Borrower B or, as the case may be, the New Owner and (ii) the Approved Manager in respect of the commercial and technical management of that Ship to be in form and substance in all respects acceptable to the Lenders and, in the plural, means both of them;

“**Manager’s Undertaking**” means, in relation to each Ship, the letter of undertaking executed or to be executed by the Approved Manager in favour of the Security Trustee in the Agreed Form agreeing certain matters in relation to the commercial and technical management of such Ship and subordinating the rights of the Approved Manager against such Ship and Borrower B or, as the case may be, the New Owner to the rights of the Creditor Parties under the Finance Documents and, in the plural, means both of them;

“**Margin**” means, 1.90 per cent. per annum;

“**Market Value**” means, in respect of each Ship, the market value thereof determined from time to time in accordance with Clause 15.3;

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

“**Material Adverse Effect**” means a material adverse effect on:

- (a) the business, property, assets, liabilities, operations or condition (financial or otherwise) of the Borrowers and/or any Security Party taken as a whole;
- (b) the ability of either Borrower and/or any Security Party to (i) perform any of its obligations or (ii) discharge any of its liabilities, under any Finance Document as they fall due; or
- (c) the validity or enforceability of any Finance Document;

“**Mortgage**” means, in relation to:

- (a) Ship A, the first priority Maltese ship mortgage and collateral deed of covenant on that Ship both dated 23 July 2009 granted by the New Owner in favour of the Security Trustee, as the same shall be amended and supplemented by and addendum to the first priority Maltese mortgage and addendum to the collateral deed of covenants in each case to be in the Agreed Form, both to be granted by the New Owner in favour of the Security Trustee; and
- (b) Ship B, a first preferred or as the case may be, priority ship mortgage on Ship B under the relevant Approved Flag (and including any collateral deed of covenant if required under the laws of the relevant Approved Flag State) executed or to be executed by Borrower B in favour of the Security Trustee, in each case to be in the Agreed Form

and, in the plural, means both of them;

“**NAVIOS POLLUX**” means the M.V. NAVIOS POLLUX now sold and released from its obligations under the Agreement and the finance documents executed at the time but at the time registered in the ownership of Surf under Panamanian flag;

“**Negotiation Period**” has the meaning given in Clause 5.10;

“New Deed of Accession, Amendment, Restatement and Release” means the new deed of accession, amendment and restatement dated October 2010 and made between, inter alios, (i) the Borrowers, (the Corporate Guarantor and the New Owner, (iii) the Lenders, (iv) the Bookrunner, (v) the Arranger, (vi) the Agent and (vii) the Security Trustee setting out the terms and conditions upon which this Agreement has been amended and restated;

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

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

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

“Notifying Lender” has the meaning given in Clause 23.1 or Clause 24.1 as the context requires;

“Payment Currency” has the meaning given in Clause 21.5;

“Permitted Security Interests” means:

- (a) Security Interests created by the Finance Documents;
- (b) liens for unpaid master’s and crew’s wages in accordance with usual maritime practice;
- (c) liens for salvage;
- (d) liens arising by operation of law for not more than 2 months’ prepaid hire under any charter in relation to any Ship not prohibited by this Agreement;
- (e) liens for master’s disbursements incurred in the ordinary course of trading and any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of a Ship, provided such liens do not secure amounts more than 30 days overdue (unless the overdue amount is being contested by Borrower B or, as the case may be, the New Owner in good faith by appropriate steps) and subject, in the case of liens for repair or maintenance, to Clause 14.14(g);
- (f) any Security Interest created in favour of a plaintiff or defendant in any proceedings or arbitration as security for costs and expenses where a Borrower is actively prosecuting or defending such proceedings or arbitration in good faith;
- (g) Security Interests arising by operation of law in respect of taxes which are not overdue for payment or in respect of taxes being contested in good faith by appropriate steps and in respect of which appropriate reserves have been made; and
- (h) the Indenture;

“Pertinent Jurisdiction”, in relation to a company, means:

- (a) England and Wales;

- (b) the country under the laws of which the company is incorporated or formed;
- (c) a country in which the company has the centre of its main interests or in which the company's central management and control is or has recently been exercised;
- (d) a country in which the overall net income of the company is subject to corporation tax, income tax or any similar tax;
- (e) a country in which assets of the company (other than securities issued by, or loans to, related companies) having a substantial value are situated, in which the company maintains a branch or a permanent place of business, or in which a Security Interest created by the company must or should be registered in order to ensure its validity or priority; and
- (f) a country the courts of which have jurisdiction to make a winding up, administration or similar order in relation to the company, whether as main or territorial or ancillary proceedings, or which would have such jurisdiction if their assistance were requested by the courts of a country referred to in paragraphs (b) or (c);

“**Purchase Price**” means in respect of Ship A the total amount of \$120,000,000 payable to Seller A pursuant to the Ship A MOA;

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

“**Relevant Person**” has the meaning given in Clause 19.9;

“**Repayment Date**” means a date on which a repayment is required to be made under Clause 8;

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

“**Security Cover Ratio**” means the ratio which is determined, at any time, by comparing the aggregate of the amounts referred to in paragraphs (a) and (b) of Clause 15.1 against the Loan at the relevant time;

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

“**Security Interest**” means:

- (a) a mortgage, charge (whether fixed or floating), pledge, assignment, trust, trust receipt, consignment, any maritime or other lien of any kind;

- (b) any other security interest of a kind not included in paragraph (a) of this definition;
- (c) a conditional sale agreement (including an agreement to sell subject to retention of title), hire purchase agreement, lease or contract of bailment that in effect secures payment or performance of a liability or obligation;
- (d) right of set-off or flawed asset arrangement that in effect secures payment or performance of a liability or obligation; and
- (e) without limiting the generality of the preceding paragraphs of this definition, any other transaction or instrument that in substance or by operation of law, now or in the future, creates an interest, right or claim in relation to property (real or personal) that secures the payment or performance of a liability or obligation, without regard to:
 - (i) the form of the transaction or instrument; or
 - (ii) the identity of the person who has title to the relevant property

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

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

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

- (a) all amounts which have become due for payment by either Borrower or any Security Party under the Finance Documents have been paid;
- (b) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;
- (c) neither either Borrower nor any Security Party has any future or contingent liability under Clause 20, 21 or 22 below or any other provision of this Agreement or another Finance Document; and
- (d) the Agent, the Security Trustee and all the Lenders do not consider that there is a significant risk that any payment or transaction under a Finance Document would be set aside, or would have to be reversed or adjusted, in any present or possible future bankruptcy of a Borrower or a Security Party or in any present or possible future proceeding relating to a Finance Document or any asset covered (or previously covered) by a Security Interest created by a Finance Document;

“Security Trustee” means DekaBank Deutsche Girozentrale, acting in such capacity through its office at Mainzer Landstraße 16, 60329 Frankfurt am Main, Germany, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

“**Seller**” means: in relation to Ship A, the company referred to in the second column of Part B of Schedule 2 as the seller of Ship A (the “**Seller**”); and

“**Ship A**” means the ship described in Part A of Schedule 2;

“**Ship A MOA**” means the relevant memorandum of agreement in respect of Ship A described in Part B of Schedule 2, as the same has been supplemented and/or amended;

“**Ship A Shipbuilding Contract**” means the shipbuilding contract in respect of Ship A described in Part B of Schedule 2, as the same has been supplemented and/or amended;

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

“**Ship A Charter**” means the time charterparty in respect of Ship A as described in Part C of Schedule 2 as the same may be further supplemented and/or amended from time to time;

“**Ship B**” means the ship described in Part A of Schedule 2;

“**Ship B Shipbuilding Contract**” means the shipbuilding contract in respect of Ship B described in Part B of Schedule 2, as the same may be further supplemented and/or amended from time to time;

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

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

“**Ships**” means, together, Ship A and Ship B and, in the singular, means either of them;

“**Shipbuilding Contracts**” means together, Ship A Shipbuilding Contract and Ship B Shipbuilding Contract and, in the singular, means either of them;

“**Summary of Terms**” means the summary of terms dated 23 December 2008 issued by the Agent and accepted by the Corporate Guarantor on 29 December 2008;

“**Surf**” means Surf Maritime Co., a corporation incorporated under the laws of the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, The Marshall Islands MH96960;

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

- (a) actual, constructive, compromised, agreed or arranged total loss of that Ship;
- (b) any expropriation, confiscation, requisition or acquisition of that Ship, whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration, which is effected by any government

or official authority or by any person or persons claiming to be or to represent a government or official authority (excluding a requisition for hire for a fixed period not exceeding 1 year without any right to an extension) unless it is within 1 month redelivered to the full control of Borrower B or, as the case may be, the New Owner's full control;

- (c) any arrest, capture, seizure or detention of that Ship unless it is within 1 month redelivered to the full control of Borrower B or, as the case may be, the New Owner's full control, and excluding hijack, theft or piracy in which case the Ship will be redelivered to the full control of Borrower B or, as the case may be, the New Owner's full control within 120 days;

"Total Loss Date" means, in relation to each Ship:

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

"Transfer Certificate" has the meaning given in Clause 27.2;

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

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

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

1.2 Construction of certain terms. In this Agreement:

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

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

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

"company" includes any partnership, joint venture and unincorporated association;

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

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

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

“**charter**” means any Charter where any remaining duration shall be taken into account especially for the purposes of calculating Market Value;

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

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

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

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

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

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

“**obligatory insurances**” means, in relation to each Ship, all insurances effected, or which Borrower B or, as the case may be, the New Owner is obliged to effect, under Clause 13 or any other provision of this Agreement or another Finance Document;

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

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

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

“**protection and indemnity risks**” means the usual risks covered by a protection and indemnity association managed in London, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of Clause 6 of the International Hull Clauses (1/11/02 or 1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/11/95) or clause 8 of the Institute Time Clauses (Hulls) (1/10/83) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision;

“**regulation**” includes any regulation, rule, official directive, request or guideline whether or not having the force of law of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

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

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

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

“**war risks**” includes the risk of mines and all risks excluded by clause 29 of the International Hull Clauses (1/11/02 or 1/11/03), clause 24 of the Institute Time Clauses (Hulls)(1/11/95) or clause 33 of the Institute Time Clauses (Hulls) (1/10/83).

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

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

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

1.4 Meaning of “subsidiary”. A company (S) is a subsidiary of another company (P) if:

- (a) a majority of the issued shares in S (or a majority of the issued shares in S which carry unlimited rights to capital and income distributions) are directly owned by P or are indirectly attributable to P; and
 - (b) P has direct or indirect control over a majority of the voting rights attaching to the issued shares of S; or
 - (c) P has the direct or indirect power to appoint or remove a majority of the directors of S; or
- and any company of which S is a subsidiary is a parent company of S.

1.5 General Interpretation. In this Agreement:

- (a) references in Clause 1.1 to a Finance Document or any other document being in the form of a particular appendix include references to that form with any modifications to that

form which the Agent (with the authorisation of all the Lenders in the case of substantial modifications) approves or reasonably requires;

- (b) references to, or to a provision of, a Finance Document or any other document are references to it as amended or supplemented, whether before the date of this Agreement or otherwise;
- (c) references to, or to a provision of, any law include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (d) words denoting the singular number shall include the plural and vice versa; and
- (e) Clauses 1.1 to 1.5 apply unless the contrary intention appears.

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

2 FACILITY

2.1 Amounts and purposes of Advances. Subject to the other provisions of this Agreement, the Lenders made available the loan as follows:

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

2.2 Lenders' participations in Advances. Subject to the other provisions of this Agreement, each Lender has participated in each Advance in the proportion which, as at the relevant Drawdown Date, its Commitment bears to the Total Commitments.

2.3 Purpose of Advances. The Borrowers hereby confirm to each Creditor Party that each Advance was used only for the purpose stated in the preamble to this Agreement.

3 POSITION OF THE LENDERS

3.1 Interests of Lenders several. The rights of the Lenders under this Agreement are several.

3.2 Individual Lender's right of action. Each Lender shall be entitled, having obtained the prior consent of all the Lenders to sue for any amount which has become due and payable by the Borrowers to it under this Agreement without joining the Agent, the Security Trustee or any other Lender as additional parties in the proceedings.

3.3 Proceedings by individual Lender. No Lender may, without the prior consent of all the Lenders, bring proceedings in respect of:

- (a) any other liability or obligation of the Borrowers or either of them or a Security Party under or connected with a Finance Document; or

(b) any misrepresentation or breach of warranty by the Borrowers or wither of them or a Security Party in or connected with a Finance Document.

3.4 Obligations of Lenders several. The obligations of the Lenders under this Agreement are several; and a failure by a Lender to perform its obligations under this Agreement shall not result in:

(a) the obligations of any other Lender being increased; nor

(b) any Borrower, any Security Party or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document, and in no circumstances shall a Lender have any responsibility for a failure of another Lender to perform its obligations under this Agreement.

3.5 Parties bound by certain actions of Majority Lenders. Each Lender, each Borrower and each Security Party shall be bound by:

(a) any determination made, or action taken, by the Majority Lenders under any provision of a Finance Document;

(b) any instruction or authorisation given by the Majority Lenders to the Agent or the Security Trustee under or in connection with any Finance Document;

(c) any action taken (or in good faith purportedly taken) by the Agent or the Security Trustee in accordance with such an instruction or authorisation.

3.6 Reliance on action of Agent. However, the Borrowers and each Security Party:

(a) shall be entitled to assume that the Majority Lenders have duly given any instruction or authorisation which, under any provision of a Finance Document, is required in relation to any action which the Agent has taken or is about to take; and

(b) shall not be entitled to require any evidence that such an instruction or authorisation has been given.

3.7 Construction. In Clauses 3.4 and 3.5 references to action taken include (without limitation) the granting of any waiver or consent, an approval of any document and an agreement to any matter.

4 DRAWDOWN

4.1 Advances drawn down. Both Advances have been drawn on the following dates and in the following amounts:

(a) Ship A Advance has been drawn in the amount of Dollars Sixty Million (\$60,000,000) on the 20 July 2009 out of which Dollars Fifty Two Million (\$52,000,000) remains outstanding; and

(b) Ship B Advance has been drawn in the amount of Dollars Sixty Million (\$60,000,000) on the 22 July 2010 out of which Dollars Thirty Nine Million (\$39,000,000) remains outstanding.

5 INTEREST

- 5.1 Payment of normal interest.** Subject to the provisions of this Agreement, interest on each Advance in respect of each Interest Period shall be paid by the Borrowers on the last day of that Interest Period.
- 5.2 Normal rate of interest.** Subject to the provisions of this Agreement, the rate of interest on each Advance in respect of an Interest Period shall be the aggregate of (a) the Margin and (b) LIBOR for that Interest Period **Provided that** where the Borrowers request, and the Lenders agree to, an Interest Period of longer than twelve months, the applicable rate of interest shall be the aggregate of the Margin and the fixed rate agreed between the Lenders and the Borrowers and advised by the Agent to the Borrowers.
- 5.3 Payment of accrued interest.** In the case of an Interest Period longer than 6 months, accrued interest shall be paid every 6 months during that Interest Period and on the last day of that Interest Period.
- 5.4 Notification of Interest Periods and rates of normal interest.** The Agent shall notify the Borrowers and each Lender of:
- (a) each rate of interest; and
 - (b) the duration of each Interest Period;
- as soon as reasonably practicable after each is determined.
- 5.5 Obligation of Lenders to quote.** Each Lender shall use all reasonable efforts to supply any quotation required of it for the purposes of fixing a rate of interest under this Agreement.
- 5.6 Absence of quotations by Lenders.** If any Lender fails to supply a quotation when required, the Agent shall determine the relevant rate of interest in accordance with the following provisions of this Clause 5.
- 5.7 Market disruption.** The following provisions of this Clause 5 apply if:
- (a) at least until 11.00 a.m. (London) time 1 Business Day before the start of an Interest Period, any Lender notifies the Agent that LIBOR fixed by the Agent would not accurately reflect the cost to that Lender of funding its Contribution (or any part of it) during the Interest Period in the London Interbank Dollar Market at or about 11.00 a.m. (London time) on the second Business day before the commencement of the Interest Period; or
 - (b) at least until 11.00 a.m. (London time) 1 Business Day before the start of an Interest Period, the Agent is notified by a Lender (the “ **Affected Lender**”) that for any reason it is unable to obtain Dollars in the London Interbank Market in order to fund its Contribution (or any part of it) during the Interest Period.
- 5.8 Notification of market disruption.** The Agent shall promptly notify the Borrowers and each of the Lenders stating the circumstances falling within Clause 5.7 which have caused its notice to be given.
- 5.9 Negotiation of alternative rate of interest.** The Borrowers, the Agent and the Lenders or (as the case may be) the Affected Lender shall use reasonable endeavours to agree, within the 30 days after the date on which the Agent serves its notice under Clause 5.8 (the “ **Negotiation Period**”), an alternative interest rate or (as the case may be) an alternative basis for the Lenders or (as the case may be) the Affected Lender to fund or

continue to fund their or its Contribution to the relevant Advance or Advances during the Interest Period concerned.

5.10 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.

5.11 Alternative rate of interest in absence of agreement. If an alternative interest rate or alternative basis is not agreed within the Negotiation Period, and the relevant circumstances are continuing at the end of the Negotiation Period, then the Agent shall, with the agreement of each Lender or (as the case may be) the Affected Lender, set an interest period and interest rate representing the cost of funding of the Lenders or (as the case may be) the Affected Lender in Dollars or in any available currency of their or its Contribution to the relevant Advance or Advances plus the Margin **Provided that** they will provide the Borrowers with supporting documentation; and the procedure provided for by this Clause 5.11 shall be repeated if the relevant circumstances are continuing at the end of the interest period so set by the Agent.

5.12 Notice of prepayment. If the Borrowers do not agree with an interest rate set by the Agent under Clause 5.11, the Borrowers may give the Agent not less than 15 Business Days' notice of their intention to prepay the relevant Advance or Advances at the end of the interest period set by the Agent.

5.13 Prepayment; termination of Commitments. A notice under Clause 5.12 shall be irrevocable; the Agent shall promptly notify the Lenders or (as the case may require) the Affected Lender of the Borrowers' notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Total Commitments or (as the case may require) the Commitment of the Affected Lender so far as they relate to the relevant Advance or Advances shall be cancelled; and
- (b) on the last Business Day of the interest period set by the Agent, the Borrowers shall prepay (without premium or penalty) the Loan or, as the case may be, the Affected Lender's Contribution, together with accrued interest thereon at the applicable rate plus the Margin and, if the prepayment or repayment is not made on the last day of the interest period set by the Agent, any sums payable under Clause 21.1(b).

5.14 Application of prepayment. The provisions of Clause 8 shall apply in relation to the prepayment.

6 INTEREST PERIODS

6.1 Commencement of Interest Periods. The first Interest Period applicable to an Advance has commenced on the Drawdown Date thereof and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

6.2 Duration of normal Interest Periods. Subject to Clauses 6.3 and 6.4, each Interest Period in respect of each Advance shall be:

- (a) 6 or 12 months as notified by the Borrowers to the Agent not later than 11.00 a.m. (Frankfurt time) 3 Business Days before the commencement of the Interest Period; or
- (b) 6 months, if the Borrowers fail to notify the Agent by the time specified in paragraph (a); or
- (c) such other period as the Agent with the authorisation of the Lenders may agree with the Borrowers.

- 6.3 Duration of Interest Periods for repayment instalments.** In respect of an amount due to be repaid under Clause 8 on a particular Repayment Date, an Interest Period shall end on that Repayment Date.
- 6.4 Non-availability of matching deposits for Interest Period selected.** If, after the Borrowers have selected and the Lenders have agreed an Interest Period longer than 6 months, any Lender notifies the Agent by 11.00 a.m. (Frankfurt time) on the third Business Day before the commencement of the Interest Period that it is not satisfied that deposits in Dollars for a period equal to the Interest Period will be available to it in the London Interbank Market when the Interest Period commences, the Interest Period shall be of 6 months.

7 DEFAULT INTEREST

- 7.1 Payment of default interest on overdue amounts.** The Borrowers shall pay interest in accordance with the following provisions of this Clause 7 on any amount payable by the Borrowers or either of them under any Finance Document which the Agent, the Security Trustee or the other designated payee does not receive on or before the relevant date, that is:
- (a) the date on which the Finance Documents provide that such amount is due for payment; or
 - (b) if a Finance Document provides that such amount is payable on demand, the date on which the demand is served; or
 - (c) if such amount has become immediately due and payable under Clause 19.4, the date on which it became immediately due and payable.
- 7.2 Default rate of interest.** Interest shall accrue on an overdue amount from (and including) the relevant date until the date of actual payment (as well after as before judgment) at the rate per annum determined by the Agent to be 2 per cent. above:
- (a) in the case of an overdue amount of principal, the higher of the rates set out at Clauses 7.3 (a) and (b); or
 - (b) in the case of any other overdue amount, the rate set out at Clause 7.3(b).
- 7.3 Calculation of default rate of interest.** The rates referred to in Clause 7.2 are:
- (a) the rate applicable to the overdue principal amount immediately prior to the relevant date (but only for any unexpired part of any then current Interest Period);
 - (b) the Margin plus, in respect of successive periods of any duration (including at call) up to 3 months which the Agent may select from time to time:
 - (i) LIBOR; or
 - (ii) if the Agent determines that Dollar deposits for any such period are not being made available to a Lender or (as the case may be) Lenders by leading banks in the London Interbank Market in the ordinary course of business, a rate from time to time determined by the Agent by reference to the cost of funds to the Agent from such other sources as the Agent may from time to time determine.
- 7.4 Notification of interest periods and default rates.** The Agent shall promptly notify the Lenders and the Borrowers of each interest rate determined by the Agent under Clause 7.3 and of each period selected by the Agent for the purposes of paragraph (b) of that

Clause; but this shall not be taken to imply that the Borrowers are liable to pay such interest only with effect from the date of the Agent's notification.

7.5 Payment of accrued default interest. Subject to the other provisions of this Agreement, any interest due under this Clause shall be paid on the last day of the period by reference to which it was determined; and the payment shall be made to the Agent for the account of the Creditor Party to which the overdue amount is due.

7.6 Compounding of default interest. Any such interest which is not paid at the end of the period by reference to which it was determined shall thereupon be compounded.

8 REPAYMENT AND PREPAYMENT

8.1 Amount of repayment instalments of Advance A. The Borrowers shall repay the outstanding principal of Advance A by 18 consecutive semi-annual repayment instalments as follows:

- (a) in the case of the first and the second instalments in the amount of \$4,000,000 each;
- (b) in the case of the third to the fifth instalments (inclusive) in the amount of \$4,250,000 each;
- (c) in the case of the sixth to the eighth instalments (inclusive) in the amount of \$4,500,000 each; and
- (d) in the case of the ninth to the eighteenth instalments (inclusive) in the amount of \$1,775,000 each;

8.2 Amount of repayment instalments of Advance B. The Borrowers shall repay the outstanding principal of Advance B by 18 consecutive semi-annual repayment instalments as follows:

- (a) in the case of the first and the second instalments in the amount of \$4,000,000 each;
- (b) in the case of the third to the fifth instalments (inclusive) in the amount of \$4,250,000 each;
- (c) in the case of the sixth to the eighth instalments (inclusive) in the amount of \$4,500,000 each; and
- (d) in the case of the ninth to the eighteenth instalments (inclusive) in the amount of \$475,000 each;

8.3 Repayment Dates. The first instalment of each Advance shall be repaid on 20 January 2011, each subsequent instalment shall be repaid at semi-annual intervals thereafter and the last instalment of such Advance shall be repaid on the date falling on 20 July 2019.

8.4 Final Repayment Date. On the final Repayment Date, the Borrowers shall additionally pay to the Agent for the account of the Creditor Parties all other sums then accrued or owing under any Finance Document.

8.5 Voluntary prepayment. Subject to the following conditions, the Borrowers may prepay the whole or any part of the Loan or any Advance on the last day of an Interest Period.

8.6 Conditions for voluntary prepayment. The conditions referred to in Clause 8.5 are that:

- (a) a partial prepayment shall be \$1,000,000 or a multiple of \$1,000,000

- (b) the Agent has received from the Borrowers at least 5 Business Days' prior written notice specifying the amount to be prepaid and the date on which the prepayment is to be made; and
- (c) the Borrowers have provided evidence satisfactory to the Agent that any consent required by the Borrowers or any of them or any Security Party in connection with the prepayment has been obtained and remains in force, and that any regulation relevant to this Agreement which affects a Borrower or any Security Party has been complied with;

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

8.8 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 8.6(c).

8.9 Mandatory prepayment. Without prejudice to the provisions of Clause 15, the Borrowers shall be obliged to prepay the Advance related to a Ship if such Ship is sold, becomes a Total Loss or is refinanced:

- (a) in the case of a sale, on or before the date on which the sale is completed by delivery of such Ship to the buyer;
- (b) in the case of a Total Loss, on the earlier of the date falling 120 days after the Total Loss Date and the date of receipt by the Security Trustee of the proceeds of insurance relating to such Total Loss; or
- (c) in the case such Ship is refinanced, on the date on which the Mortgage is discharged to enable such Ship to be refinanced

Provided however that if after such prepayment the Security Cover Ratio is less than the ratio referred to in Clause 15.1, the Borrowers shall prepay such additional amount which, after giving credit to the prepayment, results in the Security Cover Ratio being equal to the Security Cover Ratio required to be maintained pursuant to Clause 15.1.

Subject to no Event of Default or any Potential Event of Default being in occurrence or continuing at the time a prepayment is made under this Clause 8.9, any balance arising from the proceeds of a Ship which is sold or becomes a Total Loss after the prepayment required by this Clause 8.9 has been made shall be released to the Borrowers or to such other person as the Borrowers may direct.

8.10 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.

8.11 Prepayment Fee. If an Advance is prepaid as a result of a sale or refinancing of a Ship by a bank or financial institution (other than the Lender) on or prior to the sixth anniversary of the second Drawdown Date, the Borrowers shall pay, together with such prepaid amount, to the Agent a prepayment fee equal to the 0.50 per cent of the amount of such Advance immediately prior to such prepayment.

8.12 Application of partial prepayment. Each partial prepayment shall be applied:

- (a) if made pursuant to Clause 8.5, against the repayment instalments specified in Clauses 8.1 and 8.2 pro rata;
- (b) if made pursuant to Clause 8.9, first towards full repayment of the Advance related to the Ship being sold, refinanced or becoming a Total Loss and thereafter towards pro rata reduction of the repayment instalments of the other Advance specified in Clause 8.1 or 8.2 as the case may be.

8.13 No reborrowing. No amount prepaid may be reborrowed.

9 CONDITIONS PRECEDENT

9.1 Documents, fees and no default. Each Lender's obligation to contribute to an Advance was subject to the following conditions precedent:

- (a) that, on or before the service of the Drawdown Notice relative to Advance A drawn down, the Agent received the documents described in Part A of Schedule 4 in form and substance satisfactory to the Agent and its lawyers;
- (b) that, on the Drawdown Date of any Advance but prior to such Advance, the Agent received the documents described in Part B of Schedule 4 in form and substance satisfactory to it and its lawyers;
- (c) that, on the Drawdown Date of each Advance, the Agent received the fees referred to in Clause 20.1 related to such Advance and has received payment of the expenses referred to in Clause 20.2; and
- (d) that both at the date of each Drawdown Notice and at each Drawdown Date:
 - (i) no Event of Default has occurred and is continuing or would result from the borrowing of the relevant Advance;
 - (ii) the representations and warranties in Clause 10 and those of a Borrower or any Security Party which are set out in the other Finance Documents were 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 was continuing; and
 - (iv) there has been no Material Adverse Change in the financial condition, state of affairs or prospects of the Borrowers or either of them or the Corporate Guarantor or the New Owner from that applying at the date of this Agreement;
- (e) that, if the ratio set out in Clause 15.1 were applied immediately following the making of the relevant Advance, the Borrowers were not be obliged to provide additional security or prepay part of the Loan under that Clause;
- (f) that the Agent has received, and found to be acceptable to it, any further opinions, consents, agreements and documents in connection with the Finance Documents which the Agent has, with the authorisation of all the Lenders, requested by notice to the Borrowers prior to the relevant Drawdown Date.

10 REPRESENTATIONS AND WARRANTIES

10.1 General. Each Borrower represents and warrants to each Creditor Party as follows.

10.2 Status. Each Borrower is duly incorporated and validly existing and in good standing under the laws of the Republic of Marshall Islands;

10.3 Share capital and ownership. Each Borrower has an authorised share capital of 500 registered and/or bearer shares without par value, all of which shares have been issued in registered form and are wholly owned directly or indirectly by the Corporate Guarantor and all those shares are held free of any Security Interest or other claim.

10.4 Corporate power. Each Borrower has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

- (a) to execute the Ship A MOA or the relevant Ship Shipbuilding Contract, as the case may be, to purchase and pay for its Ship under the Ship A MOA or relevant Shipbuilding Contract, as the case may be, and register its Ship in its name under an Approved Flag;
- (b) to enter into, and perform its obligations under, the Approved Charter to which it is a party
- (c) to execute the Finance Documents to which it is a party; and
- (d) to borrow and/or to undertake liabilities under this Agreement and to make all the payments contemplated by, and to comply with, those Finance Documents to which such Borrower is a party.

10.5 Consents in force. All the consents referred to in Clause 10.4 remain in force and nothing has occurred which makes any of them liable to revocation.

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

- (a) constitute such Borrower's legal, valid and binding obligations enforceable against such Borrower in accordance with their respective terms; and
- (b) create legal, valid and binding Security Interests enforceable in accordance with their respective terms over all the assets to which they, by their terms, relate,
subject to any relevant insolvency laws affecting creditors' rights generally.

10.7 No third party Security Interests. Without limiting the generality of Clause 10.6, at the time of the execution and delivery of each Finance Document to which each Borrower is a party except for Permitted Security Interests:

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

10.8 No conflicts. The execution by each Borrower of each Finance Document to which it is a party and the borrowing by that Borrower of the Loan, and its compliance with each Finance Document will not involve or lead to a contravention of:

- (a) any law or regulation; or
- (b) the constitutional documents of that Borrower; or

- (c) any contractual or other obligation or restriction which is binding on that Borrower or any of its assets, and will not have a Material Adverse Effect.

10.9 Subordination of Indenture. The obligations of:

- (a) the Borrowers, if any, under the Indenture and the Notes or the Guarantees (as each term is defined in the Indenture) issued thereunder are fully subordinated to the obligations of the Borrowers under this Agreement and the other Finance Documents to the extent of the value of the assets securing this Agreement; and
- (b) the Corporate Guarantor, under the Indenture and the Notes (as such term is defined in the Indenture) issued thereunder are fully subordinated to the obligations of the Corporate Guarantor under the Corporate Guarantee to the extent of the value of the assets securing this Agreement.

10.10 No withholding taxes. All payments which a Borrower is liable to make under the Finance Documents may be made without deduction or withholding for or on account of any tax payable under any law of any Pertinent Jurisdiction.

10.11 No default. No Event of Default has occurred and is continuing.

10.12 Information. All information which has been provided in writing by or on behalf of the Borrowers or any Security Party to any Creditor Party in connection with any Finance Document satisfied the requirements of Clause 11.5; all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.7 and are true, correct and not misleading and present fairly and accurately the financial position of the Borrowers; and there has been no change in the financial position or state of affairs of any Borrower, or the Corporate Guarantor or the New Owner from that disclosed in the latest of those accounts which is likely to have a Material Adverse Effect.

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

10.14 Validity and completeness of Initial Charters, the First Ship A MOA, Ship A MOA and Shipbuilding Contracts.

- (a) The copies of each Initial Charter, the First Ship A MOA, the Ship A MOA and each Shipbuilding Contract delivered to the Agent before the date of this Agreement are true and complete copies;
- (b) each Initial Charter, the First Ship A MOA, the Ship A MOA and each Shipbuilding Contract constitutes valid, binding and enforceable obligations of the Builder and the relevant Approved Charterer, the seller under the First Ship A MOA, the Seller A and the Borrower which is party to it respectively in accordance with its terms;
- (c) none of the Builders, the relevant Approved Charterer under each Initial Charter, the seller under the First Ship A MOA, the Seller A nor either of the Borrowers is in breach of its respective obligations under the terms of each Initial Charter, the Ship A MOA, the First Ship A MOA and each Shipbuilding Contract; and
- (d) other than those already advised to the Agent and which have been documented prior to the date of this Agreement, no amendments or additions to either Initial Charter or the Ship A MOA or the First Ship A MOA or either Shipbuilding Contracts have been agreed

nor have the Borrowers, the relevant Approved Charterer, the seller under the First Ship A MOA, the Seller A and the Builder (or any of them) waived any of their respective rights under either Initial Charter or the Ship A MOA or the First Ship A MOA or either Shipbuilding Contract.

10.15 No rebates, etc. There is no agreement or understanding to allow or pay any rebate, premium, commission, discount or other benefit or payment (howsoever described) to a Borrower, an Approved Charterer, the seller under the First Ship A MOA, the Seller A or the Builder or any third party in connection with the purchase by Borrower A of Ship A at the Purchase Price of the chartering of a Ship other than as disclosed to the Agent in writing on or prior to the date of this Agreement.

10.16 Compliance with certain undertakings. At the date of this Agreement, each Borrower is in compliance with Clauses 11.2, 11.4, 11.9 and 11.14.

10.17 Taxes paid. Each Borrower has paid all taxes applicable to, or imposed on or in relation to such Borrower, its business or its Ship.

10.18 ISM Code and ISPS Code compliance. All requirements of the ISM Code and the ISPS Code as they relate to a Borrower, the New Owner, the Approved Manager and a Ship shall be or have been complied on or prior to the Delivery Date of that Ship.

10.19 No Money laundering. Each Borrower:

- (a) will not, and will procure that no Security Party, to the extent applicable, will, in connection with this Agreement or any of the other Finance Documents, contravene or permit any subsidiary to contravene, any law, official requirement or other regulatory measure or procedure implemented to combat "money laundering" (as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Communities) and comparable United States Federal and state laws. Each Borrower shall further submit any documents and declarations on request, if such documents or declarations are required by any Creditor Party to comply with its domestic money laundering and/or legal identification requirements; and
- (b) confirm that it is the beneficiary within the meaning of Section 8 of the German Anti Money Laundering Act (*Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten (Geldwäschegesetz)*), with such Borrower acting for its own account and not for or on behalf of any other person for each part of the Loan made or to be made available to it under this Agreement. That is to say, it acts for its own account and not for or on behalf of anyone else and under its full responsibility and exclusively for the purposes specified in this Agreement.

Each Borrower will promptly inform the Agent by written notice, if it ceases to be a beneficiary and will provide in writing the name and address of the beneficiary.

The Agent shall promptly notify the Lenders of any written notice it receives under this Clause 10.18.

11 GENERAL UNDERTAKINGS

11.1 General. Each Borrower undertakes with each Creditor Party to comply with the following provisions of this Clause 11 at all times during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit.

11.2 Title; negative pledge and pari passu ranking. Each Borrower will:

- (a) hold the legal title to, and own the entire beneficial interest in:

- (i) from the date hereof, the Approved Charter, the Ship A MOA and the relevant Shipbuilding Contract to which it is a party; and
 - (ii) the Ship it is acquiring and her Insurances and her Earnings from the Delivery Date applicable thereto and at all times thereafter, its Ship, free from all Security Interests and other interests and rights of every kind, except for those created by the Finance Documents and the effect of assignments contained in the Finance Documents;
- (b) not create or permit to arise any Security Interest (except for Permitted Security Interests) over any other asset, present or future; and
 - (c) procure that its liabilities under the Finance Documents to which it is a party do and will rank at least pari passu with all its other present and future unsecured liabilities, except for liabilities which are mandatorily preferred by law.

11.3 No disposal of assets. Neither Borrower will transfer, lease or otherwise dispose of:

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

11.4 No other liabilities or obligations to be incurred. Neither Borrower will incur any liability or obligation except liabilities and obligations under the Shipbuilding Contract and the Finance Documents to which it is a party and liabilities or obligations reasonably incurred in the ordinary course of its business of operating and chartering its Ship and all other matters reasonably incidental thereto.

11.5 Information provided to be accurate. All financial and other information which is provided in writing by or on behalf of a Borrower under or in connection with any Finance Document will be true and not misleading and will not omit any material fact or consideration.

11.6 Provision of financial statements. The Borrowers will send to the Agent:

- (a) as soon as possible, but in no event later than 180 days after the end of each Financial Year of the Borrowers (commencing with the Financial Year ended 31 December 2008) the annual audited consolidated accounts of the Corporate Guarantor (excluding the accounts of other public listed companies) for that Financial Year; and
- (b) as soon as possible, but in no event later than 90 days after the end of each financial quarter in each Financial Year of the Borrowers ending on 31 March, 30 June, and 30 September (commencing with the financial statements for the financial quarter ending on 31 March 2009) the unaudited consolidated quarterly accounts of the Corporate Guarantor which are certified as to their correctness by the chief financial officer of the Corporate Guarantor; and
- (c) promptly after each request by the Agent, such further financial information about the Borrowers, the Corporate Guarantor, the New Owner, the Approved Manager and the Corporate Guarantor as the Agent may reasonably require.

11.7 Form of financial statements. All accounts (audited and unaudited) delivered under Clause 11.6 will:

- (a) be prepared in accordance with all applicable laws and US GAAP consistently applied;
- (b) in the case of the annual audited accounts of the Corporate Guarantor, be audited by an internationally renowned accounting firm whose report shall not include any material qualifications;
- (c) give a true and fair view of the state of affairs of the relevant person at the date of those accounts and of its profit for the period to which those accounts relate; and
- (d) fully disclose or provide for all significant liabilities of the Corporate Guarantor.

11.8 Consents. Each Borrower will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Agent of, all consents required:

- (a) for such Borrower to perform its obligations under any Finance Document to which it is a party;
 - (b) for the validity or enforceability of any Finance Document to which it is a party;
 - (c) for such Borrower to continue to own and operate the Ship owned by it,
- and such Borrower will comply with the terms of all such consents.

11.9 Maintenance of Security Interests. The Borrowers will:

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

11.10 Notification of litigation. Each Borrower will provide the Agent with details of any legal or administrative action involving that Borrower, any Security Party, the Approved Manager or any Ship, its Earnings or its Insurances exceeding \$500,000 as soon as such action is instituted or it becomes apparent to that Borrower that it is likely to be instituted, unless it is clear to that Borrower and the Lenders that the legal or administrative action cannot be considered material and relevant in the context of any Finance Document.

11.11 No amendment to the Ship A MOA or the relevant Shipbuilding Contract. Each Borrower agrees not to enter into any amendment or supplement to, or waive or fail to enforce, the Ship A MOA or the relevant Shipbuilding Contract to which it is a party or any of its provisions.

11.12 No amendment to the Approved Charters. Each Borrower will ensure that no Borrower shall agree to any amendment or supplement to, or waive or fail to enforce, any Approved Charter to which it is a party or any of its provisions.

11.13 Principal place of business. Each Borrower confirms that its business operation and management shall be conducted as presently conducted and, throughout the Security Period, will (i) maintain its place of business and keep its corporate documents and records, at the address stated at Clause 29.2(a); and (ii) neither Borrower nor the Corporate Guarantor will establish, or do anything as a result of which it would be deemed to have, a place of business or operations or management effected from England or the United States of America.

11.14 Notification of default. The Borrowers will notify the Agent as soon as a Borrower becomes aware of:

- (a) the occurrence of an Event of Default; or
- (b) any matter which indicates that an Event of Default may have occurred, and will keep the Agent fully up-to-date with all developments.

11.15 Provision of further information. The Borrowers will, as soon as practicable after receiving the request, provide the Agent with any additional financial or other information relating:

- (a) to the Borrowers, the Ships, the Earnings or the Insurances; or
- (b) to any other matter relevant to, or to any provision of, a Finance Document, which may reasonably be requested by the Agent, the Security Trustee or any Lender at any time.

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

11.17 Charter Assignment. A Borrower shall, in the case it enters into a Charter, at the request of the Agent, execute in favour of the Security Trustee a Charter Assignment in respect of that Charter and shall deliver to the Agent such other documents equivalent to those referred to at paragraphs 3, 4 and 5 of Part A of Schedule 4 hereof.

11.18 Financial Covenants. The Borrowers shall procure that:

- (a) the ratio of Consolidated Cash Flow (defined and applied as set out in the Indenture Excerpt, which definition shall not be varied without the Lenders' consent, irrespective of any variation of the Indenture itself) to Fixed Charges (defined and applied as set out in the Indenture Excerpt, which definition shall not be varied without the Lenders' consent, irrespective of any variation of the Indenture itself) on a 12 month trailing basis shall at all times be at least 2 to 1; and
- (b) Total Liabilities divided by the Total Assets (adjusted for market values of vessels calculated in accordance with Clause 15.3) shall not exceed 75%.

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

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

11.19 Indenture. The Borrowers shall procure that the Corporate Guarantor shall comply with all of the obligations undertaken by the Corporate Guarantor under the Indenture which are set out in the Indenture Excerpt and the Borrowers further agree that:

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

11.20 Compliance Check. Compliance with these Financial Covenants contained in Clause 11.18 shall be determined by reference (a) to the unaudited consolidated accounts for the first six months in each Financial Year of the Corporate Guarantor and (b) to the audited consolidated accounts for that Financial Year of the Corporate Guarantor for each Financial Year delivered to the Agent pursuant to this Agreement. The Borrowers shall deliver to the Agent semi-annually, at the same time they deliver the consolidated accounts to the Agent pursuant to Clause 11.18, a Compliance Certificate signed by the chief financial officer of the Corporate Guarantor.

11.21 General and administrative costs. The Borrowers and the Corporate Guarantor shall ensure that the payment of all the general and administrative costs of the Borrowers and the New Owner in connection with the ownership and operation of the Ships (including, without limitation, the payment of the management fees pursuant to the Management Agreements) shall be fully subordinated to the payment obligations of the Borrowers, the New Owner and the Corporate Guarantor under this Agreement and the other Finance Documents throughout the Security Period.

11.22 Know your customer. The Borrowers will provide to (or procure that there is sent to) the Agent such documents and evidence as any Creditor Party shall require in relation to each of the Borrowers or any Security Party, based on applicable laws and regulations and each Creditor Party's own internal guidelines relating to the verification of the identity and knowledge of its customers.

12 CORPORATE UNDERTAKINGS

12.1 General. Each Borrower also undertakes with each Creditor Party to comply with the following provisions of this Clause 12 at all times during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit.

12.2 Maintenance of status. Each Borrower will maintain its separate corporate existence and remain in good standing under the laws of the Republic of the Marshall Islands.

12.3 Negative undertakings. No Borrower will:

- (a) change the nature of its business; or
- (b) provide any form of credit or financial assistance to:
 - (i) a person who is directly or indirectly interested in such Borrower's share or loan capital; or
 - (ii) any company in or with which such a person is directly or indirectly interested or connected,

or enter into any transaction with or involving such a person or company on terms which are, in any respect, less favourable to such Borrower than those which it could obtain in a bargain made at arms' length;

- (c) open or maintain any account with any bank or financial institution except accounts with the Account Bank for the purposes of the Finance Documents;
- (d) acquire any shares or other securities other than US or UK Treasury bills and certificates of deposit issued by major North American or European banks, or enter into any transaction in a derivative;
- (e) issue, allot or grant any person a right or permit the occurrence of any Security Interest to any shares in its capital or repurchase or reduce its issued share capital;
- (f) enter into any form of amalgamation, merger or de-merger or any form of reconstruction or reorganisation; or
- (g) incur any further indebtedness or enter into any form of guarantee except indebtedness reasonably incurred in the ordinary course of its business.

12.4 Ownership/Management. The Borrowers undertake to ensure that, throughout the Security Period and without the prior written consent of the Agent, there shall be no change in the beneficial ownership of any of the shares in either of the Borrowers or in the control or management of either of the Borrowers except for changes approved in writing by the Agent or which result in the shares being beneficially owned by a member of the Group.

12.5 Subordination of rights. The Borrower shall ensure and procure that all its obligations in respect of any loan made available to it by any member of the Group shall be fully subordinated to the rights of the Creditor Parties under the Finance Documents under terms and conditions acceptable by the Agent (acting upon the instructions of the Majority Lenders):

13 INSURANCE

13.1 General. Each Borrower undertakes with each Creditor Party to comply with the following provisions of this Clause 13 at all times during the Security Period (after a Ship has been delivered to it pursuant to the relevant Shipbuilding Contract) except as the Agent may, with the authorisation of the Majority the Lenders, otherwise permit.

13.2 Maintenance of obligatory insurances. Each Borrower shall keep the Ship owned by it insured at the expense of such Borrower against:

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

13.3 Terms of obligatory insurances. Each Borrower shall effect such insurances:

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

13.4 Further protections for the Creditor Parties. In addition to the terms set out in Clause 13.3, each Borrower shall procure that the obligatory insurances shall:

- (a) upon the occurrence of an Event of Default and while it is continuing (except in relation to risks referred to in Clause 13.2(c)), name (or be amended to name) the Security Trustee as additional named assured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Lender, but without the Security Trustee thereby being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance and shall procure that no other assured shall be additionally named without the prior written consent of the Security Trustee;
- (b) name the Security Trustee as loss payee with such directions for payment as the Security Trustee may specify;
- (c) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Trustee shall be made without set-off, counterclaim or deductions or condition whatsoever;
- (d) provide that the insurers shall waive, to the fullest extent permitted by the applicable law, their entitlement (if any) (whether by statute, common law, equity, or otherwise) to be subrogated to the rights and remedies of the Security Trustee in respect of any rights or interests (secured or not) held by or available to the Security Trustee in respect of the Secured Liabilities, until the Secured Liabilities shall have been fully repaid and discharged, except that the insurers shall not be restricted by the terms of this paragraph (d) from making personal claims against persons (other than the Borrowers or any Creditor Party) in circumstances where the insurers have fully discharged their liabilities and obligations under the relevant obligatory insurances;
- (e) provide that such obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Trustee;
- (f) provide that the Security Trustee may make proof of loss if such Borrower fails to do so; and
- (g) provide that if any obligatory insurance is cancelled, or if any substantial change is made in the coverage which adversely affects the interest of the Security Trustee, or if any obligatory insurance is allowed to lapse for non-payment of premium, such cancellation, charge or lapse shall not be effective with respect to the Security Trustee for 14 days (or 7

days in the case of war risks) after receipt by the Security Trustee of prior written notice from the insurers of such cancellation, change or lapse.

13.5 Renewal of obligatory insurances. Each Borrower shall:

- (a) at least 14 days before the expiry of any obligatory insurance:
 - (i) notify the Security Trustee of the brokers (or other insurers) and any protection and indemnity or war risks association through or with whom such Borrower proposes to renew that obligatory insurance and of the proposed terms of renewal; and
 - (ii) in case of any substantial change in insurance cover, obtain the Agent's approval to the matters referred to in paragraph (i);
- (b) at least 7 days before the expiry of any obligatory insurance, renew that obligatory insurance; and
- (c) procure that the brokers and/or the war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Security Trustee in writing of the terms and conditions of the renewal.

13.6 Copies of policies; letters of undertaking. Each Borrower shall ensure that all brokers provide the Security Trustee with pro forma copies of all policies relating to the obligatory insurances which they are to effect or renew and of a letter or letters or undertaking in a form required by the Lenders and including undertakings by the brokers that:

- (a) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 13.4;
- (b) they will hold such policies, and the benefit of such insurances, to the order of the Security Trustee in accordance with the said loss payable clause;
- (c) they will advise the Security Trustee immediately of any material change to the terms of the obligatory insurances;
- (d) they will notify the Security Trustee, not less than 7 days before the expiry of the obligatory insurances, in the event of their not having received notice of renewal instructions from such Borrower or its agents and, in the event of their receiving instructions to renew, they will promptly notify the Security Trustee of the terms of the instructions; and
- (e) they will not set off against any sum recoverable in respect of a claim relating to the Ship owned by such Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of the Ship owned by such Borrower or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of the Ship owned by such Borrower forthwith upon being so requested by the Security Trustee.

13.7 Copies of certificates of entry. Each Borrower shall provide or ensure that any protection and indemnity and/or war risks associations in which the Ship owned by such Borrower is entered provides the Security Trustee with:

- (a) a certified copy of the certificate of entry for such Ship;

- (b) a letter or letters of undertaking in such form as may be required by the Security Trustee;
 - (c) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to such Ship;
 - (d) where required to be issued under the terms of insurance/indemnity provided by such Borrower's protection and indemnity association, a certified copy of each United States of America voyage quarterly declaration (or other similar document or documents) made by such Borrower in relation to such Ship in accordance with the requirements of such protection and indemnity association; and
 - (e) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to such Ship.
- 13.8 Deposit of original policies.** Each Borrower shall ensure that all policies relating to obligatory insurances are deposited with the brokers through which the insurances are effected or renewed.
- 13.9 Payment of premiums.** Each Borrower shall punctually pay all premiums or other sums payable in respect of the obligatory insurances and produce all relevant receipts when so required by the Security Trustee.
- 13.10 Guarantees.** Each Borrower shall ensure that any guarantees required by a protection and indemnity or war risks association are promptly issued and remain in full force and effect.
- 13.11 Restrictions on employment.** Neither Borrower shall employ its Ship nor permit her to be employed, outside the cover provided by any obligatory insurances.
- 13.12 Compliance with terms of insurances.** Neither Borrower shall do nor omit to do (nor permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part; and, in particular:
- (a) each Borrower shall take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and (without limiting the obligation contained in Clause 13.7(c)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Security Trustee has not given its prior approval;
 - (b) neither Borrower shall make any changes relating to the classification or classification society or manager or operator of the Ship owned by such Borrower approved by the underwriters of the obligatory insurances; and
 - (c) neither Borrower shall employ the Ship owned by it, nor allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.
- 13.13 Alteration to terms of insurances.** Neither Borrower shall make or agree to any alteration to the terms of any obligatory insurance nor waive any right relating to any obligatory insurance.
- 13.14 Settlement of claims.** Neither Borrower shall settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty, and shall do all

things necessary and provide all documents, evidence and information to enable the Security Trustee to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

13.15 Provision of copies of communications. Following the occurrence of an Event of Default, each Borrower shall provide the Security Trustee, at the time of each such communication, copies of all written communications between that Borrower and:

- (a) the approved brokers; and
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters;

which relate directly or indirectly to:

- (i) that Borrower's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls; and
- (ii) any credit arrangements made between that Borrower and any of the persons referred to in paragraphs (a) or (b) relating wholly or partly to the effecting or maintenance of the obligatory insurances.

13.16 Provision of information. In addition, each Borrower shall promptly provide the Security Trustee (or any persons which it may designate) with any information which the Security Trustee (or any such designated person) requests for the purpose of:

- (a) obtaining or preparing any report from an independent marine insurance broker as to the adequacy of the obligatory insurances effected or proposed to be effected; and/or
- (b) effecting, maintaining or renewing any such insurances as are referred to in Clause 13.16 below or dealing with or considering any matters relating to any such insurances,

and such Borrower shall, forthwith upon demand, indemnify the Security Trustee in respect of all fees and other expenses incurred by or for the account of the Security Trustee in connection with any such report as is referred to in paragraph (a) above.

13.17 Mortgagee's interest and additional perils insurances. The Security Trustee shall be entitled from time to time to effect, maintain and renew all or any of the following insurances in such amounts, on such terms, through such insurers and generally in such manner as the Security Trustee may from time to time consider appropriate:

- (a) a mortgagee's interest marine insurance in an amount of 110 per cent of the Loan providing for the indemnification of the Creditor Parties for any losses under or in connection with any Finance Document which directly or indirectly result from loss of or damage to a Ship or a liability of such Ship or of the Borrower which is the owner thereof, being a loss or damage which is prima facie covered by an obligatory insurance but in respect of which there is a non-payment (or reduced payment) by the underwriters by reason of, or on the basis of an allegation concerning:
 - (i) any act or omission on the part of such Borrower, of any operator, charterer, manager or sub-manager of the Ship or of any officer, employee or agent of such Borrower or of any such person, including any breach of warranty or condition or any non-disclosure relating to such obligatory insurance;
 - (ii) any act or omission, whether deliberate, negligent or accidental, or any knowledge or privity of such Borrower, any other person referred to in paragraph

(i) above, or of any officer, employee or agent of such Borrower or of such a person, including the casting away or damaging of such Ship and/or such Ship being unseaworthy; and/or

- (iii) any other matter capable of being insured against under a mortgagee's interest marine insurance policy whether or not similar to the foregoing;
- (b) a mortgagee's interest additional perils policy in an amount of not less than 110 per cent. of the Loan providing for the indemnification of the Creditor Parties against, among other things, any possible losses or other consequences of any Environmental Claim, including the risk of expropriation, arrest or any form of detention of such Ship, the imposition of any Security Interest over such Ship and/or any other matter capable of being insured against under a mortgagee's interest additional perils policy whether or not similar to the foregoing, and the Borrowers shall upon demand fully indemnify the Security Trustee in respect of all premiums and other expenses which are incurred in connection with or with a view to effecting, maintaining or renewing any such insurance or dealing with, or considering, any matter arising out of any such insurance.

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

14 SHIP COVENANTS

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

14.2 Ship's name and registration. Each Borrower shall register the Ship owned by it under an Approved Flag; shall not do or allow to be done anything as a result of which such registration might be cancelled or imperilled; and shall not change the name or port of registry of such Ship.

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

- (a) consistent with first-class ship ownership and management practice;
- (b) so as to maintain such Ship with the highest classification available for vessels of the same age, type and specification as such Ship with an approved classification society which is a member of IACS (except for the Chinese Classification Society of the People's Republic of China and the Russian Maritime Registry of Shipping in Russia) and which is acceptable to the Agent free of all overdue recommendations and conditions; and
- (c) so as to comply with all laws and regulations applicable to vessels registered at ports in the applicable Approved Flag State, or to vessels trading to any jurisdiction to which that Ship may trade from time to time, including but not limited to the ISM Code, the ISM Code Documentation, the ISPS Code and the ISPS Code Documentation.

- 14.4 Classification society undertaking.** Each Borrower shall instruct the classification society of the Ship owned by it to do all or any of the following after the occurrence of an Event of Default or (and procure that the classification society undertakes with the Security Trustee at such time):
- (a) to send to the Security Trustee, following receipt of a written request from the Security Trustee, certified true copies of all original class records held by the classification society in relation to the Ship;
 - (b) to allow the Security Trustee (or its agents), at any time and from time to time, to inspect the original class and related records of the Borrower and the Ship at the offices of the classification society and to take copies of them;
 - (c) to notify the Security Trustee immediately in writing if the classification society:
 - (i) receives notification from that Borrower or any person that that Ship's classification society is to be changed; or
 - (ii) becomes aware of any facts or matters which may result in or have resulted in a change, suspension, discontinuance, withdrawal or expiry of that Ship's class under the rules or terms and conditions of that Borrower's or that Ship's membership of the classification society;
 - (d) following receipt of a written request from the Security Trustee:
 - (i) to confirm that that Borrower is not in default of any of its contractual obligations or liabilities to the classification society and, without limiting the foregoing, that it has paid in full all fees or other charges due and payable to the classification society; or
 - (ii) if that Borrower is in default of any of its contractual obligations or liabilities to the classification society, to specify to the Security Trustee in reasonable detail the facts and circumstances of such default, the consequences thereof, and any remedy period agreed or allowed by the classification society.
- 14.5 Modification.** Each Borrower shall not make any modification or repairs to, or replacement of, the Ship owned by it or equipment installed on her which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.
- 14.6 Removal of parts.** Each Borrower shall not remove any material part of the Ship owned by it, or any item of equipment installed on, that Ship unless the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed, is free from any Security Interest or any right in favour of any person other than the Security Trustee and becomes on installation on the Ship the property of that Borrower and subject to the security constituted by the relevant Mortgage **Provided that** a Borrower may install equipment owned by a third party if the equipment can be removed without any risk of damage to the Ship owned by it.
- 14.7 Surveys.** Each Borrower shall submit the Ship owned by it regularly to all periodical or other surveys which may be required for classification purposes and, if so required by all the Lenders provide the Security Trustee, with copies of all survey reports.
- 14.8 Inspection.** Without prejudice to the Borrower's obligations pursuant to Clause 14.7, each Borrower shall permit the Security Trustee (by surveyors or other persons appointed by it for that purpose) to board the Ship owned by it at all reasonable times without interruption to such Ship's normal schedule, or interference with its operation, to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford

all proper facilities for such inspections (including, without limitation, submitting the Ship for a technical physical survey). All fees and expenses incurred in relation to the appointment of the surveyors and the preparation and issuing of all technical reports pursuant to this Clause 14.9 shall be the account of the Borrowers. **Provided that** so long as a Ship is found to be in a satisfactory condition to the Agent and no continuing Event of Default shall be in existence, the Borrowers shall not be obliged to pay the fees and expenses incurred in connection with the inspection of that Ship more than once in any twelve-month period.

14.9 Prevention of and release from arrest. Each Borrower shall promptly discharge:

- (a) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against the Ship owned by it, the Earnings or the Insurances;
- (b) all taxes, dues and other amounts charged in respect of the Ship, the Earnings or the Insurances; and
- (c) all other outgoings whatsoever in respect of the Ship owned by it, the Earnings or the Insurances;

and, forthwith upon receiving notice of the arrest of the Ship owned by it, or of its detention in exercise or purported exercise of any lien or claim, that Borrower shall procure its release by providing bail or otherwise as the circumstances may require.

14.10 Compliance with laws etc. Each Borrower shall (and shall procure that the Approved Manager shall):

- (a) comply, or procure compliance with the ISM Code, the ISPS Code, all Environmental Laws and all other laws or regulations relating to its Ship, its ownership, operation and management or to the business of such Borrower (including, but not limited to, the International Management Code for the Safe Operation of Ships and for Pollution Prevention);
- (b) not employ its Ship nor allow its employment in any manner contrary to any law or regulation in any relevant jurisdiction including but not limited to the ISM Code and the ISPS Code; and
- (c) in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit it to enter or trade to any zone which is declared a war zone by any government or by that Ship's war risks insurers unless the prior written consent of the all the Lenders has been given and the Borrowers have (at its expense) effected any special, additional or modified insurance cover which the Lenders may require.

14.11 Provision of information. The Borrowers shall promptly provide the Security Trustee with any information which the Lenders request regarding:

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

and, upon the Security Trustee's request, provide copies of any current charter relating to a Ship, of any current charter guarantee and copies of the ISM Code Documentation and the ISPS Code Documentation.

14.12 Notification of certain events. The Borrowers shall immediately notify the Security Trustee by fax, confirmed forthwith, by letter of:

- (a) any casualty which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which a Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requirement or recommendation made by any insurer or classification society or by any competent authority which is not immediately complied with;
- (d) any arrest or detention of a Ship, any exercise or purported exercise of any lien on either Ship or the Earnings or any requisition of either Ship for hire that is not lifted within 7 days;
- (e) any intended dry docking of a Ship;
- (f) any Environmental Claim made against a Borrower or in connection with a Ship, or any Environmental Incident;
- (g) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with;

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

14.13 Restrictions on chartering, appointment of managers, etc. Neither Borrower shall in relation to the Ship owned by it:

- (a) let that Ship on demise charter for any period;
- (b) enter into any time or consecutive voyage charter in respect of that Ship for a term which exceeds, or which by virtue of any optional extensions may exceed, 11 months;
- (c) enter into any charter in relation to that Ship under which more than 2 months' hire (or the equivalent) is payable in advance;
- (d) charter that Ship otherwise than on bona fide arm's length terms at the time when the Ship is fixed;
- (e) except with the prior written consent of the Agent, appoint a manager of the Ship other than the Approved Manager or agree to any alteration to the terms of the Approved Manager's appointment;
- (f) de-activate or lay up that Ship; or
- (g) put its Ship into the possession of any person for the purpose of work being done upon her in an amount exceeding or likely to exceed \$1,000,000 (or the equivalent in any other currency) unless that person has first given to the Security Trustee and in terms satisfactory to it a written undertaking not to exercise any lien on the relevant Ship or her Earnings for the cost of such work or for any other reason.

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

14.15 Sharing of Earnings. Neither Borrower shall:

- (a) enter into any agreement or arrangement for the sharing of any Earnings except as provided in the Ship B Charter; or
- (b) enter into any agreement or arrangement for the postponement of any date on which any Earnings are due; the reduction of the amount of any Earnings or otherwise for the release or adverse alteration of any right of the Borrower to any Earnings; or
- (c) enter into any agreement or arrangement for the release of, or adverse alteration to, any guarantee or Security Interest relating to any Earnings.

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

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

15 SECURITY COVER

15.1 Minimum required security cover. Clause 15.2 applies if the Agent notifies the Borrower that:

- (a) the aggregate of the Market Values of the Ships; plus
 - (b) the net realisable value of any additional security previously provided under this Clause 15
- is, at any time during the Security Period below 120 per cent. of an amount equal to the Loan less any cash held in accounts pledged to the Lenders.

15.2 Provision of additional security; prepayment. If the Agent serves a notice on the Borrowers under Clause 15.1, the Borrowers shall, within 1 month after the date on which the Agent's notice is served, either:

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

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

15.3 Valuation of a Ship. The Market Value of a Ship at any date is that shown by a valuation prepared:

- (a) as at a date not more than 14 days previously;
- (b) by an Approved Broker;
- (c) without physical inspection of that Ship (unless reasonably required by the Agent);
- (d) on the basis of a sale for prompt delivery for cash on normal arm's length commercial terms as between a willing seller and a willing buyer, taking into account any existing charter;

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

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

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

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

15.7 Payment of valuation expenses. Without prejudice to the generality of the Borrowers' obligations under Clauses 20.2, 20.3 and 21.3, the Borrowers shall, on demand, pay the Agent the amount of the fees and expenses of any Approved Broker or expert instructed by the Agent under this Clause and all legal and other expenses incurred by any Creditor Party in connection with any matter arising out of this Clause.

15.8 Frequency of valuations. The Agent shall (at the cost of the Borrowers) obtain a valuation of each Ship which is required to determine its Market Value pursuant to this Clause 15.3 once every calendar year together with the Financial Year end Compliance Certificate thereafter throughout the Security Period commencing with the valuation to be provided or prior to the Delivery Date for such Ship.

15.9 Application of prepayment. Clause 8.11 (b) shall apply in relation to any prepayment pursuant to Clause 15.2(b).

15.10 Release of additional security. If a Borrower or a third party has provided additional security as specified in Clause 15.1(b) and the Borrowers at a later time provide the Agent with a valuation of each Ship made in accordance with Clause 15.3, each evidencing that the aggregate Market Value of the Ships exceeds 120 per cent. of the Loan, the additional security (or the relevant part thereof) shall be released at the Borrowers' expense to the extent that the minimum security cover specified in Clause 15.1 would be maintained following such release **Provided** at that time there is no Event of Default nor will an Event of Default occur as a result of such release.

16 PAYMENTS AND CALCULATIONS

16.1 Currency and method of payments. All payments to be made by the Lenders or by the Borrowers under a Finance Document shall be made to the Agent or to the Security Trustee, in the case of an amount payable to it:

- (a) by not later than 11.00 a.m. (New York City time) on the due date;
- (b) in same day Dollar funds settled through the New York Clearing House Interbank Payments System (or in such other Dollar funds and/or settled in such other manner as the Agent shall specify as being customary at the time for the settlement of international transactions of the type contemplated by this Agreement);
- (c) in the case of an amount payable by a Lender to the Agent or by a Borrower to the Agent or any Lender, to the account of the Agent with a bank in New York: "Portorosa Marine Corp. and Floral Marine Ltd."), or to such other account with such other bank as the Agent may from time to time notify to the Borrowers and the other Creditor Parties; and
- (d) in the case of an amount payable to the Security Trustee, to such account as it may from time to time notify to the Borrowers and the other Creditor Parties.

16.2 Payment on non-Business Day. If any payment by a Borrower under a Finance Document would otherwise fall due on a day which is not a Business Day:

- (a) the due date shall be extended to the next succeeding Business Day; or
- (b) if the next succeeding Business Day falls in the next calendar month, the due date shall be brought forward to the immediately preceding Business Day; and interest shall be payable during any extension under paragraph (a) at the rate payable on the original due date.

16.3 Basis for calculation of periodic payments. All interest and any other payments under any Finance Document which are of an annual or periodic nature shall accrue from day to day and shall be calculated on the basis of the actual number of days elapsed and a 360 day year.

16.4 Distribution of payments to Creditor Parties. Subject to Clauses 16.5, 16.6 and 16.7:

- (a) any amount received by the Agent under a Finance Document for distribution or remittance to a Lender or the Security Trustee shall be made available by the Agent to that Lender or, as the case may be, the Security Trustee by payment, with funds having the same value as the funds received, to such account as that Lender or the Security Trustee may have notified to the Agent not less than 5 Business Days previously; and
- (b) amounts to be applied in satisfying amounts of a particular category which are due to the Lenders generally shall be distributed by the Agent to each Lender pro rata to the amount in that category which is due to it.

16.5 Permitted deductions by Agent. Notwithstanding any other provision of this Agreement or any other Finance Document, the Agent may, before making an amount available to a Lender, deduct and withhold from that amount any sum which is then due and payable to the Agent from that Lender under any Finance Document or any sum which the Agent is then entitled under any Finance Document to require that Lender to pay on demand.

- 16.6 Agent only obliged to pay when monies received.** Notwithstanding any other provision of this Agreement or any other Finance Document, the Agent shall not be obliged to make available to the Borrowers or any Lender any sum which the Agent is expecting to receive for remittance or distribution to the Borrowers or that Lender until the Agent has satisfied itself that it has received that sum.
- 16.7 Refund to Agent of monies not received.** If and to the extent that the Agent makes available a sum to a Borrower or a Lender, without first having received that sum, the Borrower concerned or (as the case may be) the Lender concerned shall, on demand:
- (a) refund the sum in full to the Agent; and
 - (b) pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding or other loss, liability or expense incurred by the Agent as a result of making the sum available before receiving it.
- 16.8 Agent may assume receipt.** Clause 16.7 shall not affect any claim which the Agent has under the law of restitution, and applies irrespective of whether the Agent had any form of notice that it had not received the sum which it made available.
- 16.9 Creditor Party accounts.** Each Creditor Party shall maintain accounts showing the amounts owing to it by each Borrower and each Security Party under the Finance Documents and all payments in respect of those amounts made by any Borrower and any Security Party.
- 16.10 Agent's memorandum account.** The Agent shall maintain a memorandum account showing the amounts advanced by the Lenders and all other sums owing to the Agent, the Security Trustee and each Lender from the Borrower and each Security Party under the Finance Documents and all payments in respect of those amounts made by any Borrower and any Security Party.
- 16.11 Accounts prima facie evidence.** If any accounts maintained under Clauses 16.9 and 16.10 show an amount to be owing by a Borrower or a Security Party to a Creditor Party, those accounts shall be prima facie evidence that that amount is owing to that Creditor Party.

17 APPLICATION OF RECEIPTS

- 17.1 Normal order of application.** Except as any Finance Document may otherwise provide, any sums which are received or recovered by any Creditor Party under or by virtue of any Finance Document shall be applied:
- (a) FIRST: in or towards satisfaction of any amounts then due and payable under the Finance Documents in the following order and proportions:
 - (i) first, in or towards satisfaction pro rata of all amounts then due and payable to the Creditor Parties under the Finance Documents other than those amounts referred to at paragraphs (ii) and (iii) (including, but without limitation, all amounts payable by the Borrowers under Clauses 20, 21 and 22 of this Agreement or by the Borrowers or any Security Party under any corresponding or similar provision in any other Finance Document);
 - (ii) secondly, in or towards satisfaction pro rata of any and all amounts of interest or default interest payable to the Creditor Parties under the Finance Documents; and
 - (iii) thirdly, in or towards satisfaction of the Loan;

- (b) **SECONDLY:** in retention of an amount equal to any amount not then due and payable under any Finance Document but which the Agent, by notice to the Borrowers, the Security Parties and the other Creditor Parties, states in its opinion will or may become due and payable in the future and, upon those amounts becoming due and payable, in or towards satisfaction of them in accordance with the foregoing provisions of this Clause; and
- (c) **THIRDLY:** any surplus shall be paid to the Borrowers or to any other person appearing to be entitled to it.

17.2 Variation of order of application. The Agent may, with the authorisation of all the Lenders, by notice to the Borrowers, the other Security Parties and the other Creditor Parties provide for a different manner of application from that set out in Clause 17.1 either as regards a specified sum or sums or as regards sums in a specified category or categories.

17.3 Notice of variation of order of application. The Agent may give notices under Clause 17.2 from time to time; and such a notice may be stated to apply not only to sums which may be received or recovered in the future, but also to any sum which has been received or recovered on or after the third Business Day before the date on which the notice is served.

17.4 Appropriation rights overridden. This Clause 17 and any notice which the Agent gives under Clause 17.2 shall override any right of appropriation possessed, and any appropriation made, by the Borrowers or any other Security Party.

18 APPLICATION OF EARNINGS

18.1 Payment of Earnings. Each Borrower undertakes with each Creditor Party to ensure that, throughout the Security Period (and subject only to the provisions of the General Assignments), all the Earnings of the Ship owned by it are paid to the Earnings Account for that Ship.

18.2 Location of accounts. Each Borrower shall promptly :

- (a) comply with any requirement of the Agent as to the location or re-location of the Earnings Accounts (or either of them);
- (b) execute any documents which the Agent specifies to create or maintain in favour of the Security Trustee a Security Interest over (and/or rights of set-off, consolidation or other rights in relation to) the Earnings Accounts.

18.3 Minimum Liquidity. The Borrowers shall ensure and procure that, at any time and in respect of each Advance, there shall be credited to the Earnings Account(s) amounts at least equal to the aggregate of (i) the next repayment instalment of each such Advance falling due and (ii) any interest to accrue until the next repayment date of each such Advance.

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

19 EVENTS OF DEFAULT

19.1 Events of Default. An Event of Default occurs if:

- (a) either Borrower or any Security Party fails to pay when due or (if so payable) on demand any sum payable under a Finance Document or under any document relating to a Finance Document;
 - (b) any breach occurs of Clause 9.2, 11.2, 11.3, 11.18, 11.19, 12.2, 12.3, 12.4, 12.5, 13.2, 13.3, 15.1, 18.1 or 18.3; or
 - (c) any breach by either Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a) or (b)) if, in the opinion of all the Lenders, such default is capable of remedy, and such default continues unremedied 15 Business Days after written notice from the Agent requesting action to remedy the same; or
 - (d) (subject to any applicable grace period specified in the Finance Document) any breach by either Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a), (b) or (c)); or
 - (e) any representation, warranty or statement made by, or by an officer of, a Borrower or a Security Party in a Finance Document or in the Drawdown Notice or any other notice or document relating to a Finance Document is untrue or misleading when it is made; or
 - (f) any of the following occurs in relation to any Financial Indebtedness of a Relevant Person:
 - (i) any Financial Indebtedness of a Relevant Person is not paid when due or, if so payable, on demand; or
 - (ii) any Financial Indebtedness of a Relevant Person becomes due and payable or capable of being declared due and payable prior to its stated maturity date as a consequence of any event of default; or
 - (iii) any Security Interest securing any Financial Indebtedness of a Relevant Person becomes enforceable; or
 - (g) any of the following occurs in relation to any Financial Indebtedness of a Borrower:
 - (i) a lease, hire purchase agreement or charter creating any Financial Indebtedness of a Borrower is terminated by the lessor or owner or becomes capable of being terminated as a consequence of any termination event; or
 - (ii) any overdraft, loan, note issuance, acceptance credit, letter of credit, guarantee, foreign exchange or other facility, or any swap or other derivative contract or transaction, relating to any Financial Indebtedness of a Borrower ceases to be available or becomes capable of being terminated as a result of any event of default, or cash cover is required, or becomes capable of being required, in respect of such a facility as a result of any event of default; or
 - (h) any of the following occurs in relation to a Relevant Person:
 - (i) a Relevant Person becomes unable to pay its debts as they fall due; or
 - (ii) any asset of a Relevant Person (other than the Corporate Guarantor) is subject to any form of execution, attachment, arrest, sequestration or distress in respect of a sum of, \$500,000 or more or the equivalent in another currency and, in the case of the Corporate Guarantor, is subject to any form of execution, attachment, arrest, sequestration or distress which is likely to have a Material Adverse Effect; or
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- (iii) any administrative or other receiver is appointed over any asset of a Relevant Person; or
- (iv) an administrator is appointed (whether by the court or otherwise) in respect of a Relevant Person; or
- (v) any formal declaration of bankruptcy or any formal statement to the effect that a Relevant Person is insolvent or likely to become insolvent is made by a Relevant Person or by the directors of a Relevant Person or, in any proceedings, by a lawyer acting for a Relevant Person; or
- (vi) a provisional liquidator is appointed in respect of a Relevant Person, a winding up order is made in relation to a Relevant Person or a winding up resolution is passed by a Relevant Person; or
- (vii) a resolution is passed, an administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by (aa) a Relevant Person, (bb) the members or directors of a Relevant Person, (cc) a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person, or (dd) a government minister or public or regulatory authority of a Pertinent Jurisdiction for or with a view to the winding up of that or another Relevant Person or the appointment of a provisional liquidator or administrator in respect of that or another Relevant Person, or that or another Relevant Person ceasing or suspending business operations or payments to creditors, save that this paragraph does not apply to a fully solvent winding up of a Relevant Person other than the Borrowers or the Corporate Guarantor which is, or is to be, effected for the purposes of an amalgamation or reconstruction previously approved by all the Lenders and effected not later than 3 months after the commencement of the winding up; or
- (viii) an administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by a creditor of a Relevant Person (other than a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person) for the winding up of a Relevant Person or the appointment of a provisional liquidator or administrator in respect of a Relevant Person in any Pertinent Jurisdiction, unless the proposed winding up, appointment of a provisional liquidator or administration is being contested in good faith, on substantial grounds and not with a view to some other insolvency law procedure being implemented instead and either (aa) the application or petition is dismissed or withdrawn within 30 days of being made or presented, or (bb) within 30 days of the administration notice being given or filed, or the other relevant steps being taken, other action is taken which will ensure that there will be no administration and (in both cases (aa) or (bb)) the Relevant Person will continue to carry on business in the ordinary way and without being the subject of any actual, interim or pending insolvency law procedure; or
- (ix) a Relevant Person or its directors take any steps (whether by making or presenting an application or petition to a court, or submitting or presenting a document setting out a proposal or proposed terms, or otherwise) with a view to obtaining, in relation to that or another Relevant Person, any form of moratorium, suspension or deferral of payments, reorganisation of debt (or certain debt) or arrangement with all or a substantial proportion (by number or value) of creditors or of any class of them or any such moratorium, suspension or deferral of payments, reorganisation or arrangement is effected by court order, by the filing of documents with a court, by means of a contract or in any other way at all; or
- (x) any meeting of the members or directors, or of any committee of the board or senior management, of a Relevant Person is held or summoned for the purpose of

considering a resolution or proposal to authorise or take any action of a type described in paragraphs (iv) to (ix) or a step preparatory to such action, or (with or without such a meeting) the members, directors or such a committee resolve or agree that such an action or step should be taken or should be taken if certain conditions materialise or fail to materialise; or

- (xi) in a Pertinent Jurisdiction other than England, any event occurs, any proceedings are opened or commenced or any step is taken which, in the opinion of all the Lenders, is similar to any of the foregoing; or
- (i) either Borrower or any Security Party ceases or suspends carrying on its business or a part of its business which, in the opinion of all the Lenders, is material in the context of this Agreement; or
- (j) it becomes unlawful in any Pertinent Jurisdiction or impossible:
 - (i) for either Borrower or any Security Party to discharge any liability under a Finance Document or to comply with any other obligation which all the Lenders consider material under a Finance Document; and
 - (ii) for the Agent, the Security Trustee or the Lenders to exercise or enforce any right under, or to enforce any Security Interest created by, a Finance Document; or
- (k) any consent necessary to enable either Borrower or the New Owner to own, operate or charter the Ship owned by it or to enable either Borrower or any Security Party to comply with any provision which all the Lenders consider material of a Finance Document is not granted, expires without being renewed, is revoked or becomes liable to revocation or any condition of such a consent is not fulfilled; or
- (l) it reasonably appears to the Lenders that, without their prior consent, a change has occurred or probably has occurred after the date of this Agreement in the beneficial ownership of any of the shares in either Borrower, or in the control of the voting rights attaching to any of those shares which results in the Borrowers not being in compliance with their obligations under Clause 12.4; or
- (m) any provision which the Lenders consider material of a Finance Document proves to have been or becomes invalid or unenforceable, or a Security Interest created by a Finance Document proves to have been or becomes invalid or unenforceable or such a Security Interest proves to have ranked after, or loses its priority to, another Security Interest or any other third party claim or interest; or
- (n) the security constituted by a Finance Document is in any way imperilled or in jeopardy; or
- (o) (without limiting the generality of paragraph (m) above), either Credit Default Insurance with respect to the Initial Charters, ceases to exist;
- (p) it reasonably appears to the Lenders that without their prior written consent a change has occurred or probably has occurred after the date of this Agreement in the direct or indirect ownership of any of the shares in the New Owner or in the control of the voting rights attaching to any of those shares which does not result in the shares being directly or indirectly owned by a member of the Group;";
- (q) any other event occurs or any other circumstances arise or develop including, without limitation:
 - (i) a change in the financial position, state of affairs or prospects of any Borrower or any other Security Party; or

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

19.2 Actions following an Event of Default. On, or at any time after, the occurrence of an Event of Default:

- (a) the Agent may, and if so instructed by the Majority Lenders, the Agent shall:
 - (i) serve on the Borrowers a notice stating that the Commitments and all other obligations of each Lender to the Borrowers under this Agreement are terminated; and/or
 - (ii) serve on the Borrowers a notice stating that if the Event of Default is not remedied, in the case of an Event of Default falling within Clause 19.1(a), within 5 days and in any other case, within 30 days, the Loan, all accrued interest and all other amounts accrued or owing under this Agreement are immediately due and payable or are due and payable on demand; and/or
 - (iii) take any other action which, as a result of the Event of Default or any notice served under paragraph (i) or (ii), the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law; and/or
- (b) the Security Trustee may, and if so instructed by the Agent, acting with the authorisation of the Majority Lender, the Security Trustee shall take any action which, as a result of the Event of Default or any notice served under paragraph (a) (i) or (ii), the Security Trustee, the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

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

19.4 Acceleration of Loan. On the service of a notice under Clause 19.2(a)(ii), the Loan, all accrued interest and all other amounts accrued or owing from the Borrowers or any Security Party under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.

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

19.6 Notification of Creditor Parties and Security Parties. The Agent shall send to each Lender, the Security Trustee and each Security Party a copy or the text of any notice which the Agent serves on the Borrowers under Clause 19.2; but the notice shall become effective when it is served on the Borrowers, and no failure or delay by the Agent to send a copy or the text of the notice to any other person shall invalidate the notice or provide a Borrower or any Security Party with any form of claim or defence.

19.7 Lender's rights unimpaired. Nothing in this Clause shall be taken to impair or restrict the exercise of any right given to individual Lenders under a Finance Document or the general law; and, in particular, this Clause is without prejudice to Clause 3.1.

19.8 Exclusion of Creditor Party liability. No Creditor Party, and no receiver or manager appointed by the Security Trustee, shall have any liability to a Borrower or a Security Party:

- (a) for any loss caused by an exercise of rights under, or enforcement of a Security Interest created by, a Finance Document or by any failure or delay to exercise such a right or to enforce such a Security Interest; or
- (b) as mortgagee in possession or otherwise, for any income or principal amount which might have been produced by or realised from any asset comprised in such a Security Interest or for any reduction (however caused) in the value of such an asset,

except that this does not exempt a Creditor Party or a receiver or manager from liability for losses shown to have been directly and mainly caused by the dishonesty or the wilful misconduct of such Creditor Party's own officers and employees or (as the case may be) such receiver's or manager's own partners or employees.

19.9 Relevant Persons. In this Clause 19 a "**Relevant Person**" means the Borrowers, the Corporate Guarantor and any other Security Party.

19.10 Interpretation. In Clause 19.1(f) references to an event of default or a termination event include any event, howsoever described, which is similar to an event of default in a facility agreement or a termination event in a finance lease; and in Clause 19.1(g) "**petition**" includes an application.

20 FEES AND EXPENSES

20.1 Arrangement, commitment and agency fees. The Borrowers have paid to the Agent:

- (a) a commitment fee (for distribution among the Lenders pro rata to their Commitments) at the rate of 0.40 per cent. per annum on the amount of the Total Commitments less the amount of the Loan for the period from (and including) 22 July 2009 up to the earlier of (i) the Final Availability Date of the Ship B Advance, (ii) if earlier, the Drawdown Date of the Ship B Advance and (iii) the date on which the Total Commitments are fully cancelled or terminated, such fee to be paid quarterly in arrears and on the last day of such period;
- (b) an arrangement fee (for distribution among the Lenders at the sole discretion of the Agent), equal to 0.80 per cent of the amount of the Total Commitments payable as follows:
 - (i) 50 per cent. of such arrangement fee has been paid on the date of acceptance of the Summary of Terms; and
 - (ii) the remaining 50 per cent shall be paid in two equal instalments, each equal to 0.40 per cent. of the maximum amount of each Advance each such instalment to be paid on the Drawdown Date of such Advance,

Provided that :

- (A) the first instalment of the arrangement fee referred to in paragraph (i) above shall be non-refundable irrespective whether any part of the Total Commitments are drawn down hereunder for any other reason whatsoever; and
- (B) in case the Agent determines that the arrangement fee needs to be increased in order to achieve for a successful syndication of the Total Commitment or any part thereof, the amount of the arrangement fee to be

paid and the manner of payment thereof may, at the discretion of the Agent and in cooperation with the Borrowers and the Corporate Guarantor each of whom shall act reasonably, be adjusted and increased up to an amount not exceeding in aggregate 1.20 per cent of the amount of the Total Commitments; and

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

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

20.3 Costs of variations, amendments, enforcement etc. The Borrowers shall pay to the Agent, on the Agent's demand, for the account of the Creditor Party concerned, the amount of all expenses incurred by a Creditor Party in connection with:

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

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

20.4 Documentary taxes. The Borrowers shall promptly pay any tax payable on or by reference to any Finance Document, and shall, on the Agent's demand, fully indemnify each Creditor Party against any claims, expenses, liabilities and losses resulting from any failure or delay by the Borrower to pay such a tax.

20.5 Certification of amounts. A notice which is signed by 2 officers of a Creditor Party, which states that a specified amount, or aggregate amount, is due to that Creditor Party under this Clause 20 and which indicates (without necessarily specifying a detailed breakdown) the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

21 INDEMNITIES

21.1 Indemnities regarding borrowing and repayment of Loan. The Borrowers shall fully indemnify the Agent and each Lender on the Agent's demand and the Security Trustee on its demand in respect of all claims, expenses, liabilities and losses which are made or brought against or incurred by that Creditor Party, or which that Creditor Party

reasonably and with due diligence estimates that it will incur, as a result of or in connection with:

- (a) the Loan not being borrowed on the date specified in the Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
- (b) the receipt or recovery of all or any part of the Loan or an overdue sum otherwise than on the last day of an Interest Period or other relevant period;
- (c) any failure (for whatever reason) by a Borrower to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrowers on the amount concerned under Clause 7);
- (d) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause 19;

and in respect of any tax (other than tax on its overall net income) for which a Creditor Party is liable in connection with any amount paid or payable to that Creditor Party (whether for its own account or otherwise) under any Finance Document.

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

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

21.3 Miscellaneous indemnities. The Borrowers shall fully indemnify each Creditor Party severally on their respective demands in respect of all claims, expenses, liabilities and losses and expenses of every kind (“**liability items**”) which may be made or brought against or incurred by a Creditor Party, in any country, as a result of or in connection with:

- (a) any action taken, or omitted or neglected to be taken, under or in connection with any Finance Document by the Agent, the Security Trustee or any other Creditor Party or by any receiver appointed under a Finance Document; and
- (b) any other event, matter or question which occurs or arises at any time during the Security Period and which has any connection with, or any bearing on, any Finance Document, any payment or other transaction relating to a Finance Document or any asset covered (or previously covered) by a Security Interest created (or intended to be created) by a Finance Document.

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

21.4 Extension of indemnities; environmental indemnity. Without prejudice to its generality, Clause 21.3 covers:

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

21.5 Currency indemnity. If any sum due from a Borrower or any Security Party to a Creditor Party under a Finance Document or under any order or judgment relating to a Finance Document has to be converted from the currency in which the Finance Document provided for the sum to be paid (the “**Contractual Currency**”) into another currency (the “**Payment Currency**”) for the purpose of:

- (a) making or lodging any claim or proof against any Borrower or any Security Party, whether in its liquidation, any arrangement involving it or otherwise; or
- (b) obtaining an order or judgment from any court or other tribunal; or
- (c) enforcing any such order or judgment;

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

In this Clause 21.5, the “**available rate of exchange**” means the rate at which the Creditor Party concerned is able at the opening of business (London time) on the Business Day after it receives the sum concerned to purchase the Contractual Currency with the Payment Currency.

This Clause 21.5 creates a separate liability of the Borrowers which is distinct from its other liabilities under the Finance Documents and which shall not be merged in any judgment or order relating to those other liabilities.

21.6 Certification of amounts. A notice which is signed by 2 officers of a Creditor Party, which states that a specified amount, or aggregate amount, is due to that Creditor Party under this Clause 21 and which indicates (without necessarily specifying a detailed breakdown) the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

21.7 Sums deemed due to a Lender. For the purposes of this Clause 21, a sum payable by a Borrower to the Agent or the Security Trustee for distribution to a Lender shall be treated as a sum due to that Lender.

22 NO SET-OFF OR TAX DEDUCTION

22.1 No deductions. All amounts due from a Borrower under a Finance Document shall be paid:

- (a) without any form of set-off, cross-claim or condition; and
- (b) free and clear of any tax deduction except a tax deduction which a Borrower is required by law to make.

22.2 Grossing-up for taxes. If a Borrower is required by law to make a tax deduction from any payment:

- (a) the Borrowers shall notify the Agent as soon as it becomes aware of the requirement;
- (b) such Borrower shall pay the tax deducted to the appropriate taxation authority promptly, and in any event before any fine or penalty arises;
- (c) the amount due in respect of the payment shall be increased by the amount necessary to ensure that each Creditor Party receives and retains (free from any liability relating to the tax deduction) a net amount which, after the tax deduction, is equal to the full amount which it would otherwise have received.

22.3 Evidence of payment of taxes. Within 1 month after making any tax deduction, the Borrowers shall deliver to the Agent documentary evidence satisfactory to the Agent that the tax had been paid to the appropriate taxation authority.

22.4 Exclusion of tax on overall net income. In this Clause 22 “**tax deduction**” means any deduction or withholding for or on account of any present or future tax except tax on a Creditor Party’s overall net income.

23 ILLEGALITY, ETC

23.1 Illegality. This Clause 23 applies if a Lender (the “**Notifying Lender**”) notifies the Agent that it has become, or will with effect from a specified date, become:

- (a) unlawful or prohibited as a result of the introduction of a new law, an amendment to an existing law or a change in the manner in which an existing law is or will be interpreted or applied; or
- (b) contrary to, or inconsistent with, any regulation,
for the Notifying Lender to maintain or give effect to any of its obligations under this Agreement in the manner contemplated by this Agreement.

23.2 Notification of illegality. The Agent shall promptly notify the Borrowers, the Security Parties, the Security Trustee and the other Lenders of the notice under Clause 23.1 which the Agent receives from the Notifying Lender.

23.3 Prepayment; termination of Commitment. On the Agent notifying the Borrowers under Clause 23.1 and 23.2, the Notifying Lender’s Commitment shall terminate; and thereupon or, if later, on the date specified in the Notifying Lender’s notice under Clause 23.1 as the date on which the notified event would become effective the Borrowers shall prepay the Notifying Lender’s Contribution in accordance with Clause 8.

24 INCREASED COSTS

24.1 Increased costs. This Clause 24 applies if a Lender (the “**Notifying Lender**”) notifies the Agent that the Notifying Lender considers that as a result of:

- (a) the introduction or alteration after the date of this Agreement of a law, or a regulation or an alteration after the date of this Agreement in the manner in which a law is interpreted or applied by any competent authority (disregarding any effect which relates to the application to payments under this Agreement of a tax on the Notifying Lender’s overall net income); or
- (b) the effect of complying with any regulation having compulsory effect (including any which relates to capital adequacy or liquidity controls or which affects the manner in which the Notifying Lender allocates capital resources to its obligations under this Agreement) which is introduced, or altered, or the interpretation or application of which is altered, after the date of this Agreement,

the Notifying Lender (or a parent company of it) has incurred or will incur an “**increased cost**”, that is to say:

- (i) an additional or increased cost incurred as a result of, or in connection with, the Notifying Lender having entered into, or being a party to, this Agreement or a Transfer Certificate, of funding or maintaining its Commitment or Contribution or performing its obligations under this Agreement, or of having outstanding all or any part of its Contribution or other unpaid sums;
- (ii) a reduction in the amount of any payment to the Notifying Lender under this Agreement or in the effective return which such a payment represents to the Notifying Lender or on its capital;
- (iii) an additional or increased cost of funding or maintaining all or any of the advances comprised in a class of advances formed by or including the Notifying Lender’s Contribution or (as the case may require) the proportion of that cost attributable to the Contribution; or
- (iv) a liability to make a payment, or a return foregone, which is calculated by reference to any amounts received or receivable by the Notifying Lender under this Agreement,

but not an item attributable to a change in the rate of tax on the overall net income of the Notifying Lender (or a parent company of it) or an item covered by the indemnity for tax in Clause 21.1 or by Clause 22; or

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

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

24.2 Notification to Borrowers of claim for increased costs. The Agent shall promptly notify the Borrowers and the Security Parties of the notice which the Agent received from the Notifying Lender under Clause 24.1.

24.3 Payment of increased costs. The Borrowers shall pay to the Agent, on the Agent’s demand, for the account of the Notifying Lender the amounts which the Agent from time to time notifies the Borrowers that the Notifying Lender has specified to be necessary to compensate the Notifying Lender for the increased cost.

24.4 Notice of prepayment. If the Borrowers are not willing to continue to compensate the Notifying Lender for the increased cost under Clause 24.3, the Borrowers may give the Agent not less than 15 days’ notice of its intention to prepay the Notifying Lender’s Contribution at the end of an Interest Period.

24.5 Prepayment; termination of Commitment. A notice under Clause 24.4 shall be irrevocable; the Agent shall promptly notify the Notifying Lender of the Borrowers’ notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Commitment of the Notifying Lender shall be cancelled; and
- (b) on the date specified in its notice of intended prepayment, the Borrowers shall prepay (without premium or penalty) the Notifying Lender's Contribution, together with accrued interest thereon at the applicable rate plus the Margin.

24.6 Application of prepayment. Clause 8 shall apply in relation to the prepayment

25 SET-OFF

25.1 Application of credit balances. Each Creditor Party may without prior notice:

- (a) apply any balance (whether or not then due) which at any time stands to the credit of any account in the name of any Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Borrowers or any of them to that Creditor Party under any of the Finance Documents; and
- (b) for that purpose:
 - (i) break, or alter the maturity of, all or any part of a deposit of a Borrower;
 - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
 - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

25.2 Existing rights unaffected. No Creditor Party shall be obliged to exercise any of its rights under Clause 25.1; and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

25.3 Sums deemed due to a Lender. For the purposes of this Clause 25, a sum payable by the Borrowers or any of them to the Agent or the Security Trustee for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to such Lender.

25.4 No Security Interest. This Clause 25 gives each Creditor Party a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Borrowers (or any of them).

26 JOINT AND SEVERAL LIABILITY

26.1 General. All liabilities and obligations of the Borrowers under this Agreement shall, whether expressed to be so or not, be several and, if and to the extent consistent with Clause 26.2, joint.

26.2 No impairment of Borrowers' obligations. The liabilities and obligations of a Borrower shall not be impaired by:

- (a) this Agreement being or later becoming void, unenforceable or illegal as regards either one or both of the other Borrower;
- (b) any Lender, the Agent or the Security Trustee entering into any rescheduling, refinancing or other arrangement of any kind with the other Borrower;

- (c) any Lender, the Agent or the Security Trustee releasing the other Borrower or any Security Interest created by a Finance Document; or
- (d) any combination of the foregoing.

26.3 Principal debtors. Each Borrower declares that it is and will, throughout the Security Period, remain a principal debtor for all amounts owing under this Agreement and the Finance Documents and neither the Borrower shall in any circumstances be construed to be a surety for the obligations of the other Borrower under this Agreement.

26.4 Subordination. Subject to Clause 26.5, during the Security Period, neither Borrower shall:

- (a) claim any amount which may be due to it from the other Borrower whether in respect of a payment made, or matter arising out of, this Agreement or any Finance Document, or any matter unconnected with this Agreement or any Finance Document; or
- (b) take or enforce any form of security from the other Borrower for such an amount, or in any other way seek to have recourse in respect of such an amount against any asset of either one or both of the other Borrowers; or
- (c) set off such an amount against any sum due from it to the other Borrower; or
- (d) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving the other Borrower or other Security Party; or
- (e) exercise or assert any combination of the foregoing.

26.5 Borrowers' required action. If during the Security Period, the Agent, by notice to a Borrower, requires it to take any action referred to in paragraphs (a) to (d) of Clause 26.4, in relation to the other Borrower, that Borrower shall take that action as soon as practicable after receiving the Agent's notice.

27 TRANSFERS AND CHANGES IN LENDING OFFICES

27.1 Transfer by a Borrower. Neither Borrower may, without the prior written consent of the Agent, given on the instructions of all the Lenders:

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

27.2 Transfer by a Lender. Subject to Clause 27.4 and the other terms and conditions of this Clause 27.2, a Lender (the "Transferor Lender") may at any time cause:

- (a) its rights in respect of all or part of its Contribution; or
- (b) its obligations in respect of all or part of its Commitment; or
- (c) a combination of (a) and (b),

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

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

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

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

However any rights and obligations of the Transferor Lender in its capacity as Agent or Security Trustee will have to be dealt with separately in accordance with the Agency and Trust Agreement.

27.3 Transfer Certificate, delivery and notification. As soon as reasonably practicable after a Transfer Certificate is delivered to the Agent, it shall (unless it has reason to believe that the Transfer Certificate may be defective):

- (a) sign the Transfer Certificate on behalf of itself, the Borrowers, the Security Parties, the Security Trustee and each of the other Lenders;
- (b) on behalf of the Transferee Lender, send to the Borrowers and each Security Party letters or faxes notifying them of the Transfer Certificate and attaching a copy of it; and
- (c) send to the Transferee Lender copies of the letters or faxes sent under paragraph (b) above.

27.4 Effective Date of Transfer Certificate. A Transfer Certificate becomes effective on the date, if any, specified in the Transfer Certificate as its effective date **Provided that** it is signed by the Agent under Clause 26.3 on or before that date.

27.5 No transfer without Transfer Certificate. No assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, any Borrower, any Security Party or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

27.6 Lender re-organisation; waiver of Transfer Certificate. However, if a Lender enters into any merger, de-merger or other reorganisation as a result of which all its rights or obligations vest in another person (the “**successor**”), the Agent may, if it sees fit, by notice to the successor and the Borrowers and the Security Trustee waive the need for the execution and delivery of a Transfer Certificate; and, upon service of the Agent’s notice, the successor shall become a Lender with the same Commitment and Contribution as were held by the predecessor Lender.

27.7 Effect of Transfer Certificate. A Transfer Certificate takes effect in accordance with English law as follows:

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the

Transferor Lender's title and of any rights or equities which either Borrower or any Security Party had against the Transferor Lender;

- (b) the Transferor Lender's Commitment is discharged to the extent specified in the Transfer Certificate;
- (c) the Transferee Lender becomes a Lender with the Contribution previously held by the Transferor Lender and a Commitment of an amount specified in the Transfer Certificate;
- (d) the Transferee Lender becomes bound by all the provisions of the Finance Documents which are applicable to the Lenders generally, including those about pro-rata sharing and the exclusion of liability on the part of, and the indemnification of, the Agent and the Security Trustee and, to the extent that the Transferee Lender becomes bound by those provisions (other than those relating to exclusion of liability), the Transferor Lender ceases to be bound by them;
- (e) any part of the Loan which the Transferee Lender advances after the Transfer Certificate's effective date ranks in point of priority and security in the same way as it would have ranked had it been advanced by the transferor, assuming that any defects in the transferor's title and any rights or equities of either Borrower or any Security Party against the Transferor Lender had not existed;
- (f) the Transferee Lender becomes entitled to all the rights under the Finance Documents which are applicable to the Lenders generally, including but not limited to those under Clause 5.7 and Clause 20, and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them; and
- (g) in respect of any breach of a warranty, undertaking, condition or other provision of a Finance Document or any misrepresentation made in or in connection with a Finance Document, the Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.

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

27.8 Maintenance of register of Lenders. During the Security Period the Agent shall maintain a register in which it shall record the name, Commitment, Contribution and administrative details (including the lending office) from time to time of each Lender holding a Transfer Certificate and the effective date (in accordance with Clause 26.4) of the Transfer Certificate; and the Agent shall make the register available for inspection by any Lender, the Security Trustee and either Borrower during normal banking hours, subject to receiving at least 3 Business Days prior notice.

27.9 Reliance on register of Lenders. The entries on that register shall, in the absence of manifest error, be conclusive in determining the identities of the Lenders and the amounts of their Commitments and Contributions and the effective dates of Transfer Certificates and may be relied upon by the Agent and the other parties to the Finance Documents for all purposes relating to the Finance Documents.

27.10 Authorisation of Agent to sign Transfer Certificates. Each Borrower, the Security Trustee, each Lender irrevocably authorise the Agent to sign Transfer Certificates on its behalf.

27.11 Registration fee. In respect of any Transfer Certificate, the Agent shall be entitled to recover a registration fee of \$2,500 (and all costs, fees and expenses incidental to the transfer (including, but not limited to legal fees and expenses)) from the Transferor Lender or (at the Agent's option) the Transferee Lender.

27.12 Sub-participation; subrogation assignment. A Lender may sub-participate part of its rights and/or obligations under or in connection with the Finance Documents provided however that the aggregate of such sub-participations at any time does not exceed 50 per cent. of the total rights and/or obligations of the Lenders under or in connection with the Finance Documents, without the consent of, or any notice to, any Borrower, any Security Party, the Agent and the Security Trustee; and the Lenders may assign, in any manner and terms agreed by all the Lenders, the Agent and the Security Trustee, all or any part of those rights to an insurer or surety who has become subrogated to them.

27.13 Disclosure of information. A Lender may disclose to a potential Transferee Lender, or sub-participant as well as any rating agency, trustee, professional adviser or accountant any information which the Lender has received in relation to any Borrower, any Security Party or their affairs under or in connection with any Finance Document which the Agent may consider necessary or appropriate to be disclosed in order to ensure a successful potential syndication, transfer or sub-participation. In such case, the Agent shall be released from its obligation of secrecy and confidentiality **provided** however, that if a potential Transferee Lender or sub-participant, as well as any rating agency, trustee, professional adviser or accountant is not already by law subject to any rules of confidentiality, the Agent shall request the execution of a confidentiality agreement by such potential Transferee Lender, sub-participant, rating agency, trustee or accountant.

27.14 Change of lending office. A Lender may change its lending office by giving notice to the Agent and the change shall become effective on the later of:

- (a) the date on which the Agent receives the notice; and
- (b) the date, if any, specified in the notice as the date on which the change will come into effect.

27.15 Notification. On receiving such a notice, the Agent shall notify the Borrowers and the Security Trustee; and, until the Agent receives such a notice, it shall be entitled to assume that a Lender is acting through the lending office of which the Agent last had notice.

28 VARIATIONS AND WAIVERS

28.1 Variations, waivers etc. by Lenders. A document shall be effective to vary, waive, suspend or limit any provision of a Finance Document, or any Creditor Party's rights or remedies under such a provision or the general law, only if the document is signed, or specifically agreed to by fax, by the Borrowers, by the Agent on behalf of the Majority Lenders, by the Agent and the Security Trustee in their own rights, and, if the document relates to a Finance Document to which a Security Party is party, by that Security Party.

28.2 Exclusion of other or implied variations. Except for a document which satisfies the requirements of Clause 28.1, no document, and no act, course of conduct, failure or neglect to act, delay or acquiescence on the part of the Creditor Parties or any of them (or any person acting on behalf of any of them) shall result in the Creditor Parties or any of them (or any person acting on behalf of any of them) being taken to have varied, waived, suspended or limited, or being precluded (permanently or temporarily) from enforcing, relying on or exercising:

- (a) a provision of this Agreement or another Finance Document; or
- (b) an Event of Default; or
- (c) a breach by a Borrower or any other Security Party of an obligation under a Finance Document or the general law; or
- (d) any right or remedy conferred by any Finance Document or by the general law;

and there shall not be implied into any Finance Document any term or condition requiring any such provision to be enforced, or such right or remedy to be exercised, within a certain or reasonable time.

29 NOTICES

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

29.2 Addresses for communications. A notice shall be sent:

- (a) to each Borrower: 85 Akti Miaouli,
Piraeus 185 38,
Greece

Fax No: +30 210 4531984
- (b) to a Lender: At the address below its name in Schedule 1 (or as the case may require) in the relevant Transfer Certificate.
- (c) to the Agent, Security Trustee,
Bookrunner and Arranger: DekaBank Deutsche Girozentrale
Mainzer Landstraße 16
60329 Frankfurt am Main
Germany

Fax No: +49 151 527 18146

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

29.3 Effective date of notices. Subject to Clauses 29.4 and 29.5:

- (a) a notice which is delivered personally or posted shall be deemed to be served, and shall take effect, at the time when it is delivered;
- (b) a notice which is sent by telex or fax shall be deemed to be served, and shall take effect, 2 hours after its transmission is completed.

29.4 Service outside business hours. However, if under Clause 29.3 a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or
- (b) on such a business day, but after 5 p.m. local time,

the notice shall (subject to Clause 29.5) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

29.5 Illegible notices. Clauses 29.3 and 29.4 do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

29.6 Valid notices. A notice under or in connection with a Finance Document shall not be invalid by reason that its contents or the manner of serving it do not comply with the requirements of this Agreement or, where appropriate, any other Finance Document under which it is served if:

- (a) the failure to serve it in accordance with the requirements of this Agreement or other Finance Document, as the case may be, has not caused any party to suffer any significant loss or prejudice; or
- (b) in the case of incorrect and/or incomplete contents, it should have been reasonably clear to the party on which the notice was served what the correct or missing particulars should have been.

29.7 Electronic communication. Any communication to be made between the Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent and the relevant Lender:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (c) notify each other of any change to their respective addresses or any other such information supplied to them.

Any electronic communication made between the Agent and a Lender will be effective only when actually received in readable form and, in the case of any electronic communication made by a Lender to the Agent, only if it is addressed in such a manner as the Agent shall specify for this purpose.

29.8 English language. Any notice under or in connection with a Finance Document shall be in English.

29.9 Meaning of “notice”. In this Clause 28, “notice” includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

30 SUPPLEMENTAL

30.1 Rights cumulative, non-exclusive. The rights and remedies which the Finance Documents give to each Creditor Party are:

- (a) cumulative;
- (b) may be exercised as often as appears expedient; and
- (c) shall not, unless a Finance Document explicitly and specifically states so, be taken to exclude or limit any right or remedy conferred by any law.

30.2 Severability of provisions. If any provision of a Finance Document is or subsequently becomes void, unenforceable or illegal, that shall not affect the validity, enforceability or legality of the other provisions of that Finance Document or of the provisions of any other Finance Document.

30.3 Counterparts. A Finance Document may be executed in any number of counterparts.

30.4 Third Party rights. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

31 LAW AND JURISDICTION

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

31.2 Exclusive English jurisdiction. Subject to Clause 31.3, the courts of England shall have exclusive jurisdiction to settle any Disputes.

31.3 Choice of forum for the exclusive benefit of Creditor Parties. Clause 31.2 is for the exclusive benefit of the Creditor Parties, each of which reserves the rights:

- (a) to commence proceedings in relation to any Dispute in the courts of any country other than England and which have or claim jurisdiction to that Dispute; and
- (b) to commence such proceedings in the courts of any such country or countries concurrently with or in addition to proceedings in England or without commencing proceedings in England.

Neither Borrower shall commence any proceedings in any country other than England in relation to a Dispute.

31.4 Process agent. Each Borrower irrevocably appoints Messrs HFW Nominees Limited at their office for the time being, presently at Friary Court, 65 Crutched Friars, London EC3N 3AE, England to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with this Agreement or any other Finance Document.

31.5 Creditor Party rights unaffected. Nothing in this Clause 31 shall exclude or limit any right which any Creditor Party may have (whether under the law of any country, an international convention or otherwise) with regard to the bringing of proceedings, the service of process, the recognition or enforcement of a judgment or any similar or related matter in any jurisdiction.

31.6 Meaning of “proceedings”. In this Clause 31, “proceedings” means proceedings of any kind, including an application for a provisional or protective measure and a “Dispute” means any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) or any non-contractual obligation arising out of or in connection with this Agreement.

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

EXECUTION PAGES

BORROWERS

SIGNED by)
)
Georgia Babanara) /s/ Georgia Babanara
for and on behalf of)
PORTOROSA MARINE CORP.)
in the presence of: Catriona Henderson) /s/ Catriona Henderson
WATSON, FARLEY & WILLIAMS
89 AKTI MIAOULI
PIRAEUS 185 38 GREECE

SIGNED by)
)
Georgia Babanara) /s/ Georgia Babanara
for and on behalf of)
FLORAL MARINE LTD.)
in the presence of: Catriona Henderson) /s/ Catriona Henderson
WATSON, FARLEY & WILLIAMS
89 AKTI MIAOULI
PIRAEUS 185 38 GREECE

LENDERS

SIGNED by)
)
Efstratios Paschalidas) /s/ Efstratios Paschalidas
for and on behalf of)
DEKABANK DEUTSCHE)
GIROZENTRALE)
in the presence of: Catriona Henderson) /s/ Catriona Henderson
WATSON, FARLEY & WILLIAMS
89 AKTI MIAOULI
PIRAEUS 185 38 GREECE

AGENT

SIGNED by)
)
Efstratios Paschalidas) /s/ Efstratios Paschalidas
for and on behalf of)
DEKABANK DEUTSCHE)
GIROZENTRALE)
in the presence of: Catriona Henderson) /s/ Catriona Henderson
WATSON, FARLEY & WILLIAMS
89 AKTI MIAOULI
PIRAEUS 185 38 GREECE

SECURITY TRUSTEE

SIGNED by)
)
Efstratios Paschalidas) /s/ Efstratios Paschalidas
for and on behalf of)
DEKABANK DEUTSCHE)
GIROZENTRALE)
in the presence of: Catriona Henderson) /s/ Catriona Henderson
WATSON, FARLEY & WILLIAMS
89 AKTI MIAOULI
PIRAEUS 185 38 GREECE

BOOKRUNNER

SIGNED by)
)
Efstratios Paschalidas) /s/ Efstratios Paschalidas
for and on behalf of)
DEKABANK DEUTSCHE)
GIROZENTRALE)
in the presence of: Catriona Henderson) /s/ Catriona Henderson
WATSON, FARLEY & WILLIAMS
89 AKTI MIAOULI
PIRAEUS 185 38 GREECE

ARRANGER

SIGNED by)
)
Efstratios Paschalidas) /s/ Efstratios Paschalidas
for and on behalf of)
DEKABANK DEUTSCHE)
GIROZENTRALE)
in the presence of: Catriona Henderson) /s/ Catriona Henderson
WATSON, FARLEY & WILLIAMS
89 AKTI MIAOULI
PIRAEUS 185 38 GREECE